

Our File: 1555

February 6, 2014

**BY MAIL AND FACSIMILE**

Ian McPhail, QC  
Chair, Commission for Public Complaints against the RCMP  
National Intake Office  
PO Box 88689  
Surrey, BC V3W 0X1

Dear Mr McPhail:

**Re: Surveillance of Canadian Citizens and Information Sharing  
with the National Energy Board**

We are legal counsel for the British Columbia Civil Liberties Association (“BCCLA”). By this letter, our client is making a complaint pursuant to section 45.35(1) of the *Royal Canadian Mounted Police Act* regarding the improper and unlawful actions of Royal Canadian Mounted Police (“RCMP”) members in gathering information about Canadian citizens and groups engaging in peaceful and lawful expressive activities, and sharing it with other government bodies and private sector actors.

As set out in greater detail below, recent media reports indicate that the National Energy Board (“NEB” or the “Board”) has engaged in systematic information and intelligence gathering about organizations seeking to participate in the Board’s Northern Gateway Project hearings. Records obtained under the *Access to Information Act* confirm that this information and intelligence gathering was undertaken with the cooperation and involvement of the RCMP and other law enforcement agencies, and that the RCMP participates in sharing intelligence information with the Board’s security personnel, the Canadian Security Intelligence Service (“CSIS”), and private petroleum industry security firms. The records suggest that the targeted organizations are viewed as potential security risks simply because they advocate for the protection of the environment.

This complaint is directed at all RCMP members and officers participating in or commanding the impugned activities described in more detail in the body of this letter. In brief, BCCLA has serious concerns about the scope and extent of the RCMP’s intelligence gathering activities and its practice of monitoring groups and organizations that seek to peacefully participate in public discourse about energy-related programs such as the Northern Gateway Project. BCCLA is particularly concerned about the chilling effect that

such intelligence gathering and sharing will have on participation in the Board's proceedings, as it seeks to criminalize what is intended to be a forum for public expression and engagement in decision-making processes regarding projects of significant public interest. These activities violate sections 2(b), 2(c), 2(d) and 8 of the *Canadian Charter of Rights and Freedoms*.

## Background and Specific Concerns

For the past few years, BCCLA has become increasingly alarmed by reports about the nature and scope of the RCMP's interest in organizations engaged in environmental advocacy. Last year, the media reported on internal RCMP documents referring to "a growing radicalized environmentalist faction within Canadian society that is opposed to Canada's energy sector policies".<sup>1</sup> Subsequent media reports have suggested that protests and opposition relating to the petroleum industry are regarded as threats to national security by the RCMP and other government agencies.<sup>2</sup>

Most recently, the media has reported that the RCMP worked and shared information with the NEB about so-called "radicalised environmentalist" groups seeking to participate in the Board's hearings regarding the Northern Gateway Project.<sup>3</sup> These groups, which include Leadnow, ForestEthics Advocacy, the Council of Canadians, the Dogwood Initiative, EcoSociety, and the Sierra Club of British Columbia, have well-established records of engagement and advocacy on a wide range of public issues. Also included was the relatively newer social and political movement for Indigenous rights, Idle No More. None of these groups are criminal organizations, nor do they have any history of advocating, encouraging, or participating in criminal activity.

BCCLA has reviewed the *Access to Information Act* records upon which these recent media reports were based, and has also been contacted by many individuals involved with these organizations. BCCLA has serious concerns about the RCMP's involvement and conduct in this matter. In particular, we note the following:

- RCMP members have maintained a visible presence at NEB hearings when there are no grounds for security concerns. Courts and tribunals conduct hearings every day across Canada without the presence of police or other security personnel.
- RCMP S/Sgt VK Steinhammer notified an NEB security officer of an Idle No More protest that was scheduled to take place on the Prince Rupert courthouse lawn on a Sunday afternoon.<sup>4</sup> Despite confirming that the RCMP anticipated the protest would

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<sup>1</sup> Jim Bronskill, "RCMP Concerned About 'Radicalized Environmentalist' Groups Such As Greenpeace: Report," *The Canadian Press*, July 29, 2012.

<sup>2</sup> Stephen Leahy, "Canada's environmental activists seen as 'threat to national security'," *The Guardian*, February 14, 2013.

<sup>3</sup> Shawn McCarthy, "CSIS, RCMP monitored activist groups before Northern Gateway hearings," *The Globe and Mail*, November 21, 2013; Krystle Alarcon and Matthew Millar, "Harper government under fire for spying on environmental groups," *The Vancouver Observer*, November 21, 2013; Matthew Millar, "Harper government officials, spies meet with energy industry in Ottawa," *The Vancouver Observer*, November 22, 2013.

<sup>4</sup> Email of S/Sgt VK Steinhammer to R. Garber re "Security for upcoming round of Northern Gateway hearings," dated April 19, 2013 [A0008929\_11-000011-12].

be peaceful, S/Sgt Steinhammer nevertheless advised that the RCMP would be “monitoring” this event. BCCLA is troubled that the RCMP would deem it necessary to monitor peaceful gatherings at which it has no expectation of criminal behaviour, threat to public safety or need to ensure the safety of demonstrators.

- Tim O’Neil, a Senior Criminal Intelligence Research Specialist with the RCMP’s Critical Infrastructure Intelligence Team (“CITT”), wrote to Board staff regarding the risk of interference with NEB hearings by groups opposed to oilsands and pipeline development.<sup>5</sup> Despite confirming that CITT has no intelligence indicating a criminal threat to the NEB or its members, O’Neil advises that CITT “will continue to monitor all aspects of the anti-petroleum industry movement,” requests that an SPROS/SIR National Security database file be opened for this matter, and notes that this information is also being shared with CSIS. Again, BCCLA is troubled that the RCMP and CSIS would deem it necessary to monitor the activities of groups which it does not suspect of any criminality.
- Tim O’Neil’s April 19, 2013 message was also copied to members of Natural Resources Canada, a government institution that organizes biannual “classified briefings” in which it has been reported that the RCMP and CSIS share information about security matters, including the monitoring of environmental organizations and activists, with the NEB and representatives of the energy industry.<sup>6</sup> Indeed, O’Neil’s email concludes by inviting recipients to discuss their concerns with security officials who will be attending the next NRCan Classified Briefing meeting.
- Based on redactions made pursuant to sub-paragraph 16(1)(c)(ii) of the *Access to Information Act*, it appears that RCMP and NEB security officers shared confidential-source information regarding events or individuals related to the Board’s hearings.<sup>7</sup> BCCLA finds this particularly troubling, as it suggests that the RCMP has been sharing sensitive aspects of its investigative and law enforcement work with an independent federal agency that performs an adjudicative function, not to mention industry representatives who are parties in the same hearings. Such information sharing may compromise these groups’ ability to participate fully and effectively before the NEB, as industry representatives may be receive information that assists in advancing their position before the Board, and the Board itself may be made privy to unproven yet highly prejudicial allegations against individuals, groups, or organizations appearing before it.
- It appears highly likely that the “intelligence” shared with the NEB and industry representatives includes personal information about specific individuals. We further note that the Board subsequently shared some of this information with Tocra Inc, a

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<sup>5</sup> Email of T. O’Neil to R. Garber and 23 other recipients re “Security Concerns - National Energy Board,” dated April 19, 2013 [A0008929\_14-000014-16].

<sup>6</sup> Matthew Millar, “Harper government’s extensive spying on anti-oilsands groups revealed in FOIs,” *The Vancouver Observer*, November 19, 2013; Matthew Millar, “Harper government officials, spies meet with energy industry in Ottawa,” *The Vancouver Observer*, November 22, 2013.

<sup>7</sup> See, for example, email chain dated January 18-21, 2013 [A0008929\_87-000087-91]; email chain dated January 18, 2013 [A0008929\_92-000092-93]; undated document addressed to NEB Panel and ENG Hearing Kelowna - Information Summary, dated January 22, 2013 [A0008929\_80-000080-86].

private firm that provides security consulting services for the petroleum and natural gas industries.

- These emails also indicate that some of the RCMP's information is derived from "confidential sources" who may be directly connected or involved with advocacy groups such as Idle No More. This strongly suggests that the RCMP is engaged in covert intelligence gathering and/or infiltration of peaceful organizations whose sole purpose is to give voice to their members' concerns and viewpoints on matters of significant public interest. Again, BCCLA is troubled that the RCMP would infiltrate and/or covertly gather intelligence regarding groups whose members are peacefully exercising their *Charter*-protected assembly and expression rights.
- Finally, we note that the documents released by the NEB indicate that the RCMP provided the Board with intelligence beyond the open-source information its own security staff were capable of gathering. For example, the NEB's "threat assessment" pertaining to its hearings in Kelowna and Prince Rupert confirm that the Board consulted with "national-level intelligence resources" of both the RCMP and CSIS, in addition to regional level and local RCMP detachments in Kelowna and Prince Rupert.<sup>8</sup> BCCLA finds it troubling that the RCMP would provide such high-level intelligence to an arms-length government adjudicative body such as the NEB, particularly since the RCMP had no expectation of any criminal activity in connection with the Board's proceedings.

### Chilling Effect on Free Expression and Democratic Participation

Freedom of expression is among the most fundamental of rights possessed by Canadians, and is guaranteed by section 2(b) of the *Canadian Charter of Rights and Freedoms*. Similarly, sections 2(c) and (d) of the *Charter* protect historically powerful modes of collective expression, namely peaceful assembly and association. Protecting democratic discourse and participation in decision-making is a core rationale for these freedoms. The Supreme Court of Canada has repeatedly emphasized the paramount importance of free expression to Canadian society. As Chief Justice McLachlin stated in *Grant v Torstar Corp*, "free expression is essential to the proper functioning of democratic governance." For this reason, "freewheeling debate on matters of public interest is to be encouraged" because the truth-seeking function of public debate is dependent on the free flow of information and expression of diverse opinions.<sup>9</sup>

Any state action that discourages or deters individuals from engaging in free expression infringes section 2(b) of the *Charter*. Such violations are particularly egregious when they restrict expression concerning public affairs. BCCLA maintains that monitoring, surveillance, and information sharing with other government agencies and private sector interests creates a chilling effect for groups and individuals who may wish to engage in

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<sup>8</sup> National Energy Board, "Appendix 9: Enbridge Northern Gateway Project Integrated Security, Logistics and Communications Plan: Kelowna," dated January 24, 2013 [excerpt at A0008929\_61-000061]; National Energy Board, "Appendix 11: Enbridge Northern Gateway Project Security Plan: Prince Rupert," dated January 23, 2013 [A0008929\_77-000077]; also see Email of R. Garber re Prince Rupert security assessment, dated January 31, 2013 [A0008929\_37-000037-38].

<sup>9</sup> *Grant v Torstar Corp*, 2009 SCC 61 at paras. 48 and 52.

public discourse or participate in proceedings before the Board. Police monitoring may also deter those who simply wish to meet with or join a group to learn more about a matter of public debate or otherwise exchange information or share views with others in their community. Indeed, BCCLA has already heard from several of the affected groups that members and prospective members of their organizations have expressed serious concerns and reluctance to participate in light of recent media reports of RCMP monitoring.<sup>10</sup>

BCCLA also notes that individuals and groups have a reasonable expectation of privacy in meeting and discussing matters of public interest or planning ways of lawfully exercising their *Charter*-protected assembly and expression rights. If the RCMP is involved in infiltrating these groups or is otherwise relying on confidential informants or covert intelligence gathering, then an inquiry must also be conducted into whether such activities amount to an unreasonable search in violation of section 8 of the *Charter*.

Finally, and in addition to this chilling effect on rights of free expression, assembly, and association, BCCLA is also concerned that the RCMP's ongoing collaboration and information sharing with the NEB and other interested parties may undermine the fairness of the Board's proceedings. In this regard, BCCLA is concerned that disclosing to the NEB that certain groups are of interest to or under investigation by the RCMP may prejudice their credibility when they appear before the Board as intervening parties. At a minimum, it strikes us as highly improper for the RCMP to gather information about a party to a judicial proceeding and to share that information directly with the tribunal and with another party to the proceeding, Enbridge. The disclosure of intelligence information to the Board or other interested parties may compromise the right of these groups or individuals to participate in or even attend proceedings in which they have clearly expressed an interest.

## Conclusion

In light of all the foregoing, BCCLA asks that the Commission undertake a full investigation of the allegations described in this complaint and those RCMP members who are or may have been involved in targeting groups participating or seeking to participate in NEB hearings. We trust you will appreciate the urgency of this matter, and look forward to hearing from you regarding next steps in the complaint process as soon as possible. We remain available to address any questions or furnish any additional information which you may require in the course of your inquiry into this matter.

Yours truly,  
  
Paul Champ

c: J. Paterson, Executive Director, BCCLA

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<sup>10</sup> BCCLA is prepared to provide the Commission with statements or other information from affected individuals and groups as to the impact of news reports of RCMP surveillance on group membership and participation upon request or at such later stage as may be appropriate.