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WIRETAPPING AND OTHER ELECTRONIC SURVEILLANCE: Law and Procedure Robert W. Hubbard, Mabel Lai and Daniel Sheppard Release No. 6, November 2024

What's New in this Update:

This release features a significant rewrite of major portions of Chapter 12. Electronic Surveillance under the Canadian Security Intelligence Service.

The Chapter provides a broad discussion on the 2024 set of reforms to the *CSIS Act*, including three new warrant powers made available to the Service: preservation orders, production orders, and obtention warrants.

The 2024 reforms also addressed disclosure of datasets by CSIS. The Service may disclose a publicly available dataset without restriction. It may also disclose a Foreign dataset pursuant to terms contained in the Ministerial authorization that permits the dataset's retention, or a Canadian dataset pursuant to terms of the judicial authorization that permits the dataset's retention. Disclosures that occur under these rules are not subject to section 19 of the Act.

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Highlights

INTERCEPTIONS UNDER THE ACT — Warrantless Electronic Surveillance by CSIS; THE APPLICATION — The Federal Court considered whether CSIS could use a novel technology on targets outside of Canada without a warrant. Importantly, the targets were foreign nationals with no nexus to Canada and the use of the technology would be more than minimally invasive: *Canadian Security Intelligence Service Act (CA) (Re)*, 2022 FC 1444.

THE APPLICATION — The Duty of Candour — The Court held that CSIS had a duty to inform the Court as soon as it was aware that the Communications Security Establishment was disclosing Canadian Identifying Information obtained while assisting CSIS implement its warrants through a process different than the one that governed CSIS's own disclosures. This information would have been material to the Court's decision to issue foreign intelligence warrants and could have caused the Court to revisit previously issued warrants: *Canadian Security Intelligence Service Act (CA) (Re)*, 2023 FC 1341 (F.C.).