

Federal Court



Cour fédérale

**Ottawa, June 20, 2023** – Chief Justice Paul S. Crampton of the Federal Court issued a public version of a classified decision today in file 2022 FC 144:

**IN THE MATTER OF APPLICATION BY [REDACTED] FOR WARRANTS PURSUANT TO SECTIONS 12 AND 21 OF THE *CANADIAN SECURITY INTELLIGENCE SERVICE ACT*, RSC 1985, c C-23 9 [the *CSIS Act*], AND IN THE MATTER OF [REDACTED] THREAT-RELATED ACTIVITIES**

**Summary:** There were two principal issues in this proceeding.

The first was whether the Canadian Security Intelligence Service [**CSIS**] may deploy a particular new technology [the **Technology**] within Canada in four specific ways without a warrant, in the course of investigations pursuant to section 12 of the *CSIS Act*. Three of those proposed uses of the Technology would be solely within Canada, while the fourth would be both within and outside Canada. The Court agreed with the position of the Attorney General of Canada that although those ways of deploying the technology would constitute a “search,” those searches would not be “unreasonable,” within the meaning of section 8 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11* [the *Charter*]. This was subject to the caveat that the uses of the Technology are consistent with the Court’s reasons, particularly the operational principles and measures discussed at paragraphs 62, 88, 116–117, 126–127 and 141.

The second principal issue was whether CSIS may utilize the Technology outside Canada against foreign nationals with no recognized nexus to Canada, without a warrant. This use of the Technology would be more than minimally intrusive. The Court concluded that CSIS would not require a warrant to deploy the Technology in such circumstances. This is because foreign nationals with no recognized nexus to Canada do not benefit from the protections afforded by section 8. In brief, foreign nationals with no nexus to Canada do not come within the scope of the word “everyone” in section 8 of the *Charter*. The Court also found that section 12 authorizes investigative activities outside Canada that are more than minimally intrusive, when they are conducted against foreign nationals who have no rights under the *Charter*. Finally, the Court determined that there is no principle of international law that would prevent CSIS from using the Technology abroad against foreign nationals with no nexus to Canada, in the more than minimally intrusive ways that CSIS proposed.

Given the confidential nature of the Technology, the Court’s description of it is provided in Appendix I to the Court’s reasons, which will remain classified

A copy of the decision can be obtained via the Federal Court website:  
<https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/523680/index.do>.