

Federal Court



Cour fédérale

Ottawa, January 27, 2021 – A public version of the confidential Judgment and Reasons (2020 FC 697) was issued today by the Honourable James W. O’Reilly of the Federal Court:

IN THE MATTER OF AN APPLICATION BY ██████ FOR WARRANTS PURSUANT TO SECTIONS 16 AND 21 OF THE *CANADIAN SECURITY INTELLIGENCE SERVICES ACT*, RSC 1985, c. C-23

AND IN THE MATTER OF ██████

Summary: This case began as an application for warrants to gather foreign intelligence pursuant to s 16 of the *Canadian Security Intelligence Act*, RSC 1985, c 23. It then grew, becoming a vehicle for the consideration of a number of issues.

First, this application provided an opportunity for the Court to receive from the Service detailed information about certain aspects of its foreign intelligence mandate under s 16 of the *CSIS Act*. The Service explained its policies and practices relating to the incidental collection of information about Canadians, including elected officials, and to the pursuit of parallel s 16/s 12 operations. In both of these areas, the Court finds the Service’s conduct generally to be appropriate and satisfactory.

Second, the Service sought to obtain authority pursuant to s 16 of the *CSIS Act* to capture information through use of cellular site simulators (CSS). CSS can reveal the country where the user’s cellular account is located, the network code for the service provider, a subscriber identity number assigned by the service provider, and the make, model, and serial number of the device. The Court finds no conflict between the warrantless use of CSS and s 8 of the *Charter*. S 16 provides a sufficient and reasonable statutory basis for warrantless searches, so long as they are minimally intrusive and conducted in a reasonable manner.

Third, the Court finds that the interception of certain other data is more than minimally intrusive. Having access to this data would allow the Service to draw inferences about an individual’s personal lifestyle choices. To comply with s 8 of the *Charter*, these searches require a warrant.

Fourth, the Court finds that the Service’s interception on Canadian soil of communications of certain individuals who are outside Canada complies with the geographical limitation in s 16. These interceptions occur “within Canada.”

A copy of the decision can be obtained via the [website](https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/491878/index.do) of the Federal Court: <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/491878/index.do>