

# Court ruling allows Canadian spies to conduct mass surveillance of cellphones

By Laurent Lafrance  
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Federal court judge Chief Justice Paul S. Crampton has ruled that the Canadian Security Intelligence Service (CSIS), Canada's premier domestic spy agency, can make use of cellphone surveillance technology to carry out warrantless spying.

Crampton's decision, released late last month, relates to CSIS' use of cell-site simulators (CSS) in the course of a recent "Islamist terrorism" investigation. The reactionary ruling argued that "state objectives of public importance [i.e., national security] are predominant, the intrusive nature of the search was minimal, and the method of the search was both highly accurate and narrowly targeted."

Crampton concluded that the use of CSS by CSIS does not represent an "unreasonable search," and is thus not in violation of the Charter of Rights and Freedoms. In other words, the ruling gives a green light to the spy agencies to use tools of mass surveillance.

CSS—also known as IMSI catchers or "Stingrays"—are briefcase-size devices that imitate cellphone towers and trick nearby cellphones into establishing a connection with them. They can record phones' geolocation, phone numbers, personal information and even the content of texts and phone calls.

While officials claim the devices are only used to track a targeted suspect in the course of a police investigation, the reality is that CSS can cover a half-kilometre radius in urban areas and a two-kilometre radius in open spaces, meaning that intelligence agents can intercept communications of hundreds or thousands of civilians at a time. This kind of technology has been regularly used to conduct mass surveillance during protests in various countries.

The latest ruling grants even greater powers to Canada's intelligence apparatus, which under successive Conservative and Liberal governments has been dramatically expanded in the name of the "war on terror." The scaffolding of a police state has been erected in the

more than 15 years since the 9/11 terrorist attacks, with core democratic rights, such as the presumption of innocence, right to remain silent and freedom of assembly, having been gravely undermined.

Privacy advocates in Canada and around the world have long criticized the use of IMSI catchers due to the anti-democratic implications for ordinary citizens. Tamir Israel, a staff lawyer at the Canadian Internet Policy and Public Interest Clinic (CIPPIC) characterized the IMSI catchers as "inherently intrusive" and said of the court ruling, "[T]he impact on non-direct targets can actually be, I think, much more serious than is presented here."

Crampton's pro forma insistence that any information collected incidentally must be "quickly destroyed and not subject to any analysis whatsoever" and that CSIS cannot legally capture the content of communications nor geolocate someone without a warrant will not reassure anyone over the age of ten.

CSIS routinely flouts the law and has repeatedly been found guilty of lying to the courts. In 2016, it was revealed that CSIS and the Royal Canadian Mounted Police (RCMP) had been secretly using CSS technologies for over ten years, sometimes without any warrant.

Last November, Federal Court Judge Simon Noel sharply criticized CSIS for concealing the existence of a mass data collection program—the Operational Data Analysis Centre. Established in July 2006, the ODAC has gathered metadata on a vast and unspecified number of Canadians, including email addresses, telephone numbers and IP addresses of anyone who has been in contact with a person surveilled by CSIS.

In 2013, Justice Richard Mosley ruled that CSIS systematically lied for years in a series of applications it made to the courts to secure authorization for wiretapping operations. The domestic spy agency failed to disclose that it was collaborating with CSE (Communications Security Establishment), Canada's foreign signals

intelligence service, which is part of the NSA-led “Five Eyes” alliance and is formally prohibited from collecting information on Canadians.

Since these revelations became public, lifting a small corner of the veil of secrecy surrounding the intelligence agencies’ activities, the Liberal government has been engaged in damage control.

The suggestion that government officials were unaware that police forces utilized CSS does not hold water. Information came to light in 2016 revealing that during a six-month period in 2015, the RCMP used IMSI catchers without warrants under the direct advice of the Department of Justice and an intergovernmental working group on wiretapping technology.

The granting of legal authority to CSIS to use tools of mass surveillance is in keeping with the Liberals’ National Security Act, 2017 (Bill C-59). The legislation empowers CSIS to actively “disrupt” vaguely defined “threats” to national security, including by using illegal means if necessary. Bill C-59 is the promised reform of the draconian Bill C-51 that the previous Conservative government of Stephen Harper rammed through parliament in 2015 in the name of fighting “terrorism.”

Bill C-59 retains all the anti-democratic provisions contained in the Harper government’s law, while giving the new legislation a veneer of legitimacy by providing a list of “permitted” illegal acts for CSIS to use. These include restricting people’s movements, disrupting communications and financial transactions, and damaging property, as long as the damage does not endanger life or cause bodily harm. It also authorizes CSE to launch offensive cyberattacks against what it deems “hostile actors,” including foreign states.

Public Safety Minister Ralph Goodale, who at the end of November sent Bill C-59 for study to the House Public Safety and National Security Committee, recently boasted that the bill will make it easier to combat “homegrown extremism” by improving existing provisions.

The Liberal government trumpeted the creation of a new committee of seven MPs and two senators with the power to review intelligence and security operations in any department or agency, as well as the nomination of a new Intelligence Commissioner tasked with authorizing the warrants granted to the intelligence agencies.

In truth, these mechanisms merely serve to provide the intelligence agencies with a legal-constitutional fig leaf as they continue their mass surveillance of the population. Committee members are barred from making their findings public, and the government has wide powers to

withhold information from the committee if a responsible minister deems that a review of an operation would harm “national security.”

The Library of Parliament recently released a discussion paper underscoring that CSIS and CSE are out to data-mine electronic records in “bulk” about ordinary people as they look for so-called terrorist threats. The report states that parts of Bill C-59 “would accommodate the bulk acquisition of any publicly available information that has been published or broadcast for public consumption, including, for example, facial imagery captured in social-media posts.”

The report went on to suggest that Bill C-59 could be a windfall for service providers and information brokers—companies that will gather bundles of data such as credit histories, web browsing history, online purchases, social-media connections, marital status, etc., and sell them to government agencies.

The Liberals’ assault on the population’s basic democratic rights and defence of Canada’s national security apparatus goes hand in hand with their aggressive, imperialist foreign policy. Bill C-59 was introduced just two weeks after the Trudeau government unveiled a 70 percent hike in defence spending over the next decade as part of its new defence policy. A key element of this is the deepening of Canada’s strategic partnership with the Trump administration, with which Ottawa wants to be able to cooperate in the waging of wars around the world to uphold both countries’ imperialist interests.

Such militarist policies, which will be paid for by an intensification of the assault on the social position of the working class, cannot be implemented democratically. In the final analysis, these repressive measures will be used against any form of social opposition to the government’s right-wing policies—from environmentalists, to native organizations, leftist and antiwar groups, and above all the working class.

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