

# CSEC and Harper Government Assert Right to Spy on Canadians

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With the government's full support, the Communication Security Establishment Canada (CSEC)—the Canadian partner and counterpart of the US National Security Agency (NSA)—has illegally arrogated the power to spy on Canadians.

Responding Friday to the latest revelations from NSA whistleblower Edward Snowden, CSEC baldly declared that it has the unfettered right to systematically collect and analyze the metadata from Canadians' electronic communications—that is from their telephone calls, texts, e-mail messages, and Internet use.

Like the NSA, CSEC is advancing a pseudo-legal argument to justify its flagrant violation of Canadians' privacy rights. This argument revolves around a spurious distinction between the "content" of a communication and the metadata generated by it. The latter, claims CSEC, is not constitutionally protected because it is merely a "wrapping" or "envelope." Metadata can, therefore, be accessed, preserved and analyzed by the state at will. That is, in the absence of any reasonable suspicion of wrongdoing and without CSEC needing to obtain a judicial warrant.

CSEC "is legally authorized to collect and analyze metadata," declared a terse press release issued by Canada's eavesdropping agency Friday. "In simple terms, metadata is technical information used to route communications, and not the contents of a communication."

Based on this antidemocratic assertion, the CSEC statement goes on to claim that a pilot NSA-CSEC program that involved the collection and analysis of the metadata of all Wi-Fi traffic at a Canadian airport during a two-week period in 2012 was completely in accordance with the blanket legal ban on CSEC spying on the communications of people in Canada, unless authorized by a court-issued warrant.

"No Canadian or foreign travellers were tracked," claimed CSEC. "No Canadian communications were, or are, targeted, collected or used."

This is doublespeak. Since at least 2004, CSEC has been spying on Canadians' communications through the systematic collection and analysis of metadata.

In the case of the NSA-CSEC pilot project, the 27-slide CSEC PowerPoint presentation leaked by Snowden to the Canadian Broadcasting Corporation (CBC) boasts that the new program the spy agencies were testing enabled them to trace the subsequent Wi-Fi communications of those swept up in their surveillance of an unnamed "mid-size" Canadian airport for up to two weeks. The metadata from their communications was collected and their movements reconstructed as they accessed Wi-Fi's at hotels, cafes, libraries and other airports in

Canada and the US.

What is this if not spying?

The CSEC statement went on to make various claims as to the legality of its metadata mining operations. Such spying, it contended, is authorized under the *National Defence Act* and by ministerial directives and has been approved by the CSEC Commissioner, an ostensible “watchdog” who works hand-in-glove with CSEC and reports to the Defence Minister.

The reality is that CSEC’s operations are shrouded in complete secrecy—an antidemocratic framework conducive to illegal assertions of executive power. It functions on the basis of directives issued by the Minister of Defence. The contents of these directives and even their subjects are known only to a handful of cabinet ministers and a cabal of national security officials

The ministerial directives that authorize CSEC’s metadata mining programs have never been publicly released, let alone approved by parliament and their legality tested in the courts.

We do know, thanks to a series of reports published by the *Globe and Mail* since last June, that CSEC has been metadata mining Canadians’ communications for at least a decade. The initial *Globe* report was largely based on a secret 2009 ministerial directive that gave CSEC continued authorization for at least one of its metadata mining programs and sought to provide legal cover for this by invoking the claim that metadata is not constitutionally protected communication.

In response to this and other revelations—many of them coming from documents leaked by Snowden and showing that CSEC functions as a veritable arm and subcontractor of the NSA in its global spying operations—CSEC and the Conservative government have made numerous pro forma declarations affirming CSEC’s adherence to the law. Canadians have been repeatedly told that CSEC’s operations target “foreign threats” and that it cannot and does not scrutinize Canadians’ communications without court authorization.

The *World Socialist Web Site* repeatedly warned that these statements were disinformation and lies. In particular, we pointed to the evidence that CSEC was seeking to circumvent the legal and constitutional restrictions on it spying on Canadians by asserting that metadata is not part of an electronic “communication.”

The significance of Friday’s statement is that never before has CSEC so forthrightly admitted to the Canadian public that it is collecting and analyzing the metadata of their communications and asserted—in flagrant contradiction with the privacy rights guaranteed in the country’s constitution—that it has the power to do so.

While the CSEC statement did not repeat this argument, the spy agency and the Conservative government have repeatedly suggested that metadata is innocuous technical information—which begs the question as to why massive state resources are being expended to collect and analyze it and to perfect dragnet surveillance programs.

Through metadata mining the state can develop intimate profiles of individuals and groups. Metadata is “way more powerful than the content of communications,” University of Toronto professor and cyber-security specialist Ron Deibert told the CBC. “You can tell a lot more

about people, their habits, their relationships, their friendships, even their political beliefs.”

CSEC’s metadata spying was first authorized by the Liberal government of Jean Chretien and Paul Martin and has been expanded under its successor, Stephen Harper’s Conservative government.

On Friday, Defence Minister Rob Nicholson stuck to the government script, insisting that CSEC’s operations are lawful and repeating its tendentious claims that metadata mining doesn’t constitute spying on Canadians’ communications. CSEC, declared Nicholson, “made it clear to CBC that nothing in the documents that they had obtained showed that Canadian communications were targeted, collected, or used, nor that travellers’ movements were tracked.”

Canada’s opposition parties have aided and abetted the government’s attempt to cover up the illegal spying being conducted by CSEC. In the seven months prior to last Friday, they had asked only a handful of questions in parliament about the revelations concerning CSEC and refused to either alert Canadians to the significance of CSEC’s metadata mining or its pivotal role in the NSA’s illegal global spying network.

On Friday, some MPs from the trade union-supported New Democratic Party and the Liberals did characterize CSEC’s spying as illegal. But as defenders of big business and the capitalist state, they will not mount any serious effort to expose the illegal operations of CSEC, let alone demonstrate the connection between the emergence of police state spying, ever widening social inequality, and the drive of all sections of the elite to make the working class pay for the capitalist crisis through wage and job cuts and the dismantling of public services.

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