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## THE GLOBE AND MAIL

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# Ottawa accused of breaking intelligence agency transparency vow

By MICHELLE ZILIO and COLIN FREEZE

*While trying to keep public a surveillance-related court case, civil liberties lawyer says Liberals aren't living up to an election promise*

The Liberal government is contradicting its promise to increase the transparency of federal intelligence agencies by attempting to shut the public out of a court case on surveillance, a civil liberties lawyer says.

"What I've been doing over the last two days [is] cross-examining representatives from CSE, CSIS and Global Affairs Canada who say that 'the sky will fall if Canadians know more,'" lawyer David Martin said as he left a hearing in Ottawa on Thursday.

Working to prevent a lawsuit filed by the British Columbia Civil Liberties Association from being moved into a closed court, he had just squared off against government lawyers fighting to protect the secrets of spy agencies.

"I don't think that the Minister of National Defence and the Attorney-General of Canada ... have really turned their attention to what is happening in this lawsuit, and I encourage them to do that because the Government of Canada ran on a platform of having more judicial supervision of CSE," Mr. Martin said.

He said he hoped the ministers could force a reconsideration of where the case is heading.

In January, lawyers acting in the name of the Attorney-General of Canada – Liberal cabinet minister Jody Wilson-Raybould – invoked a legal procedure that can move a national-security matter from an open court to closed court.

The BCCLA sued the federal government in 2013, alleging that indiscriminate collection of telecommunications data by government security agencies violates Canadians' constitutional rights. The case has been proceeding slowly and, under disclosure rules, the government is turning over to the civil rights agency material that exposes the inner workings of the Communications Security Establishment (CSE), a highly secretive spy agency.

The Globe reported on one such disclosure earlier this week: a watchdog agency's written report that says CSE violated the secret ministerial edicts under which it operates. It did this by inadvertently failing to remove private data about Canadians that turned up in the pools of intercepted data about foreigners' communications that it shares with allies. As a consequence, CSE has stopped sharing such data.

The documents were disclosed in court filings in the BCCLA case. This week, Federal Court Justice Robert Barnes heard intelligence officials argue that seepage of secrets shouldn't continue, because while the agencies care about privacy, they should not be made to speak publicly of all they do. "We focus on the foreigner. We don't focus on Canadians. That would be unlawful," testified Scott Millar, a director general of strategic policy for CSE. In a sworn

affidavit provided to the court, he said CSE's allied agencies abroad would likely cut information sharing with Canada themselves if too much was said in court.

The Liberals promised in last year's election campaign to rein in the operations of government spy agencies. Or, at least, bring the spies under greater scrutiny from the legislative and judicial branches of government.

Public Safety Minister Ralph Goodale hopes to introduce a bill later this month that would strike a select committee of parliamentarians who are afforded insights into how classified spy operations work. As things stand, MPs and senators are allowed to know almost nothing about them.

This committee "will have the authority to examine all of the security and intelligence activities of the government of Canada," Mr. Goodale told Parliament on Thursday. "They will have extraordinary access to classified information," he added.

Changes to actual spying operations are further away. The Liberals want to have a consultation process first. This winter, government officials launched the bid to bring the BCCLA lawsuit behind closed doors in what is known as a Section 38 of the Canada Evidence Act proceeding.

The Attorney-General of Canada is "asserting that the disclosure of some documents would be injurious to national security," explained Andrew Baumberg, a court spokesman.

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