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NEXT SLIDE: DLS

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Directorate of Legal Services (DLS)

- Since 1986, CSE has had in-house legal counsel who are Department of Justice (DOJ) lawyers
- Mission of DOJ:
 - to provide client departments with legal advice; and
 - to ensure that government is administered in accordance with the law and the Constitution

 Department of Justice
Général

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NEXT SLIDE: I. What do you need to know?



I. What do you need to know?

- CSE must comply with the law
- CSE always seeks to protect the privacy of Canadians
- The *National Defence Act* (NDA) sets out the powers of CSE (Part V.1)
- CSE has 3 mandates (A: FI; B: IT security; and C: Assistance) and can only undertake activities that fall within them

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NEXT SLIDE: II. What do you need to know?



Keep Three Legal Pillars in Mind

- Rule of Law
- The Charter
- *Privacy Act*



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NEXT SLIDE: The Rule of Law



The Rule of Law

- All persons, entities, and institutions within a state, whether those persons be private or public, should be bound by and entitled to the benefits of laws that are publicly promulgated, equally enforced, independently adjudicated, and consistent with international human rights norms and standards

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NEXT SLIDE: The Canadian Charter of Rights and Freedoms



Canadian Charter of Rights and Freedoms

- Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law⁴⁴
- **Section 8 of the *Charter*** is of particular interest for CSE:

**Everyone has the right to be secure
against unreasonable search or seizure.**

- *Hunter v. Southam Inc.*



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NEXT SLIDE : *Privacy Act*



Privacy Act

- Imposes obligations on federal government departments and agencies to respect privacy rights



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NEXT SLIDE: CSE's Authorities



CSE's Authorities

- *National Defence Act* (NDA), Part V.1
 - CSE's Mandate and Mandate Restrictions
 - Ministerial Directives
 - Ministerial Authorizations



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NEXT SLIDE: Take a Closer Look at the Legislation!



Take a Closer Look at the Legislation!

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www.laws.justice.gc.ca

Part V.1 of the NDA - Communications
Security Establishment

Part VI of the *Criminal Code* - Invasion of
Privacy

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NEXT SLIDE: CSE's Mandate — section 273.64 NDA



CSE's Mandate – section 273.64 NDA

Threefold mandate of CSE:

- a) to acquire and provide foreign intelligence (**SIGINT**);
- b) to provide advice, guidance and services to help to ensure the protection of electronic information and information infrastructures of importance to the government of Canada (**ITS**);
- c) to provide technical and operational assistance to federal law enforcement and security agencies in the performance of their lawful duties (**Assistance**).

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NEXT SLIDE: CSE Mandate Restrictions



CSE Mandate Restrictions

General (s. 273.66)

- CSE may only undertake activities within its mandate, consistent with ministerial direction and consistent with ministerial authorization if required

A and B Mandates – SIGINT and IT Security (ss. 273.64(2))

- shall not be directed at Canadians or persons in Canada; and
- subject to measures to protect the privacy of Canadians in the use and retention of intercepted information

C Mandate – Assistance (ss. 273.64(3))

- subject to any limitations imposed by law on the agency to whom CSE is providing assistance

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NEXT SLIDE: Ministerial Directives



Ministerial Directives

- June 2001 – Examples of Some Ministerial Directives (MDs)
 - MD on Accountability Framework (Unclassified)
 - MD on Privacy of Canadians (Unclassified)
- *NDA* now provides that the Minister may issue written directions to the Chief respecting the carrying out of the Chief's duties and functions (ss. 273.62(3))
- MDs have also been issued relating to sensitive operations, relationships and other matters

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NEXT SLIDE: Ministerial Authorizations



Ministerial Authorizations (MAs)

- Minister may authorize in writing the interception of private communications in relation to an activity or a class of activities (ss. 273.65(1) and (3))
 - Part VI of the *Criminal Code* does not apply to an interception of a communication under the authority of an MA (s. 273.69)
 - GoC cannot be sued in respect of the use, disclosure or disclosure of the existence of a communication intercepted under the authority of an MA (s. 273.7)

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NEXT SLIDE: MINISTERIAL AUTHORIZATIONS (Validity, Conditions, Support)



Ministerial Authorizations

Validity

- Up to one year, as specified in the MA, may be renewed (s. 273.68(1))
- Minister may vary or cancel at any time (s. 273.68(2))

Conditions

- MA may contain any conditions that the Minister considers advisable to protect the privacy of Canadians (s. 273.65(5))

Support

- Minister may issue written directions to the Canadian Forces to support CSE in carrying out activities under an MA (s. 273.65(6))

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NEXT SLIDE: Internal Accountability and External Review



Internal Accountability and External Review

INTERNAL ACCOUNTABILITY:

- Audit and Evaluation
 - Periodic review – operational and administrative
 - Provides assurance that appropriate controls are in place to ensure compliance with law and policy
- Directorate of Legal Services

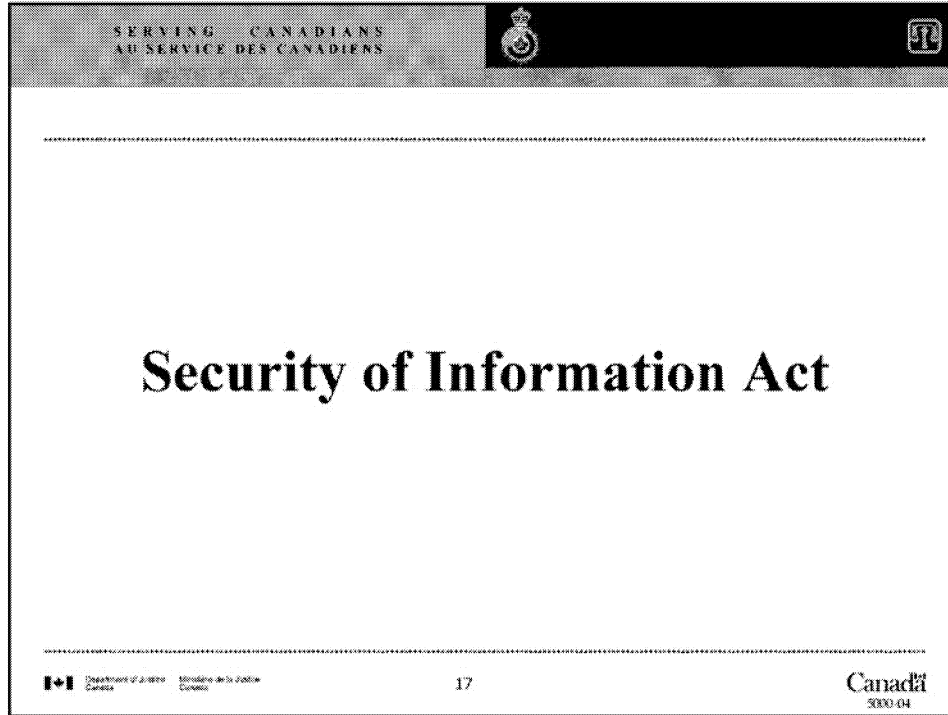
EXTERNAL REVIEW:

- Independent Review by CSE Commissioner
 - Reviews CSE activities to ensure compliance with the law
- Other External Review
 - E.g., Auditor General, Privacy and Information Commissioners

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NEXT SLIDE: SECURITY OF INFORMATION ACT (Title Slide)





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NEXT SLIDE: *R. v. Delisle*

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R. v. Delisle



 Department of Justice
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NEXT SLIDE: Delisle Recap; video interlude (4 minutes, 35 seconds)

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Delisle Recap

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Department of Justice
Ministère de la Justice

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NEXT SLIDE: *R. v. Delisle* : Relevant Provisions



R. v. Delisle: Relevant Provisions

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SOIA, s. 16 – Communications with foreign
entities or terrorist groups

Criminal Code, s. 122 – Breach of trust by
public officer

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NEXT SLIDE: What do you need to know?



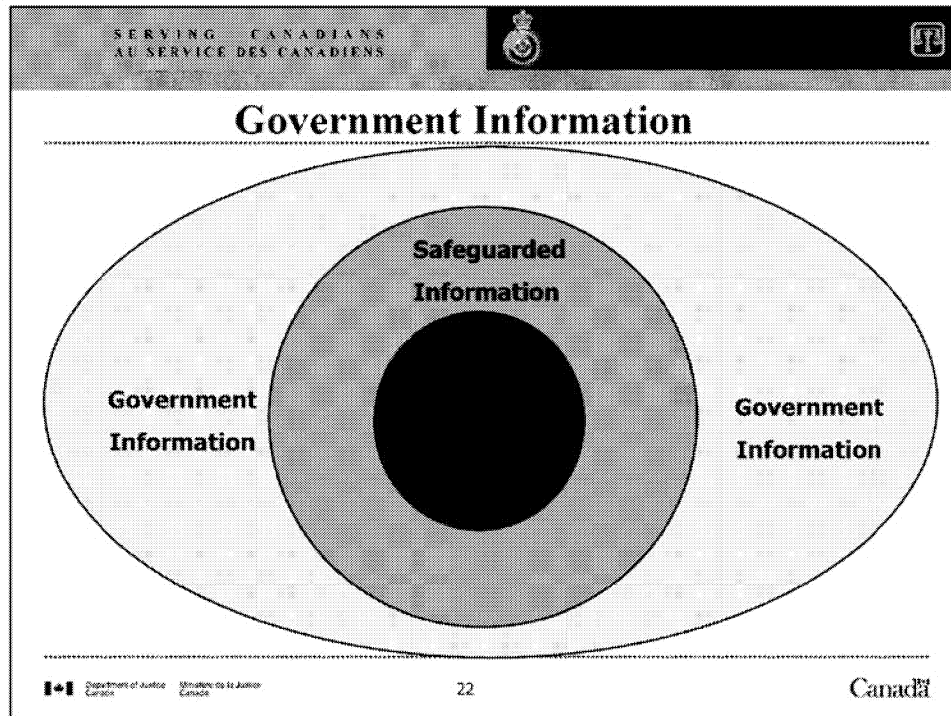
What do you need to know?

- CSE employees frequently deal with **Safeguarded Information (SI)** and **Special Operation Information (SOI)**
- **Unauthorized disclosure of SI or SOI** may result in **criminal liability**

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- **NEXT SLIDE: Government Information**



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NEXT SLIDE: Why do you need to know?



Why do you need to know?

Serious consequences for:

- CSE
- the Government of Canada; and/or
- you

may result from the unauthorized disclosure of
safeguarded or special operational information.

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NEXT SLIDE: Safeguarded Information



Safeguarded Information

What is Safeguarded Information?

- Information that the Government of Canada or a province is taking measures to safeguard

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NEXT SLIDE: Safeguarded Information (Related Offences)



Safeguarded Information

Related Offences

- Unauthorized **communication** of safeguarded information to a **foreign entity** or **terrorist group** by any person (section 16)
- Unauthorized communication of safeguarded information to a foreign entity or terrorist group by a **person holding a security clearance** (section 18)

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NEXT SLIDE: Special Operational Information (What is SOI? and Examples of SOI)



Special Operational Information

What is SOI?

Safeguarded information that reveals, or from which one can infer, certain classes of information as set out in the Act

Examples of SOI

- **Sources**
- **Targets**
- **Means** to covertly collect, analyze and exploit information or intelligence
- **Identity** of persons engaged in covert operations
- **Encryption** used by GoC and its vulnerabilities
- Similar information as above about or received from a foreign entity or terrorist group

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NEXT SLIDE: Special Operational Information (Related Offences)



Special Operational Information

What are the related offences?

- Unauthorized communication of **actual SOI** to a foreign entity or terrorist group by **any person**
- Unauthorized communication of **purported SOI** by a Person Permanently Bound to Secrecy (PPBS)
- Unauthorized communication of **actual SOI** by a **PPBS**

Note: You may be charged with any or all of the offences.

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NEXT SLIDE: Persons Permanently Bound to Secrecy



Persons Permanently Bound to Secrecy

By operation of law

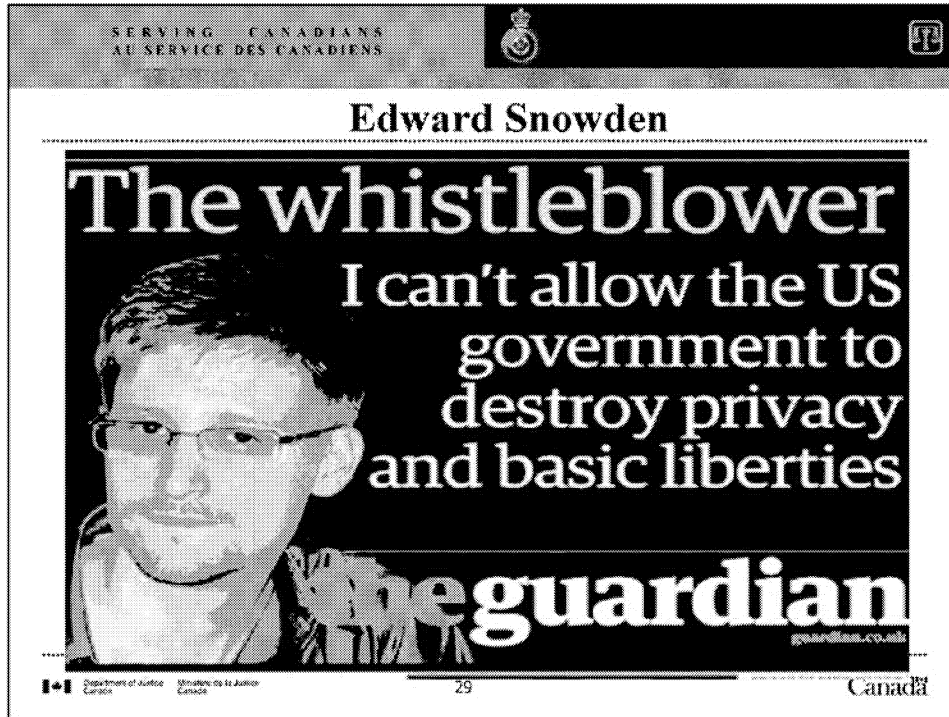
- All current and former employees of CSE are PPBS

By personal designation

- Selected secondees, contractors, etc.

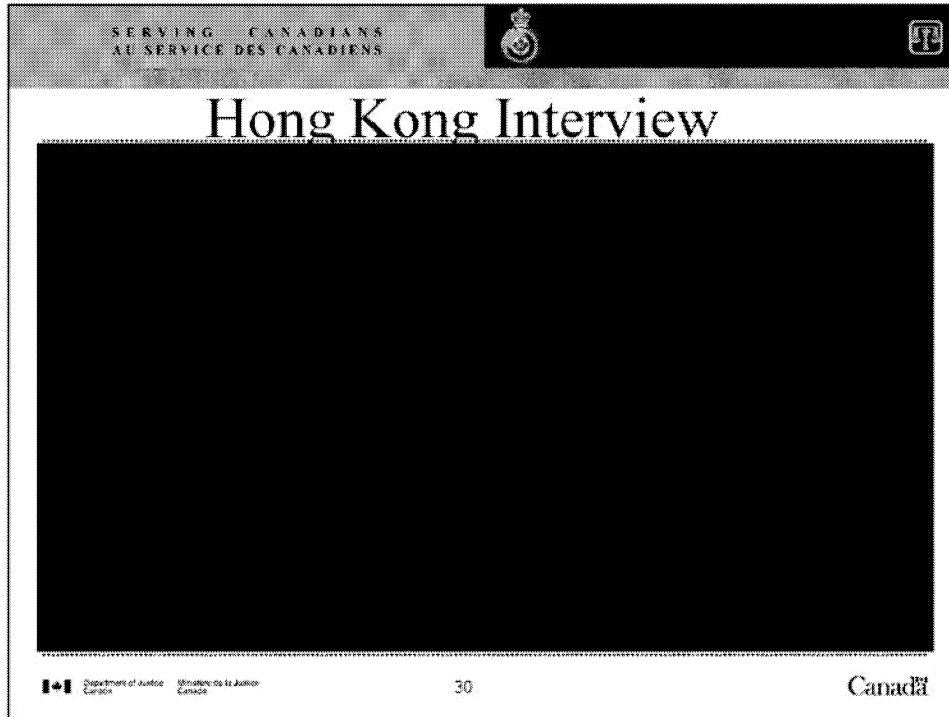
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NEXT SLIDE: Edward Snowden



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NEXT SLIDE: Hong Kong Interview



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NEXT SLIDE: Procedure for Public Interest Defence



Procedure for Public Interest Defence

CSE Internal Disclosure Mechanism



Deputy Head or Deputy Attorney General



CSE Commissioner



PPBS considers whether to publicly disclose



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NEXT SLIDE: Questions



QUESTIONS ?