

File: CSE-2025-05



Office of
the Intelligence
Commissioner

Bureau du
commissaire
au renseignement

P.O. Box / C.P. 1474, Station / Succursale B
Ottawa, Ontario K1P 5P6
613-992-3044 • Fax 613-992-4096

INTELLIGENCE COMMISSIONER
DECISION AND REASONS

IN RELATION TO A FOREIGN INTELLIGENCE AUTHORIZATION
FOR [...] ACTIVITIES
PURSUANT TO SUBSECTION 26(1) OF THE
COMMUNICATIONS SECURITY ESTABLISHMENT ACT AND
SECTION 13 OF THE *INTELLIGENCE COMMISSIONER ACT*

MAY 29, 2025

TABLE OF CONTENTS

I.	OVERVIEW	1
II.	CONTEXT	1
III.	STANDARD OF REVIEW	4
IV.	ANALYSIS	4
	A. Updated Record	5
	B. Are the Minister's conclusions reasonable (s 34(1), <i>CSE Act</i>).....	6
	C. Are the Minister's conclusions proportionate (s 34(1), <i>CSE Act</i>).....	12
	D. Subsection 34(2) of the <i>CSE Act</i> – Conditions for issuing an authorization	13
	i. <i>Any information acquired under the authorization could not reasonably be acquired by other means and will be retained for no longer than is reasonably necessary (s 34(2)(a))</i>	14
	ii. <i>Any unselected information acquired under the authorization could not reasonably be acquired by other means (s 34(2)(b))</i>	15
	iii. <i>Measures to protect privacy will ensure that information acquired under the authorization identified as relating to a Canadian or a person in Canada will be used, analysed or retained only if the information is essential to international affairs, defence or security (s 34(2)(c))</i>	16
V.	REMARKS	17
	A. Threshold for foreignness assessments	17
	B. Caretaker convention	21
	C. Delineating the offences that CSE may commit	21
	D. Additional information related to Acts of Parliament that may be contravened	23
VI.	CONCLUSIONS	24
ANNEX A		

I. OVERVIEW

1. This is a decision reviewing the conclusions of Minister of National Defence (Minister) in relation to a Foreign Intelligence Authorization for [...] Activities (Authorization) issued pursuant to the *Communications Security Establishment Act*, SC 2019, c 13, s 76 (*CSE Act*). This Authorization is a renewal of authorized activities approved by the Intelligence Commissioner in Decision CSE-2024-04 on July 9, 2024. It also seeks new authorities to conduct [Activity A] in support of [a specific type of activities].
2. On April 29, 2025, pursuant to subsection 26(1) of the *CSE Act*, the Minister issued the Authorization. The Office of the Intelligence Commissioner received it on the same day for my review and approval. Pursuant to the *Intelligence Commissioner Act*, SC 2019, c 13, s 50 (*IC Act*), the Intelligence Commissioner must provide a written decision either 30 days after the day on which the authorization is received, or within any other period agreed to with the Minister (s 20(3)). The Authorization is valid for a period of one year following the Intelligence Commissioner's approval (s 28(1), *CSE Act*).
3. Based on my review and for the reasons that follow, I am satisfied that the Minister's conclusions in relation to activities and classes of activities enumerated at paragraph 63 of the Authorization are reasonable.
4. Consequently, pursuant to paragraph 20(1)(a) of the *IC Act*, I approve the Authorization.

II. CONTEXT

5. A detailed legislative context of CSE's collection of foreign intelligence is set out in past Intelligence Commissioner decisions. In summary, CSE may acquire, covertly or otherwise, information from or through the global information infrastructure (GII) – essentially the Internet, computer and telecommunications networks, and associated devices – that provides intelligence about foreign targets located outside of Canada (s 16, *CSE Act*). The information is acquired based on the Government of Canada's (GC) foreign intelligence priorities and for

technical or operational reasons that support the foreign intelligence aspect of CSE's mandate.

6. Foreign intelligence constitutes information about the capabilities, intentions or activities of foreign targets in relation to international affairs, defence or security, including cybersecurity (s 2, *CSE Act*). As defined by CSE, a target is a "specific foreign entity whose activities are of interest to the GC (or who has access to information of foreign intelligence interest), such as a foreign individual, state, organization, or terrorist group, located outside Canada, whose activities are believed to be of foreign intelligence interest."
7. To effectively engage in foreign intelligence activities, CSE may have to contravene certain Canadian laws. It may also incidentally acquire communications and information that infringe on the privacy interests of Canadians (Canadian citizens, permanent residents or corporations formed under Canadian or provincial law) and persons in Canada. To engage in these foreign intelligence activities, CSE must first obtain an authorization issued by the Minister and approved by the Intelligence Commissioner (s 26, *CSE Act*).
8. The authorization sets out the Minister's conclusions – effectively the reasons – supporting the activities or classes of activities that CSE may carry out. The Minister must, among other conditions, conclude that the proposed activities are necessary (s 33(2), *CSE Act*), reasonable and proportionate, and that measures are in place to protect the privacy of Canadians or persons in Canada (s 34, *CSE Act*). To approve the authorization, the Intelligence Commissioner must be satisfied that the Minister's conclusions are reasonable (s 13, *IC Act*). It is only then that CSE may carry out the authorized activities. The Minister and the Intelligence Commissioner receive a report on the outcomes of the activities carried out under the authorization within 90 days of the end of its validity period (s 52, *CSE Act*).
9. Even with an authorization, CSE is prohibited from directing its activities at Canadians or persons in Canada and infringing the *Canadian Charter of Rights and Freedoms (Charter)* (s 22(1), *CSE Act*). However, CSE may incidentally acquire information relating to Canadians or persons in Canada (s 23(4), *CSE Act*). Incidentally means that the information

was not deliberately sought and the information acquisition activity was not directed at Canadians or persons in Canada (s 23(5), *CSE Act*). To use, analyse, retain or disclose this information, CSE is statutorily required to have measures in place to protect the privacy of Canadians and of persons in Canada (s 24, *CSE Act*).

10. In accordance with section 23 of the *IC Act*, the Minister confirmed in his cover letter that he provided me with all the information that was before him when issuing the Authorization.

The record is therefore composed of:

- a) The Authorization dated April 29, 2025;
- b) Briefing Note from the Chief of CSE (Chief) to the Minister dated April 14, 2025;
- c) The Chief of CSE's Application dated April 14, 2025, including nine annexes:
 - i) SIGINT Operations Risk Acceptance Form (SORAF);
 - ii) Ministerial Directive – Government of Canada Intelligence Priorities for 2023-2025;
 - iii) National SIGINT Priorities List 2025;
 - iv) Outcomes Report for 2024;
 - v) [...] Reasonable Grounds to Believe Targets are Not Canadian
 - vi) Mission Policy Suite – Foreign Intelligence approved August 17, 2023 (MPS FI);
 - vii) Summary of CSE's Measures to Protect the Privacy of Canadians;
 - viii) Ministerial Order – Designations for the purpose of section 43, *CSE Act*; and
 - ix) List of *Criminal Code of Canada* offences and other Acts of Parliament at risk of being breached;
- d) Briefing Deck – Overview of the Activities;
- e) Briefing Note from Chief of CSE to the Minister : Foreignness Assessments; and
- f) Responses to Intelligence Commissioner's Remarks.

III. STANDARD OF REVIEW

11. The *IC Act* requires the Intelligence Commissioner to review whether the Minister's conclusions are reasonable. I will therefore apply the reasonableness standard, as applied in judicial reviews of administrative action.
12. As indicated by the Supreme Court of Canada, when conducting a reasonableness review, a reviewing court is to start its analysis by examining the reasons of the administrative decision maker. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paragraph 99, the Court succinctly describes what constitutes a reasonable decision:

A reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision.
13. Relevant factual and legal constraints can include the governing statutory scheme and the impact of the decision. The governing statutory scheme set out in the *IC* and *CSE Acts* highlights the role of the Intelligence Commissioner as an independent mechanism to ensure that government action taken for the purpose of national security and intelligence is properly balanced with the respect of the rule of law and the rights and interests of Canadians.
14. When the Intelligence Commissioner is satisfied (*convaincu* in French) that the Minister's conclusions at issue are reasonable, he "must approve" the authorization (s 20(1)(a), *IC Act*). Conversely, where unreasonable, the Intelligence Commissioner "must not approve" the authorization (s 20(1)(b), *IC Act*). In both cases the Intelligence Commissioner must set out his reasons for doing so.

IV. ANALYSIS

15. On April 14, 2025, the Chief submitted a written Application for a Foreign Intelligence Authorization for [...] Activities (Application) to the Minister. The Application sets out the

foreign intelligence activities that could be conducted by CSE to covertly collect information on or through the GII. It also describes how the Chief proposes CSE will analyse, process and retain the information and the measures in place to protect the privacy of Canadians and of persons in Canada, in cases where it incidentally acquires information about them.

16. These activities could contravene Canadian laws or interfere with the reasonable expectation of privacy of Canadians or persons in Canada and their description can be found in the classified annex to this decision (Annex A). The annex renders the eventual public version of this decision easier to read and ensures that the decision contains the nature of the facts that were before me, which otherwise would only be available in the record.
17. Based on the facts presented in the Application submitted by the Chief, the Minister concluded, in accordance with subsection 33(2) of the *CSE Act*, that there are reasonable grounds to believe that the Authorization is necessary and that the conditions in subsections 34(1) and (2) of the *CSE Act* were met. Consequently, the Minister issued a one-year Authorization for CSE to carry out the activities set out at paragraph 63 and further described in the Authorization.
18. Except for the addition of paragraph 63(e) of the Authorization – which sets out new activities allowing CSE to conduct [Activity A] in support of [a specific type of activities] activities and which I will discuss further in my analysis – all the other activities authorized by the Minister are the same as those approved in last year's Authorization.

A. Updated Record

19. Past approvals of activities do not entail that they will automatically be approved again. Every ministerial authorization is distinct and is reviewed on its own record. The record before me contains updated operational information and sets out new activities.
20. Other information in the record addresses remarks made in previous foreign intelligence decisions, which I outline in Decision CSE-2025-04. I will not repeat my analysis, but highlight the following items that I find useful for the Minister and myself.

- a) The MPS FI is being updated. To expedite my own future review, relevant changes should be highlighted and/or summarized.
 - b) The record would benefit from tangible examples to show how analysts assesses whether information related to Canadians or persons in Canada (IRtC) is essential to international affairs, defence or security, and the resulting rationale they prepare.
 - c) The Outcomes Report now includes specific details on the number of foreign intelligence reports shared that contained suppressed Canadian identifying information (CII), as well as how many were disclosed upon request to GC partners. I am satisfied with the response provided by CSE.
21. The record also includes [...] CSE's application of the standard of "reasonable grounds to believe" that targets are not Canadian or in Canada, in response to past remarks I raised. I address this more fully in my remarks.
22. As set out in section 13 of the *IC Act*, I must review whether the Minister's conclusions made under subsections 34(1) and (2) of the *CSE Act*, on the basis of which the authorization was issued under subsection 26(1) of the *CSE Act*, are reasonable.
- B. Are the Minister's conclusions reasonable (s 34(1), *CSE Act*)**
23. The Minister concluded that he had reasonable grounds to believe that the activities are reasonable "given the objective of acquiring information from the GII for the purpose of providing foreign intelligence".
24. In support of his conclusion, the Minister explains that the activities – described in Annex A – provide CSE with access to information that would otherwise be inaccessible through, or could not reasonably be acquired via, CSE's other acquisition programs. The record shows that the activities carried out under the previous authorization enabled the production of a wide-range of reports to fulfil the GC's intelligence priorities.

25. For an activity to be reasonable, it must necessarily be permitted by the legislation (*Vavilov*, at para 110). Subsection 26(2) of the *CSE Act* constitutes the statutory authority for foreign intelligence activities conducted pursuant to an authorization. As set out in past decisions, subsection 26(2) provides for three general categories of activities: 1) acquiring information of foreign intelligence interest (26(2)(a)(b)(c)), 2) maintaining the covertness of the activities (26(2)(d)), and 3) supporting the activities authorized by the authorization (26(2)(e)). Given the varying objectives and nature of the activities, grouping the activities into these categories allows for the fact that the Minister's considerations may differ when evaluating different types, or categories, of activities.
26. Further, categories 2 and 3 have distinct thresholds requiring thorough examination. For category 2, the Minister must be satisfied that the activity "is reasonably necessary" to maintain the covert nature of the activity, whereas for category 3, they must be satisfied that it is "reasonable in the circumstances and reasonably necessary in aid of any other activity, or class of activity, authorized by the authorization".
27. In support of the Authorization, the Minister explains how the activities provide CSE with unique access to information of foreign intelligence interest to the GC and why they are necessary. Also, the Minister confirms that CSE only collects information to the extent needed to respond effectively to the GC's priorities, which are further set out in the Ministerial Directive to CSE on the GC Intelligence Priorities for 2023-2025.
28. With regard to the activities conducted to acquire foreign intelligence, the Minister's conclusions set out a rational link between (i) the intelligence priorities as set by Cabinet and operationalized by CSE; (ii) the intelligence acquisition activities; and (iii) the nature of the foreign intelligence CSE anticipates it will acquire. I am of the view that the intelligence acquisition activities are set out with sufficient specificity to provide guidance to CSE employees with respect to the activities that they may lawfully carry out.
29. I note that there is a discrepancy between a footnote at paragraph 18 of the Application that specifies that [...], and paragraph 18 of the Authorization which states that the information

obtained through those activities [...]. Based on a close review of the record – as well as a comparison to last year’s record – I am confident this is a drafting error and I take the Application to better reflect the Minister’s intent.

30. In relation to activities aiming to maintain the covert nature of CSE’s conduct, the record reflects the types of activities that could fall within this class – [...]. The Minister’s conclusions show that he understands the nature of the activities. I find the Minister’s conclusions reasonable because the activities are sufficiently specific for CSE employees to carry them out as described by the Minister. It is also clear how the activities in the class are connected to the goal of acquiring foreign intelligence.
31. With respect to category 3 – activities in support of other activities in the authorization – a number of activities that are again included in this Authorization fall within it, namely those listed at paragraph 63(b)(ii) and (iii) of the Authorization. The new activities set out in the Authorization, namely those listed at paragraph 63(e) of the Authorization, also fall within this category. To streamline my analysis, I will first review the Minister’s conclusions regarding the activities that were approved in the past before addressing the new activities.
32. Again this year, the Minister describes the existing supporting activities, such as [...], in sufficient detail showing that he understands their nature and their impact. In addition, I am of the view that the activities are defined in such a way as to provide a CSE employee with sufficient guidance to determine what acts could be carried out in support of other activities in the Authorization. Although the Minister does not explicitly address the issue, given the nature of acquisition activities set out in the Authorization, it is easily understood how the supporting activities are reasonable in the circumstances and reasonably necessary in aid of other activities. As a result, I am satisfied that the Minister’s conclusions are reasonable with respect to these activities.
33. The new activities are defined by a clause more or less repeating the wording of paragraph 26(2)(e) of the *CSE Act*:

carrying out any other activity that is reasonable in the circumstances and reasonably necessary in aid of any other activity, or class of activity, authorized by the Authorization. These activities can be used to enable CSE activities outlined in paragraph 63 (a) to (d). (emphasis added)

34. The Briefing Deck – Overview of Activities characterizes this “reinsertion of the basket clause” as responding to one of my remarks in last year’s decision, and further states that it is also necessary to cover the new [Activity A conducted to support a specific type of activities]. The inclusion of this clause and the reasons for it raise a number of issues, many of which have already been addressed in previous decisions.
35. In several past decisions I have found similar invocations of a “basket clause” unreasonable on the basis that simply reproducing the statutory language of 26(2)(e) does not allow the Minister to have a sufficient understanding of what activities could be carried out (CSE Decisions 2023-01, 2023-03, 2023-04, and 2024-01). However, unlike those past records, the present Authorization and record allow me to conclude that the activities the basket clause seeks to enable are sufficiently defined in order for the Minister to properly assess them. I arrive at this conclusion only through a careful reading of the Minister’s conclusions in conjunction with the record, further informed by the limits established by the *CSE Act*.
36. Indeed, as noted, the record indicates that the basket clause is included to cover the new [Activity A conducted to support a specific type of activities]. In turn, when describing these new activities, the Minister explains that they are required to facilitate CSE operations. The Minister’s conclusions show that he understands that the purpose of the new activities is not to acquire foreign intelligence, but rather to support acquisition activities.
37. Importantly, the Minister’s conclusions do not suggest that any other additional activities would be included in the basket clause. I therefore understand that the Minister concludes that the activities in the basket clause are limited to the new activities he sets out in the Authorization, that is, [Activity A conducted to support a specific type of activities]. I come to this conclusion by reading the Minister’s reasons holistically and contextually, and also by relying on the remarks and analysis available to the Minister through my prior foreign intelligence decisions rendered on this issue [*Vavilov*, at paras 92, 94, 102]. Indeed,

interpreting the Minister's conclusions as allowing the basket clause to include other activities for which there is no information would be plainly contrary to my previous decisions.

38. Consequently, I am satisfied that the Minister's conclusions with respect to the new activities are reasonable.
39. Nevertheless, the use of the basket clause in this instance raises some concerns. First, the Chief's briefing note to the Minister, the Application and the Authorization purport at times to allow the proposed new activities to provide CSE with the ability to support activities under other foreign intelligence authorizations, emergency authorizations, or active and defensive authorizations. A clear distinction must be made between the authority for CSE to use information retained under this Authorization across the other aspects of its mandate, and the authority for CSE to use supporting activities authorized in this Authorization for other purposes.
40. As I explained in my reasons in Decision CSE-2023-01, paragraph 26(2)(e) of the *CSE Act*, under which the new activities fall, is limited to authorizing an activity "that is reasonable in the circumstances and reasonably necessary in aid of any other activity, or class of activity, authorized by the authorization" (emphasis added). In other words, the only activities that can be authorized under 26(2)(e) are those which are necessary for the purpose of that same authorization; the activities cannot be authorized for the purposes of enabling activities under other authorizations. As a result, if another authorization requires the use of the same activities, that authorization will need to individually authorize them.
41. Based on a plain reading of the Authorization, and in keeping with the statutory limits of paragraph 26(2)(e) of the *CSE Act*, I find that the Minister's enumeration of activities authorized by him found at paragraph 63(e) of the Authorization is clear and specific. It only authorizes supporting activities for the purposes of "the" Authorization, i.e. the Authorization now before me, and not other authorizations.

42. This can be demonstrated by comparing the wording of this year's Authorization to the basket clause I found unreasonable in Decision CSE-2023-01. That basket clause sought to authorize "facilitating any other activities authorized by another valid authorization issued by me [the Minister]" (emphasis added). By contrast, this year's Authorization properly only authorizes those supporting activities that are reasonable in the circumstances and reasonably necessary "in aid of any other activity, or class of activity, authorized by the Authorization" (emphasis added). Further, the last sentence of the clause also limits the use of the activities to the current Authorization by indicating that "These activities can be used to enable CSE activities outlined in paragraph 63(a) to (d)." I will discuss this further in my analysis.
43. As a result, the supporting activities in question must be limited to supporting only activities under the Authorization, whose stated sole objective is obtaining foreign intelligence in accordance with the GC intelligence priorities. The Authorization does not – and legally cannot – authorize any activities for the purposes of CSE's other foreign intelligence authorizations, let alone for the purposes of other aspects of CSE's mandate. Should CSE seek to conduct [Activity A] in support of activities set out in other ministerial authorizations, it must seek authorization for them – either in new authorizations or amended authorizations (s 39, *CSE Act*). The Minister's conclusions will need to consider how such activities are necessary and reasonable in the circumstances in the context of each application.
44. One final clarification is required. It relates to the effect of the statutory requirement that any other activity authorized by the basket clause be "reasonable in the circumstances".
45. This requirement in my view has two important effects. To be "reasonable in the circumstances", an activity must comply with the *CSE Act*. As already discussed, the *CSE Act* does not allow for authorizing activities pursuant to paragraph 26(2)(e) for the purpose of another authorization or other aspect of CSE's mandate.
46. The second important effect of the "reasonable in the circumstances" requirement is that no authorized supporting activities – such as the new activities [Activity A] – can be conducted

in relation to activities which themselves are supporting activities authorized pursuant to 26(2)(e). Put simply, 26(2)(e) cannot be used to authorize supporting activities for any other 26(2)(e) authorized activities.

47. The practical effect of this is that the supporting activities are only authorized for the purposes supporting the activities in paragraphs 63(a), (b)(i), (c), and (d) of the Authorization. The activities in paragraph 63(b)(ii) and (iii) are in fact – as clearly set out in my previous decisions – themselves ‘category 3’ activities, namely supporting activities under 26(2)(e), and cannot therefore be the basis for authorizing further supporting activities. Given the Minister’s conclusions I do not read them as suggesting that is the case.

C. Are the Minister’s conclusions proportionate (s 34(1), *CSE Act*)

48. The Minister also concluded that he had reasonable grounds to believe the activities authorized are proportionate given the manner in which they are conducted. The activities are “subject to measures and controls that limit CSE’s acquisition of information to that which is relevant in the fulfillment of the foreign intelligence aspect of its mandate.”
49. Again this year, the Minister relies on four main reasons to address the impact of the activities on Canadian privacy interests and the rule of law. The reasons include internal thresholds and limits necessary for the activities that go beyond the limits set out in the *CSE Act*.
50. First, the potential value of information acquired from the GII is high and the risk of acquiring Canadian-related information is low given the steps taken to ensure any target is foreign. As explained by the Minister, prior to carrying out the activities, CSE employees must have reasonable grounds to believe that foreign entities being targeted are located outside of Canada and are not Canadian (s 11.2, MPS FI). I am satisfied that the Minister’s rationale supporting the reasonable grounds to believe standard to conduct its foreignness assessment is reasonable, but comment on it further in my remarks.

51. Second, given the nature of the activities, operations are subject to a risk assessment and the completion of a SIGINT Operations Risk Acceptance Form (SORAF). The higher the risk, the higher the approval authority required for the activity. Only CSE employees who have completed the required training are allowed to engage in the approved activities.
52. Third, the Minister imposes an internal threshold on certain activities that could materially contribute to a threat to Canada and its allies. I have found this internal threshold – that the activity will not [...] – reasonable in past decisions. As explained in the Minister’s conclusions, this internal threshold refers [...]. This limit imposes restrictions on the scope of the activities and ensures that CSE’s activities that contravene an Act of Parliament cannot [...]. Although I am of the view that the threshold is sufficiently clear to be applied by CSE employees, I address the issue of guidance for employees in my remarks.
53. Fourth, even though the legislative framework allows for Acts of Parliament to be contravened, at paragraph 68 of the Authorization, the Minister sets out certain limitations – a red line – that CSE employees cannot cross when carrying out activities including that CSE will not cause, intentionally or by criminal negligence, death or bodily harm to an individual, or willfully attempt to obstruct, pervert or defeat the course of justice or democracy. Similarly, CSE will not [...].
54. Importantly, I am of the view that the limits imposed by the Minister are sufficiently clearly defined, providing sufficient guidance to CSE employees. I am satisfied that the Minister’s conclusions considered the potential impacts on privacy interests and the rule of law, and describes reasonable measures to limit those impacts. As a result, I find reasonable the Minister’s conclusions that the authorized activities are proportionate.

D. Subsection 34(2) of the *CSE Act* – Conditions for issuing an authorization

55. In addition to finding the activities are reasonable and proportionate, the Minister may issue an authorization for foreign intelligence activities only if he also concludes that there are

reasonable grounds to believe that the conditions set out at subsection 34(2) of the *CSE Act* are met, namely:

- a) any information acquired under the authorization could not reasonably be acquired by other means and will be retained for no longer than is reasonably necessary;
- b) any unselected information acquired under the authorization could not reasonably be acquired by other means, in the case of an authorization that authorizes the acquisition of unselected information; and
- c) the measures referred to in section 24 will ensure that information acquired under the authorization that is identified as relating to a Canadian or a person in Canada will be used, analysed, or retained only if the information is essential to international affairs, defence or security.

i. Any information acquired under the authorization could not reasonably be acquired by other means and will be retained for no longer than is reasonably necessary (s 34(2)(a))

56. I am satisfied that any information under the Authorization could not reasonably be acquired by other means. As explained by the Minister, the activities set out in the Authorization provide a reasonable way for CSE to collect information of foreign intelligence value from the GII [...]. Acquiring the information in a different manner would not achieve this objective.

57. Further, every operational activity provides access to information that would otherwise not be available. [...]. These activities allow CSE to acquire information [...].

58. I am also satisfied with the Minister's conclusions that any information acquired under the Authorization will be retained for no longer than is reasonably necessary. As indicated, access to the information is limited to CSE employees authorized to operate under that aspect of the mandate. The MPS FI's retention schedule (s 18.10) establishes different categories of information that may be collected, and also incorporates minimum periods set out in the *Privacy Act*, RCS, 1985, c P-21, and the *Library and Archives of Canada Act*, SC 2004, c 11.

59. For operational and technical reasons, certain types of information may be retained for longer periods, – and even indefinitely in the case of IRtC, as explained further, the information must be essential – whereas other information may be deleted earlier than its maximum retention period. The Minister explains the rationales for longer retention periods and establishes a connection between the types of information and their retention periods.
60. Finally, in response to a remark made in prior decisions, the Minister provides further clarification regarding the retention of metadata queries and the rationale for the retention period of metadata. I am satisfied that CSE's retention of metadata for [...] is proportional to the potential privacy impact on Canadians and persons in Canada.

ii. Any unselected information acquired under the authorization could not reasonably be acquired by other means (s 34(2)(b))

61. When conducting foreign intelligence activities, CSE may acquire unselected information, which is defined as information acquired, for technical or operational reasons, without the use of terms or criteria to identify information of foreign intelligence interest (s 2, *CSE Act*). When collected, unselected information also includes any information that could contain Canadian privacy interests. Hence, the *CSE Act* requires that particular attention be given to this type of information.
62. Similar to the first condition (s 34(2)(a)), the Minister explains that the activities found in the Authorization would allow CSE to acquire information that it could not otherwise collect. Also, the value of some of the activities depends on the ability for CSE to acquire unselected information. For example, the use of the information allows CSE [...]. Unselected information provides CSE [...]. Once acquired, CSE may use specific criteria in order to select any information that may be of foreign intelligence interest.
63. For these reasons, I am satisfied that the Minister has reasonable grounds to believe that unselected information could not reasonably be acquired by other means.

- iii. *Measures to protect privacy will ensure that information acquired under the authorization identified as relating to a Canadian or a person in Canada will be used, analysed or retained only if the information is essential to international affairs, defence or security (s 34(2)(c))*

64. CSE is prohibited from directing its activities at Canadians and persons in Canada.

Section 24 of the *CSE Act* requires CSE to have measures in place to protect the privacy of Canadians and of persons in Canada in the use, analysis, retention and disclosure of information related to them acquired in the course of activities further to the foreign intelligence aspect of its mandate.

65. The Minister has reasonable grounds to believe that the measures referred to in section 24 have been met. He indicates that although the activities specified in the Authorization are not directed at Canadians or persons in Canada, they “may” result in the incidental acquisition of information that is later identified as being related to Canadians or persons in Canada. In Decision CSE-2025-02, I remarked that the Chief’s application and the Minister’s authorization should reflect that information relating to a Canadian will be incidentally collected, rather than that it may be. The Chief’s Application has been updated accordingly. The summary of key changes found in the record indicates that the Authorization was likewise updated, but based on my review this is not the case. I underscore the importance of summaries presented to the Minister accurately reflecting the record.

66. Information that has a recognized Canadian privacy interest and is assessed as essential to international affairs, defence, or security, including cybersecurity, can be retained for “as long as is reasonably necessary.” On a quarterly basis, operational managers must revalidate whether the information is still essential. If not, it must be deleted.

67. The record provides further clarity on the measures in place to protect the privacy of Canadians and persons in Canada in the retention and disclosure of information deemed essential. This information is stored in repositories controlled and limited to employees who are properly accredited to conduct foreign intelligence activities and have received training on CSE’s authorities, policies, and information handling procedures. Further, prior to releasing CII, CSE must first replace the information with a generic term such as “named

Canadian”, unless the information is necessary to understand the foreign intelligence. CSE must also be satisfied that the recipient or class of recipients receiving the CII have been designated by Ministerial Order. In addition, CSE must be satisfied that the disclosure of CII is essential to international affairs, defence, security or cybersecurity (s 43, *CSE Act*). Finally, all CSE foreign intelligence reports are reviewed prior to release by the appropriate Report Release Authorities.

68. Given the multiple layers of internal controls to protect the privacy interests of Canadians and limit access to unassessed information, I am satisfied that the Minister’s conclusions are reasonable and that IRtC will only be retained, analysed and used if it is essential to international affairs, defence or security, including cybersecurity.

V. REMARKS

69. I would like to make four additional remarks to assist in the consideration and drafting of future of ministerial authorizations, which do not alter my findings regarding the reasonableness of the Minister’s conclusions.

A. Threshold for foreignness assessments

70. As indicated, the record includes a [REDACTED] in support of why CSE considers the “reasonable grounds to believe” (RGB) standard to be the “correct” threshold for determining that a target is not a Canadian or a person in Canada. [REDACTED] is in response to earlier remarks I made in which I wrote that although reasonable, given the absolute prohibition against targeting Canadians or persons in Canada found at subsection 22(1) of the *CSE Act*, a higher legal threshold than RGB may be more appropriate when determining the foreignness of a target. I also specified that the rationale for the legal threshold should be explained in the Minister’s conclusions.
71. [REDACTED] points out that the issue of whether the legal threshold governing CSE’s foreignness assessments is appropriate has been raised in the past – notably including by the Right Honourable Antonio Lamer, then the Commissioner of the CSE. However, all past legal assessments pertained to the precursor of the *CSE Act*, Part V.1 of the *National Defence Act*

(*NDA*). These assessments had not been revisited since before the *CSE Act* was enacted in 2019. While paragraph 273.65(2)(a) of the *NDA* specifically required the Minister to be “satisfied” that an interception would be directed at foreign entities located outside Canada, a similar provision does not exist in the *CSE Act*.

72. Nevertheless, [...] explains that the foreignness assessment remains a “fundamental part of CSE’s targeting process.” Indeed, [...] points out that one of the elements that makes the application reasonable and proportionate – as required by *CSE Act* subsection 34(1) – is the RGB threshold applied by CSE when assessing that is a target is not a Canadian or a person in Canada.
73. [...] argues that since the RGB threshold is the common standard in the *Criminal Code* and most federal enactments authorizing search warrants, it is sensible to apply the same standard where state actions risk the inadvertent intrusion – as opposed to the deliberate intrusion in the context of search warrants – of *Charter* protected rights. Indeed, it would be illogical, according to [...], to require a higher legal threshold when not targeting a Canadian than when the target is Canadian. [...] is thorough in describing how Canadian courts have defined the RGB standard, which requires a subjective belief that needs to be objectively supported by facts. [...] also sets out the measures taken in the event that Canadians or persons in Canada are inadvertently targeted.
74. Finally, [...] states that applying a higher standard, such as balance of probabilities or beyond a reasonable doubt, would create significant operational challenges for CSE given the complexities associated with assessing the origin of communications on the GII.
75. I appreciate that CSE has included [...] in the record. The enactment of the *CSE Act* changed how the prohibition against targeting Canadians is articulated and in my view, it was a useful exercise for CSE to reconfirm its previous advice– and note that it should have been done when the *CSE Act* was adopted. I have found reasonable the Minister’s conclusions with respect to the foreignness assessment. Indeed, in replicating the rationale from [...], the conclusions exhibit a justification for applying the RGB standard.

76. I acknowledge that for CSE, [...] addresses my remark. Nevertheless, having had the benefit of reviewing [...], and upon further reflection, in my view, the object of my original remark has not yet been addressed. Indeed, I remain concerned that the articulation of the standard used by CSE to respect its obligation relating to the absolute prohibition against targeting Canadians does not reflect the object of that prohibition. I therefore make additional comments for CSE's consideration, in particular with respect to whether the articulation of how CSE respects its obligation under subsection 22(1) of the *CSE Act* could be strengthened.
77. In noting that a higher standard than RGB may be more appropriate, I was effectively highlighting that the appropriateness of a standard is related to purpose for which it is being applied. It is not clear to me that [...] provides support for how applying the RGB standard when conducting a foreignness assessment is related to CSE respecting its obligation not to target Canadians. Therefore, in my view, when [...] justifies the RGB standard on the ground that the same standard applies in the context of search warrants, insufficient consideration is given to the reason a foreignness assessment is required in the first place, namely that the prohibition set out at subsection 22(1) of the *CSE Act* will be respected.
78. Fundamentally, in my view, the *CSE Act* is not as concerned with how the standard is described as with whether the prohibition it contains is respected. Indeed, "the starting point in any interpretative exercise is the text of the provision" (*Quebec (Commission des droits de la jeunesse) v Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43, at para 28). Subsection 22(1) of the *CSE Act* contains a prohibition against directing activities at Canadians or persons in Canada. The prohibition is not set out as a condition. Rather, contrary to the former *NDA*, the prohibition appears alongside the prohibition against infringing the *Charter* at subsection 22(1): "Activities [...] must not be directed at a Canadian or at any person in Canada and must not infringe the *Canadian Charter of Rights and Freedoms*" (emphasis added). Importantly, in my view, Canadians expect their *Charter* rights to be respected, not that there are merely RGB that they will be. Similarly, in my view, although Canadians may understand and accept that inadvertent targeting may in the rare

instances occur, they nevertheless expect that the processes in place are sufficient to ensure that they will not be targeted by CSE.

79. While my comments are aimed at the articulation of how the prohibition is respected, it is clear from the record, from briefings that I have received pursuant to section 25 of the *IC Act*, as well as from outcome reporting, that CSE takes its obligation not to target Canadians or persons in Canada with utmost seriousness. Inadvertent targeting occurs extremely rarely, and any information obtained as a result can never be used or retained. The processes developed by CSE to ensure it does not target Canadians or persons in Canada have proven to be effective; indeed, they could potentially satisfy a higher legal standard than RGB – if they were to be evaluated using a standard of proof.
80. On this point, I note that if applying the RGB standard to a foreignness assessment may be one way for the Minister’s conclusions relating to CSE’s obligation to be reasonable, I am not convinced that adopting the legal standard that applied under the *NDA* is the only – or “correct” – way. Indeed, it is not apparent to me that the articulation of how CSE satisfies the obligation against targeting Canadians must necessarily take the form of a legal standard, or only a legal standard. For example, it could consist of a legal standard accompanied by obligatory operating procedures, or only the operating procedures themselves.
81. The record includes a 2024 briefing note to the Minister on foreignness assessments, which also addresses related findings from the National Security and Intelligence Review Agency. I have taken particular note of the steps that CSE has undertaken to better understand where improvements to foreignness assessments could be made, and appreciate also the update on the implementation of these measures included in the record as part of the responses to my remarks. I note and commend the progress made including on training modules, new standard operating procedures and the study of targeting incidents. They exemplify that ensuring the prohibition is upheld is a continuous task requiring a variety of efforts. In that vein, I would encourage CSE and the Minister to consider my comments in relation to the articulation of how its obligation under subsection 22(1) is respected.

B. Caretaker convention

82. As addressed in greater detail in Decisions CSE-2025-04 and CSIS-2025-02, the Chief's Application was made during the caretaker period triggered by the March 23, 2025 dissolution of Parliament. My role as a quasi-judicial decision maker is not to assess whether the caretaker convention has been respected. However, decisions by the Intelligence Commissioner are one way by which the public is made aware that a ministerial authorization has been issued, including – where possible – the context in which it was issued. I am of the view that it is therefore important to raise the issue.
83. Although no reference to the caretaker period or convention appears in the Application or the Authorization, the Minister – given his role and responsibilities – was certainly aware of the applicability of the caretaker convention. Nevertheless, I am of the view that future ministerial authorizations made during the caretaker periods should address the caretaker convention, especially where new or novel activities are being authorized. This would allow any such considerations to be included in the publicly released decisions of the Intelligence Commissioner, therefore strengthening transparency and upholding ministerial accountability.

C. Delineating the offences that CSE may commit

84. Certain offences that CSE may commit in the course of carrying out the proposed activities – most notably [...] offences [...] raise particular issues.
85. First, the [...] offences raise an issue in line with a remark I made in Decision CSIS-2025-01 relating to CSIS justification framework – set out at section 20.1 of the *CSIS Act*. The justification framework allows CSIS employees, or persons directed by them, to commit otherwise unlawful acts and omissions set out in a ministerial authorization that has been approved by the Intelligence Commissioner. I noted that the record included references [...] that the commission of certain offences under the *Criminal Code* – similar to the offences that CSE may contravene – [would very likely limit specific *Charter* rights]. The record further left open the possibility that CSIS could carry out activities that infringe *Charter*

rights if the infringement could be justified. This was a novel interpretation which the Minister had not addressed in his conclusions and which I therefore rejected. I commented that I would expect future conclusions to engage more fully with the issue.

86. I recognize that CSIS operates in a different context than CSE and note without commenting on their effect that there are differences in the wording of relevant sections of the two agencies' enabling statutes. Notably, whereas the justification framework in the *CSIS Act* includes a limitation that "[n]othing in this section justifies the commission of an act or omission that would infringe a right or freedom guaranteed by the [*Charter*]" (s 20.1(22)), the *CSE Act* states that activities "must not infringe the *Canadian Charter of Rights and Freedoms*" (s 22(1)) (emphasis added). Additionally, in contrast to CSIS, CSE activities "must not be directed at a Canadian or at any person in Canada."

87. Nevertheless, I raise the issue for purposes of transparency and ministerial accountability. CSE and CSIS both have a statutory regime expressly setting out the principle that authorized persons may commit acts or omissions that would otherwise constitute offences (s 20.1(2), *CSIS Act*; s 3, *CSE Act*). Although each authorization is evaluated on its own merits on a reasonableness standard, I am of the view that the legal approach to acts that would otherwise be unlawful and which risk infringing *Charter* rights should be common across the Department of Justice and the agencies. I would encourage consultation between the agencies on this issue if it has not already taken place, and expect the issue to be addressed in future authorizations.

88. The second issue relates to past comments I have made regarding the internal threshold CSE employees must apply when determining whether a certain activity can be committed – the "foreseeable significant increase in the perceived threat presented by the target" threshold. As I have previously stated, delineating clear boundaries on what authorized CSE employees can and cannot do is necessary to maintain public trust, as well as to facilitate operational decisions by giving CSE employees certainty as to what they can in good faith reasonably carry out in accordance with an authorization, thus protecting them from any criminal or civil liability for that activity (Decision CSE-2023-04 at paras 83-84; s 49 *CSE Act*). However, an

explanation or definition of the threshold remains absent from CSE policy documents included in the record. I would expect the new version of the MPS currently under development to provide CSE employees with additional guidance about how to apply the threshold. I add that examples of how the threshold is applied by CSE employees would be helpful to the Minister and myself.

D. Additional information related to Acts of Parliament that may be contravened

89. In last year's decision, I made a remark to the effect that the outcomes and end of authorization reports should provide the reader with some understanding of the breaches of Acts of Parliament that occurred during an authorization period. In response, the Chief's Application includes a new annex which provides a list of offences that "would otherwise likely be breached when conducting authorized activities."
90. The annex indicates that CSE cannot confirm [whether specific Acts of Parliament were contravened and which ones, or if specific thresholds had been reached] The list of offences mirrors the offences included in last year's authorization that CSE indicated could be breached, including, I note, offences that were described in the authorization as only arising in "remote circumstances". In essence, I understand the document to say that the offences that could have been committed during the authorization period are the same as the Minister said could potentially be committed.
91. As a result, I do not find the document improves my understanding of the breaches that occurred during the authorization period – with the potential exception of offences related to the interception of private communications, for which it is indicated that further information will be included in the end of authorization report prepared pursuant to 52(1) of the *CSE Act*. I consider my conclusion to be more so a result of my unfamiliarity with how acts that could constitute offences are tracked by CSE, rather than as a result of CSE's efforts to respond to my remark. I look forward to receiving more information on this, which could also address the limitations CSE has encountered. I note that it may also be helpful for CSE to consult

CSIS with respect to how that agency reports on the use of its own justification framework (*CSIS Act*, s 20.1(24)).

VI. CONCLUSIONS

92. Based on my review of the record, I am satisfied that the Minister's conclusions made under subsections 34(1) and (2) of the *CSE Act* in relation to activities and classes of activities enumerated at paragraph 63 of the Authorization are reasonable.

93. I therefore approve the Authorization pursuant to paragraph 20(1)(a) of the *IC Act*.

94. As indicated by the Minister, and pursuant to subsection 36(1) of the *CSE Act*, this Authorization expires one year from the day of my approval.

95. As prescribed in section 21 of the *IC Act*, a copy of this decision will be provided to the National Security and Intelligence Review Agency for the purpose of assisting the Agency in fulfilling its mandate under paragraphs 8(1)(a) to (c) of the *National Security and Intelligence Review Agency Act*, SC 2019, c 13, s 2.

May 29, 2025

(Original signed)

The Honourable Simon Noël, K.C.
Intelligence Commissioner