



BACKGROUND:

BCCLA COMPLAINTS AGAINST RCMP AND CSIS

WHERE ARE WE FILING?

We have filed complaints in Ottawa this morning to the Security Intelligence Review Committee (the oversight body for CSIS) and the Commission for Public Complaints Against the RCMP.

WHAT POTENTIAL RIGHTS VIOLATIONS DO THE COMPLAINTS ALLEGE?

The BCCLA alleges that the activities of the RCMP and CSIS in monitoring and spying on individuals and groups opposed to the proposed Enbridge Northern Gateway Pipeline project are a potential violation of several rights under the *Charter of Rights and Freedoms*:

- **Section 2(b) – Freedom of expression; Section 2(c) – Freedom of assembly; Section 2(d) – Freedom of association:** Any government action that discourages or deters individuals from engaging in free expression, and gathering together (in this case to get involved in public affairs), infringes these rights. BCCLA takes the position that monitoring, surveillance, and information sharing with other government agencies and with private corporations creates a chilling effect for people who want to speak out, engage in public discourse, join groups, and in this case, participate in proceedings at the National Energy Board.
- **Section 8 – Freedom from unreasonable search** – individuals have a reasonable expectation of privacy in meeting with others to discuss matters of public interest and to exercise their constitutionally-protected freedoms of expression, assembly and association. If the RCMP or CSIS used infiltration or confidential informants to gather intelligence at these meetings, that could represent a violation of section 8 of the *Charter*. There are many redacted portions of the documents released under the *Access to Information Act*, and there is a reference to “national level intelligence assets” followed by redaction, as well as to “confidential sources” providing information. In addition, various emails in the documents (and referred to in the complaint) suggest that the RCMP used confidential informants within organizations, including IdleNoMore, to gather information. These references strongly suggest, but do not establish, that covert means were used to gather information in this case. That is a question raised in our complaints.
- **CSIS Act** – The law that gives authority to CSIS makes clear that the agency cannot investigate, monitor, collect information or spy on “lawful advocacy, protest or dissent” (s. 12 & s. 2). Its sole mandate is to investigate “threats to the security of Canada.” The documents released make clear that, in the opinion of the government, the organizations being spied upon did not constitute such a threat – and in any case, it is clear that the activities were completely peaceful. It is thus unlawful for CSIS to be involved in any way in gathering information about peaceful political activity.

WHAT RCMP and/or CSIS CONDUCT ARE WE COMPLAINING ABOUT?

In general, documents released under the *Access to Information Act* confirm that the RCMP and CSIS, in cooperation with the National Energy Board, engaged in **systematic information and intelligence gathering** about individuals and organizations opposed to the proposed Enbridge Northern Gateway Pipeline project, including those who were participants in the Board’s hearings. The documents indicate that of this information was shared with the National Energy Board, Enbridge itself, and other oil corporations.

This included:

- Monitoring the activities of groups including ForestEthics Advocacy, Dogwood Initiative, LeadNow.ca, the Council of Canadians, EcoSociety, Sierra Club BC, and the IdleNoMore movement.
- **RCMP** monitoring “all aspects of the anti-petroleum industry movement” despite confirmation in the documents that it has no information to indicate any criminal threat.
- **RCMP** monitoring peaceful protests even when it admits anticipating such protest will be peaceful. This is distinct from helping to keep protestors safe or perform traffic control. The documents make clear that the activity is directed at keeping tabs on the protest itself.
- The documents indicate that **CSIS** provided information the National Energy Board and that CSIS would “continue monitoring all sources of information and intelligence together with police and intelligence partners.” The documents also confirm that the Board consulted with national and regional offices of CSIS in relation to protests in Prince Rupert and Kelowna. Given that the documents also suggest that RCMP saw no criminal threat in these protests, it appears that CSIS involvement in such information-gathering would be unlawful.
- **INFORMATION SHARING WITH INDUSTRY:** The documents report that the **RCMP and CSIS** share information with the petroleum industry, including Enbridge, in biannual “classified briefings” hosted by Natural Resources Canada. Information was also shared with Tocra, which provides specialized security services to the oil and gas industry.
- **POTENTIAL USE OF COVERT MEANS AND INFILTRATION:** Redacted emails in the documents strongly suggest that confidential **RCMP** sources within IdleNoMore communicated information with the police. This information was then communicated with the National Energy Board and with private security firm Tocra, which provides specialized security services to the oil and gas industry. The redactions are marked “s.16(1)(c)(ii)” which refers to the section of the *Access to Information Act* that excludes information from disclosure “that would reveal the identity of a confidential source of information”.

WHAT IS THE PROCESS?:

- The Commission for Public Complaints Against the RCMP can be a lengthy process. In general, the RCMP is tasked with a review of the complaint. If the complainant is not satisfied, it can ask for review by the Commission. In some cases, the Commission itself investigates the complaint without assigning it first to the RCMP.
- The Security Intelligence Review Committee (SIRC) is the oversight body for CSIS. A complaint against CSIS is first reviewed by CSIS itself, which has 30 days to respond. Then SIRC will review the complaint and the CSIS response.

SECURITY INTELLIGENCE REVIEW COMMITTEE POTENTIAL CONFLICT OF INTEREST:

The chair of SIRC, Hon. Chuck Strahl, recently stepped aside because he is paid lobbyist for Enbridge. Had he continued to sit as chair, this complaint would have placed him in a conflict of interest, as activities related to Enbridge’s proposed Northern Gateway Pipelines form the subject of this complaint. The complaint against SIRC also alleges that information was shared by CSIS with other petroleum companies. BCCLA is concerned that other SIRC members may have apparent conflicts of interest arising from their ties to the petroleum industry. SIRC member Hon. Denis Losier sits on the board of directors of Enbridge NB, an Enbridge subsidiary, while SIRC member Hon. Yves Fortier formerly sat on the board of TransCanada Pipelines. A range of oil companies participated in the “classified” briefings that are part of this complaint. BCCLA asks that any SIRC member with current or former ties to the petroleum industry should recuse him or herself due to a reasonable apprehension of bias. We do not suggest that these members would share secret information with industry, but that their connections create an appearance that could compromise public confidence in their review of this matter, and that their review would provide them with information that potentially pertains to those connections, placing them in a difficult position.