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Canadian Security Intelligence Service (CSIS): What do you need to know?

What does CSIS do?

CSIS is Canada's spy agency. CSIS collects and analyzes information and security intelligence within Canada and around the world. Its primary function is to advise the Canadian government on national security and threats to the security of Canada.¹ Proposed changes to the law may permit CSIS to "reduce" these same threats to the security of Canada by engaging in disruption techniques.²

For CSIS's purposes, activities that constitute "threats to the security of Canada" include:

- espionage against Canada or detrimental to Canada's interests;
- foreign-influenced activity that is detrimental to Canada's interests and is clandestine or deceptive or involve a threat to any person;
- serious violence for the purpose of achieving a political, religious or ideological objective; and
- activities that lead to the destruction or overthrow by violence of Canada's system of government.³

Can I be arrested or detained by a CSIS agent?

No, you cannot be arrested by a CSIS agent. They do not have the power to arrest you, as police officers do.⁴ However, proposed changes to the law may allow CSIS to detain and interrogate you in order to "reduce" threats to the security of Canada.⁵

Do I have to answer questions asked by a CSIS agent?

No, if you do not want to speak with a CSIS agent, you may decline to answer questions.⁶ There is, however, one exception to this rule: a foreign national making an application under the *Immigration and Refugee Protection Act* must appear for an interview with a CSIS agent and truthfully answer all questions, if requested by an immigration officer.⁷ A foreign national appearing for an interview may also have to produce photographic or fingerprint evidence and submit to a medical examination.⁸ We strongly advise that you seek legal counsel before speaking with any member of CSIS.

What will happen if I do not answer questions asked by a CSIS agent?

It is difficult to predict exactly what will happen if you do not answer questions asked by a CSIS agent; it will depend on the specific circumstances. However, if you have any interactions with CSIS, you should consider documenting what occurred and seeking independent legal advice.

Does a CSIS agent have to tell me that they work for CSIS?

There is no clear requirement that CSIS agents disclose that they work for CSIS.⁹ As CSIS is a spy agency often conducting covert activities, secrecy is inherently required. Moreover, CSIS uses informants to secretly obtain information. These informants clearly do not have to reveal that they are working for CSIS so it stands to reason that CSIS agents obtaining information directly do not have to disclose that they work for CSIS either.

If a police or RCMP officer is with the CSIS agent, can I be arrested or detained? Do I have to answer questions?

If the CSIS agent is accompanied by a police or RCMP officer, the officer still possesses their normal police powers. Thus, you may be arrested or detained by that officer and taken for questioning. In such a case, you have the right to remain silent and not answer any questions. You also have the right to immediately ask to speak to a lawyer.

Can CSIS impact my immigration status or citizenship application in any way?

CSIS may advise a Minister so that they may perform a function under the *Citizenship Act* or the *Immigration and Refugee Protection Act*.¹⁰ Thus, the information provided by CSIS may have an impact on your immigration status or citizenship application.

For example, CSIS may provide information that leads the Minister to submit a report opining that you should not be granted citizenship because you will engage in activities that constitute a threat to the security of Canada.¹¹ This report will be reviewed and could prevent you from being granted citizenship.¹²

Moreover, you will not be granted citizenship or take the oath of citizenship while you are under investigation by CSIS for certain offences under the *Crimes Against Humanity and War Crimes Act*.¹³

Can CSIS take my cellphone or computer? Can they access my cellphone or computer or monitor or intercept my activities on those devices without my knowledge?

No, unless CSIS has obtained the approval of the Minister of Public Safety and Emergency Preparedness and a warrant issued by a judge, they cannot take your cellphone or computer or use any intrusive techniques to gain access to the information on them.¹⁴ However, if they obtain a warrant issued by a judge, CSIS may intercept any communication or obtain any information, record, document, or thing. For this purpose, CSIS agents are authorized to:

- (a) to enter any place or open or obtain access to any thing;
- (b) to search for, remove or return, or examine, take extracts from or make copies of or record in any other manner the information, record, document or thing; or
- (c) to install, maintain or remove any thing.¹⁵

Therefore, if a judge issues a warrant, a CSIS agent may be able to take your cellphone or computer or use some intrusive techniques to gain access to the information on them. Additionally, proposed changes to the law may mean that CSIS can take such action without a warrant or approval, if it does not violate the *Charter of Rights and Freedoms*.¹⁶

It should be noted that changes to the *Criminal Code* allow telecom providers to voluntarily provide a document that contains information about a customer. This could help match specific phone calls or internet activity with a certain person and no warrant would be needed. Some have argued that CSIS agents could use these changes to the law.¹⁷ However, there are strong legal arguments against this view.¹⁸ Ultimately, courts will have the final word on the topic.

If CSIS takes or accesses my cellphone or computer or monitors or intercepts my activities, can I find out what information they obtained?

While you do have a right to request access to your personal information held by CSIS, it can refuse to give you access.¹⁹ CSIS can further refuse to confirm or deny whether the information exists.²⁰

If CSIS refuses to provide access to your personal information or refuses to confirm or deny the existence of such information, you can appeal to the Privacy Commissioner of Canada but it has no power to order CSIS to comply with your request.²¹ Individuals can also file a complaint to the Canadian Security Intelligence Review Commission (SIRC) which has the power to investigate CSIS and to make non-binding recommendations.

Is CSIS allowed to investigate protest groups?

Lawful advocacy, protest, or dissent by itself cannot be investigated by CSIS – it is specifically excluded from “threats to the security of Canada” that CSIS is meant to investigate.²² However, a protest group can be investigated if it protests in conjunction with one of the defined threats that CSIS is meant to investigate (espionage, foreign-influenced activity detrimental to Canada, terrorism, or destruction or violent overthrow of Canada’s system of government).²³

Can CSIS recruit human sources to spy on or provide information about me, my community, or a group I am part of?

Yes, CSIS can and does recruit human sources to obtain information.²⁴ For example, CSIS has specific policies with regards to using human sources on university campuses and has previously used such sources to spy on individuals.²⁵ CSIS has also used human sources to spy on members of the Muslim community.²⁶ Of course, you are not obligated to collaborate with or work as a human source for CSIS.

Can CSIS conduct surveillance outside of Canada?

CSIS has stated that it has carried out operations outside of Canada, asserting that there is no restriction on where it may collect information on threats to the security of Canada.²⁷ Proposed changes to the *Canadian Security Intelligence Service Act* expressly allow CSIS to collect information outside of Canada with a warrant, even if it is illegal in the other country.²⁸

The Federal Court of Appeal has found that, though a warrant is required, CSIS can directly, or indirectly with the support of foreign intelligence services, engage in intrusive investigative methods in other countries.²⁹

What can I do to make a complaint against CSIS?

You can complain about any act or thing done by CSIS to the Director of CSIS.³⁰ If you do not receive a response from the Director within 30 days or are dissatisfied with the response, you may complain to the Canadian Security Intelligence Review Committee (SIRC), which oversees CSIS. The SIRC shall investigate the complaint, so long as you have already complained to the Director and it does not find your complaint trivial, frivolous, vexatious or made in bad faith.³¹

The information you need to file a complaint is outlined [here](#).

Sources

¹ Section 12, *Canadian Security Intelligence Service Act*.

² Section 42 of Bill C-51: the *Anti-Terrorism Act, 2015*.

³ Section 2, *Canadian Security Intelligence Service Act*.

⁴ No section in the *Canadian Security Intelligence Service Act* gives CSIS such powers; also stated by the BCCLA at: <http://bccla.org/privacy-handbook/main-menu/privacy7contents/privacy7-20/#2>; admitted by CSIS at <https://www.csis.gc.ca/bts/fq-en.php>.

⁵ Section 42 of Bill C-51: the *Anti-Terrorism Act, 2015*.

⁶ Again, no section in the *Canadian Security Intelligence Service Act* requires one to answer questions; also stated by the BCCLA at: <http://bccla.org/privacy-handbook/main-menu/privacy7contents/privacy7-20/#2>.

⁷ Section 16(2.1), *Immigration and Refugee Protection Act*.

⁸ Section 16(3), *Immigration and Refugee Protection Act*.

⁹ While CSIS agents engaging in “covert operational activities” may disclose their identity for the purpose of performing their duties, it is not mandatory unless required by law, which it is not: see sections 18(1) and (2), *Canadian Security Intelligence Service Act*.

¹⁰ Section 14, *Canadian Security Intelligence Service Act*.

¹¹ Section 19(2), *Citizenship Act*.

¹² Section 20(1), *Citizenship Act*.

¹³ Section 22(1)(c), *Citizenship Act*.

¹⁴ Section 21(1) and (3), *Canadian Security Intelligence Service Act*.

¹⁵ Section 21(3), *Canadian Security Intelligence Service Act*.

¹⁶ Section 42 of Bill C-51: the *Anti-Terrorism Act, 2015*.

¹⁷ See, for example, “How federal bill C-13 could give CSIS agents – or even Rob Ford – access to your personal online data”, online: National Post <<http://news.nationalpost.com/2014/05/04/how-a-new-federal-bill-c-13-could-give-csis-agents-or-even-rob-ford-access-to-your-personal-online-data/>>

¹⁸ CSIS agents are likely not peace officers, though the term is broadly defined under the Criminal Code. Moreover, per sections 2 and 6 of the *Security Offences Act*, the RCMP bears the primary responsibility of peace officers with respect to the offences constituting a “threat to the security of Canada.” Additionally, the amendments only allow telecom providers to voluntarily provide a document if they are not prohibited by law from doing so. They appear to be prohibited by law from doing so due to the Supreme Court of Canada’s recent decision in *R v Spencer*, 2014 SCC 43.

¹⁹ Section 22(1), *Privacy Act*.

²⁰ Section 16(2), *Privacy Act*.

²¹ Section 29(1), *Privacy Act*; Privacy Commissioner of Canada only makes recommendations to government institution that denies request, which need not be followed, per sections 35(1) and (5), *Privacy Act*.

²² Section 2, *Canadian Security Intelligence Service Act*.

²³ Section 2, *Canadian Security Intelligence Service Act*.

²⁴ Ability to recruit on university campuses is acknowledged by CSIS at: <https://www.csis.gc.ca/bts/fq-en.php>; use recently discussed in the case *Canada (Citizenship and Immigration) v Harkat*, 2014 SCC 37, where the court found that CSIS human sources may be identified because they are not protected by class privilege, as criminal informants are: see paras 80 and 88.

²⁵ SIRC Annual Report 1998-1999 at pages 16 to 20; “Professors worried about CSIS spying on campus”, online: The Varsity <<http://thevarsity.ca/2001/11/15/professors-worried-about-csis-spying-on-campus/>>; “University Faculty Worried Over CSIS Activity”, online: Rabble <<http://rabble.ca/news/university-faculty-worried-over-csis-activity>>.

²⁶ Confidential informant Mubinoddin Shaikh was the principal Crown witness in the Toronto 18 case - see, for example, *R v N.Y.*, [2008] OJ No 3902; “Muslims say CSIS has spies in many mosques”, online: The Globe and Mail <<http://www.theglobeandmail.com/news/national/muslims-say-csis-has-spies-in-many-mosques/article1101289/>>; human sources also play a key role in some immigration detention cases like *Canada (Citizenship and Immigration) v Harkat*, 2014 SCC 37.

²⁷ <https://www.csis.gc.ca/bts/fq-en.php>.

²⁸ Section 21(3.1), *Canadian Security Intelligence Service Act*.

²⁹ *Re X*, 2014 FCA 249 at para 103.

³⁰ Section 41(1), *Canadian Security Intelligence Service Act*.

³¹ Section 41(1), *Canadian Security Intelligence Service Act*.

Cited Legislative Provisions

Canadian Security Intelligence Service Act, R.S.C., 1985, c. C-23

2. In this Act,

“threats to the security of Canada”

« *menaces envers la sécurité du Canada* »

“threats to the security of Canada” means

- (a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,
- (b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
- (c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and
- (d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,

but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d).

12. The Service shall collect, by investigation or otherwise, to the extent that it is strictly necessary, and analyse and retain information and intelligence respecting activities that may on reasonable grounds be suspected of constituting threats to the security of Canada and, in relation thereto, shall report to and advise the Government of Canada.

14. The Service may

- (a) advise any minister of the Crown on matters relating to the security of Canada, or
- (b) provide any minister of the Crown with information relating to security matters or criminal activities,

that is relevant to the exercise of any power or the performance of any duty or function by that Minister under the Citizenship Act or the Immigration and Refugee Protection Act.

21. (1) Where the Director or any employee designated by the Minister for the purpose believes, on reasonable grounds, that a warrant under this section is required to enable the Service to investigate a threat to the security of Canada or to perform its duties and functions under section 16, the Director or employee may, after having obtained the approval of the Minister, make an application in accordance with subsection (2) to a judge for a warrant under this section.

(3) Notwithstanding any other law but subject to the Statistics Act, where the judge to whom an application under subsection (1) is made is satisfied of the matters referred to in paragraphs (2)(a) and (b) set out in the affidavit accompanying the application, the judge may issue a warrant authorizing the persons to whom it is directed to intercept any communication or obtain any information, record, document or thing and, for that purpose,

- (a) to enter any place or open or obtain access to any thing;
- (b) to search for, remove or return, or examine, take extracts from or make copies of or record in any other manner the information, record, document or thing; or
- (c) to install, maintain or remove any thing.

(3.1) Without regard to any other law, including that of any foreign state, a judge may, in a warrant issued under subsection (3), authorize activities outside Canada to enable the Service to investigate a threat to the security of Canada.

41. (1) Any person may make a complaint to the Review Committee with respect to any act or thing done by the Service and the Committee shall, subject to subsection (2), investigate the complaint if

- (a) the complainant has made a complaint to the Director with respect to that act or thing and the complainant has not received a response within such period of time as the Committee considers reasonable or is dissatisfied with the response given; and
- (b) the Committee is satisfied that the complaint is not trivial, frivolous, vexatious or made in bad faith.

Bill C-51: the *Anti-Terrorism Act*, 2015

42. The [*Canadian Security Intelligence Service*] Act is amended by adding the following after section 12:

12.1 (1) If there are reasonable grounds to believe that a particular activity constitutes a threat to the security of Canada, the Service may take measures, within or outside Canada, to reduce the threat.

(2) The measures shall be reasonable and proportional in the circumstances, having regard to the nature of the threat, the nature of the measures and the reasonable availability of other means to reduce the threat.

(3) The Service shall not take measures to reduce a threat to the security of Canada if those measures will contravene a right or freedom guaranteed by the Canadian Charter of Rights and Freedoms or will be contrary to other Canadian law, unless the Service is authorized to take them by a warrant issued under section 21.1.

***Immigration and Refugee Protection Act*, S.C. 2001, c. 27**

16. (2.1) A foreign national who makes an application must, on request of an officer, appear for an interview for the purpose of an investigation conducted by the Canadian Security Intelligence Service under section 15 of the *Canadian Security Intelligence Service Act* for the purpose of providing advice or information to the Minister under section 14 of that Act and must answer truthfully all questions put to them during the interview.

16. (3) An officer may require or obtain from a permanent resident or a foreign national who is arrested, detained or subject to a removal order, any evidence — photographic, fingerprint or otherwise — that may be used to establish their identity or compliance with this Act.

Citizenship Act, R.S.C., 1985, c. C-29

19. (1) In this section and sections 19.1, 19.2 and 20, “Review Committee” and “threats to the security of Canada” have the same meanings as in the Canadian Security Intelligence Service Act.

(2) Where the Minister is of the opinion that a person should not be granted citizenship under section 5 or subsection 11(1) or administered the oath of citizenship or be issued a certificate of renunciation under section 9 because there are reasonable grounds to believe that the person will engage in activity

(a) that constitutes a threat to the security of Canada, or

(b) that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of any offence that may be punishable under any Act of Parliament by way of indictment,

the Minister may make a report to the Review Committee.

20. (1) Notwithstanding anything in this Act, a person shall not be granted citizenship under section 5 or subsection 11(1) or administered the oath of citizenship or be issued a certificate of renunciation under section 9 where, after considering the report made under subsection 19(6) by the Review Committee or the person appointed under subsection 19.1(1), the Governor in Council declares that there are reasonable grounds to believe that the person with respect to whom the report was made will engage in an activity described in paragraph 19(2)(a) or (b).

22. (1) Despite anything in this Act, a person shall not be granted citizenship under subsection 5(1), (2) or (4) or 11(1) or take the oath of citizenship

(c) while the person is under investigation by the Minister of Justice, the Royal Canadian Mounted Police or the Canadian Security Intelligence Service for, or is charged with, on trial for, subject to or a party to an appeal relating to, an offence under any of sections 4 to 7 of the Crimes Against Humanity and War Crimes Act;

Security Offences Act, R.S.C., 1985, c. S-7

2. Notwithstanding any other Act of Parliament, the Attorney General of Canada may conduct proceedings in respect of an offence under any law of Canada where

(a) the alleged offence arises out of conduct constituting a threat to the security of Canada within the meaning of the Canadian Security Intelligence Service Act, or

(b) the victim of the alleged offence is an internationally protected person within the meaning of section 2 of the Criminal Code,

and for that purpose the Attorney General of Canada may exercise all the powers and perform all the duties and functions assigned by or under the Criminal Code to the Attorney General.

6. (1) Members of the Royal Canadian Mounted Police who are peace officers have the primary responsibility to perform the duties that are assigned to peace officers in relation to any offence referred to in section 2 or the apprehension of the commission of such an offence.

Privacy Act, R.S.C., 1985, c. P-21

16. (1) Where the head of a government institution refuses to give access to any personal information requested under subsection 12(1), the head of the institution shall state in the notice given under paragraph 14(a)

- (a) that the personal information does not exist, or
- (b) the specific provision of this Act on which the refusal was based or the provision on which a refusal could reasonably be expected to be based if the information existed,

and shall state in the notice that the individual who made the request has a right to make a complaint to the Privacy Commissioner about the refusal.

(2) The head of a government institution may but is not required to indicate under subsection (1) whether personal information exists.

22. (1) The head of a government institution may refuse to disclose any personal information requested under subsection 12(1)

- (a) that was obtained or prepared by any government institution, or part of any government institution, that is an investigative body specified in the regulations in the course of lawful investigations pertaining to
 - (i) the detection, prevention or suppression of crime,
 - (ii) the enforcement of any law of Canada or a province, or
 - (iii) activities suspected of constituting threats to the security of Canada within the meaning of the Canadian Security Intelligence Service Act,

if the information came into existence less than twenty years prior to the request;

(b) the disclosure of which could reasonably be expected to be injurious to the enforcement of any law of Canada or a province or the conduct of lawful investigations, including, without restricting the generality of the foregoing, any such information

- (i) relating to the existence or nature of a particular investigation,
- (ii) that would reveal the identity of a confidential source of information, or
- (iii) that was obtained or prepared in the course of an investigation; or

(c) the disclosure of which could reasonably be expected to be injurious to the security of penal institutions.

29. (1) Subject to this Act, the Privacy Commissioner shall receive and investigate complaints

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- (a) from individuals who allege that personal information about themselves held by a government institution has been used or disclosed otherwise than in accordance with section 7 or 8;
- (b) from individuals who have been refused access to personal information requested under subsection 12(1);
- (c) from individuals who allege that they are not being accorded the rights to which they are entitled under subsection 12(2) or that corrections of personal information requested under paragraph 12(2)(a) are being refused without justification;
- (d) from individuals who have requested access to personal information in respect of which a time limit has been extended pursuant to section 15 where they consider the extension unreasonable;
- (e) from individuals who have not been given access to personal information in the official language requested by the individuals under subsection 17(2);
- (e.1) from individuals who have not been given access to personal information in an alternative format pursuant to a request made under subsection 17(3);
- (f) from individuals who have been required to pay a fee that they consider inappropriate;
- (g) in respect of the index referred to in subsection 11(1); or
- (h) in respect of any other matter relating to
 - (i) the collection, retention or disposal of personal information by a government institution,
 - (ii) the use or disclosure of personal information under the control of a government institution, or
 - (iii) requesting or obtaining access under subsection 12(1) to personal information.

35. (1) If, on investigating a complaint under this Act in respect of personal information, the Privacy Commissioner finds that the complaint is well-founded, the Commissioner shall provide the head of the government institution that has control of the personal information with a report containing

- (a) the findings of the investigation and any recommendations that the Commissioner considers appropriate; and
 - (b) where appropriate, a request that, within a time specified therein, notice be given to the Commissioner of any action taken or proposed to be taken to implement the recommendations contained in the report or reasons why no such action has been or is proposed to be taken.
- (5) Where, following the investigation of a complaint relating to a refusal to give access to personal information under this Act, access is not given to the complainant, the Privacy Commissioner shall inform the complainant that the complainant has the right to apply to the Court for a review of the matter investigated.