



Ottawa, July 14, 2021 – Public versions of two confidential decisions were issued today by Justice Simon Noël of the Federal Court in files 2021 FC 105 and 2021 FC 585:

IN THE MATTER OF AN APPLICATION BY XXX FOR WARRANTS PURSUANT TO SECTIONS 12 AND 21 of the *CANADIAN SECURITY INTELLIGENCE SERVICE ACT*, RSC 1985, c C-23 AND IN THE MATTER OF XXX

Summary: The Federal Court authorizes full extraterritorial warrant powers for the first time.

In this matter, the Federal Court granted warrants sought by the Canadian Security Intelligence Service [CSIS] seeking full extraterritorial warrant powers pursuant to sections 12 and 21 of the *Canadian Security Intelligence Service Act* [CSIS Act]. Extraterritorial warrant powers allow CSIS to conduct investigative activities in foreign countries (subsections 12(2) and 21(3) of the *CSIS Act*), either directly or with the assistance of foreign partners, and could do so without regard to the law of a foreign state (subsection 21(3.1) of the *CSIS Act*). The Court issued two sets of reasons following the granting of warrants.

In the first set of reasons, Justice Noël reviewed prior case law dealing with extraterritorial warrant powers under section 12 of the *CSIS Act* in which the Federal Court of Appeal found that Parliament did not intend to give CSIS the authority to engage foreign agencies to intercept private communications of Canadians under section 12 of the *CSIS Act*. The Court then examined new provisions subsequently adopted by Parliament in 2015 that made it explicitly clear that CSIS could perform its duties and functions “*within or outside of Canada*” (subsection 12(2)), a threat to the security of Canada could be investigated “*within or outside of Canada*” (subsection 21(1)), and that a judge may authorize activities outside Canada to enable CSIS to investigate a threat to the security of Canada “[w]ithout regard to any other law, including that of any foreign state” (subsection 21(3.1)). The Court was satisfied that pursuant to subsections 12(2) and 21(3) of the *CSIS Act*, it has the jurisdiction to grant warranted powers that may be executed outside of Canada.

Although the warrants signed by the Court would have permitted CSIS to undertake warranted activities in a foreign state without regard to the law of that state pursuant to subsection 21(3.1) of the *CSIS Act*, the Court’s original reasons noted that it did not have to comment on the legality of such activities as the evidence suggested that CSIS would not conduct activities that would be contrary to the legal regime in a foreign country. On motion, counsel for the Attorney General of Canada sought clarification of the Court’s reasons. In the second set of reasons, the Court explained that upon convening an additional hearing, it was satisfied that factual circumstances existed that might necessitate CSIS using the powers without regard to the law of a foreign state. The Court held that pursuant to Rules 3, 55 and 397 of the *Federal Courts Rules*, it had the authority to admit the additional evidence and modify its reasons to accord with the original decision, that is, the signed warrants. In doing so, it stated unequivocally that

CSIS has the authority to use the powers authorised in the signed warrants without regard to the law of a foreign state, as per subsection 21(3.1) of the *CSIS Act*.

Copies of the public decisions can be obtained via the [website](#) of the Federal Court:

File 2021 FC105 <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/500231/index.do>

File 2021 FC 585 <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/500226/index.do>