



September 4, 2020

The Honourable Bill Blair
Minister of Public Safety and Emergency Preparedness
269 Laurier Avenue West
Ottawa, Canada K1A 0P8

RE: New revelations regarding CSIS actions in *Peshdary v AGC* (2018)

Minister Blair:

I am writing to you today to express the deep concern of the International Civil Liberties Monitoring Group (ICLMG) coalition regarding revelations in a Federal Court decision released at the end of August of yet another case of the Canadian Security Intelligence Service (CSIS) engaging in potentially illegal activities to gather intelligence in support of a surveillance warrant. The decision also reveals that in applying for the warrant, CSIS not only withheld exculpatory information regarding the warrant's target, but also misled the courts in how it presented other information.

We became aware of these new circumstances via the recent decision of Justice James O'Reilly of the Federal Court of Canada in *Peshdary v AGC* (2018), regarding his decision to reconsider his earlier dismissal of a request by Mr. Peshdary's counsel to quash a 2012 surveillance warrant. As you are aware, based on these revelations, Justice O'Reilly is currently reconsidering his 2018 decision.

This egregious breach of CSIS' duty of candour – to make full and frank representations to the courts when applying for a warrant in an *ex parte* hearing – is in addition to the scathing Federal Court decision from Justice Patrick Gleeson, made public on July 16. Again, in that decision, Justice Gleeson found that CSIS had also misled the courts, this time regarding illegal actions carried out as part of their intelligence gathering activities.

Minister, in less than two months, we have seen two court decisions revealing CSIS engaged in potentially illegal activities and withheld information from the courts. Our

coalition finds this utterly unacceptable. We are therefore asking that you take immediate steps to remedy what we see as an abuse of power:

- First, we ask that you act to determine whether those who were involved in illegal activity or misleading the courts are still employed by either CSIS or the Department of Justice.
- Second, we ask that you share publicly the repercussions they have faced in light of their actions, up to and including termination of employment and judicial proceedings.

We believe these actions by CSIS officers not only undermine the justice system, but also demonstrate a deep disregard for the fundamental rights and freedoms of Canadians and people in Canada. No one should be subject to surveillance or other measures based on misleading information or as the result of illegal activities.

As you are aware, Justice Gleeson’s decision in July called for a comprehensive external review “to fully identify systemic, governance and cultural shortcomings and failures that resulted in the Canadian Security Intelligence Service engaging in operational activity that it has conceded was illegal and the resultant breach of candour.”

We were pleased to note your prompt and public reaction to those findings. We also view as a positive step that the National Security and Intelligence Review Agency (NSIRA) has since been tasked to undertake this review.

However, the duty to be candid in representations to the court is not new. In 2010, two years before the warrant in question was granted, the Supreme Court of Canada wrote:

“When seeking an *ex parte* authorization such as a search warrant, a police officer — indeed, any informant — must be particularly careful not to “pick and choose” among the relevant facts in order to achieve the desired outcome. The informant’s obligation is to present all material facts, favourable or not.” (*R v Morelli*, 2010 SCC 8, [2010] 1 SCR 253 at para. 58.)

We trust that the forthcoming report from the NSIRA will help shine a light on the depth of these issues, and present solutions for moving forward, including addressing the lack of opposing counsel during *ex parte* hearings. At the same time, the fact remains that the courts have identified instances where it is already clear that federal officers went too far and undermined both the justice system and threatened the rights of Canadians.

We believe there must be accountability and repercussions for those actions to ensure they do not occur again, and we hope you will act accordingly.

Our coalition looks forward to your response, and I would be happy to discuss this with you further at your earliest convenience.

Sincerely,



Tim McSorley
National Coordinator
International Civil Liberties Monitoring Group