Court File No. T-1492-17

FEDERAL COURT

BETWEEN:

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

CERTIFIED TRIBUNAL RECORD

Volume I

Department of Justice Canada
Ministère de la Justice Canada

National Security Litigation & Advisory Group
PO Box 8127, Station T
Ottawa, Ontario
K1G 3H6

Groupe litiges et conseils en sécurité nationale
CP 8127, Succursale T
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TOP SECRET

August 11, 2017

BY HAND

Ms. Shayna Stawicki
Registrar
Security Intelligence Review Committee
Jackson Building
122 Bank Street, 4th Floor
Ottawa, Ontario K1P 5N6

Dear Ms. Stawicki:

RE: Complaint filed by BCCLA pursuant to section 41 of the *CSIS Act*
Final Report: Review of vetting for national security concerns
Your file: 1500-481

Further to our letter dated July 14, 2017 and our meeting of yesterday with Ms. Bowers, we wish to inform the Committee of the following changes to the proposed redactions to the final report in the above-mentioned file.

As discussed, we have added the following redactions in order to provide better consistency with other redactions throughout the final report:

[redacted]

Please do not hesitate to contact me at 613-842-1356 should you require additional information or clarification. I remain available to assist the Committee in its consultation as per section 55 of the *CSIS Act* if you have any specific questions or concerns.

Sincerely,

Stephanie Dion
Counsel

cc: Canadian Security Intelligence Service, ER&L

[redacted] 51000-677

Department of Justice Canada
Ministère de la Justice Canada

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TOP SECRET

July 14, 2017

BY HAND

Ms. Shayna Stawicki
Registrar
Security Intelligence Review Committee
Jackson Building
122 Bank Street, 4th Floor
Ottawa, Ontario
K1P 5N6

Dear Ms. Stawicki:

RE: Complaint filed by BCCLA pursuant to section 41 of the *CSIS Act*
Final Report: Vetting for national security concerns
Your file: 1500-481

Further to your letter dated May 30, 2017, please find enclosed a copy of the final report with the Service's proposed redactions using the CSIS National Security Privilege Claims.

For national security purposes, the Service requests the following redactions:

[redacted]

The Service seeks to protect information which identifies or tends to identify its interest in individuals, groups or issues, including the existence or absence of past or present files or investigations, the intensity of investigations, and the degree or lack of success of investigations.

Disclosure of such information would identify or assist in identifying the Service's current or previous interest in individuals or groups. This, in turn, could jeopardize the efficacy of the Service's operations and investigations by prompting the subjects of investigation, or individuals intending to undertake actions detrimental to national security, to take counter-measures to thwart the investigation and/or introduce false or misleading information into the investigative process. For example, Service operations might be countered by

individuals taking specific measures to disassociate from identified individuals or groups, thereby nullifying the usefulness of human or technical sources.

The disclosure of subjects of investigation, a past or present Service investigation, its success or lack of success and any related Service assessment would also provide those engaged or wishing to engage in activities constituting a threat to the security of Canada with information that could enable them to access the depth, deployment and sophistication of the resources, as well as the degree of expertise, of the Service. It would enable them to find gaps in the Service's knowledge and use them to their advantage.

A security agency cannot operate effectively if individuals are able to ascertain the state of the security agency's operational knowledge at a particular point in time, the specific operational assessment made by the security agency as well as the fact the security agency is in a positon to draw certain conclusions on a subject. The disclosure of this type of information would indicate a level of interest, or lack thereof, in an individual or group and the fact that a security agency has enough information to draw a conclusion.

[redacted]

Please note that, unlike the Service's specific investigation [redacted] its more general investigation relating to domestic extremism is in the public domain. This information has only been redacted in instances where the information becomes classified in a particular context. The same is true in relation to the Service's role in the protection of critical infrastructure. For example, [redacted]

The Federal Court of Canada, in the context of section 87 applications, has relied on the framework set out in *Henrie vs Canada* (Security Intelligence Review Committee) [1989] 2 F.C. 229 (upheld on appeal to FCA) when considering injury to national security. In *Henrie*, the Court recognized the injury to national security relating to the duration, scope, intensity and degree or lack of success of an investigation.

[redacted]

The Service seeks to protect disclosure of information that would identify or tend to identify its employees. This information would include their name, position title, unit name and personal identifiers. Knowledge of this information would be valuable to those whose interests are inimical to Canada. Also, identifying Service personnel could endanger their personal safety. [redacted] Employees have been harassed and had their lives threatened and CSIS has been identified as a target by a group of home-grown extremists. If a Service employee is identified, it is possible to trace the name and obtain addresses and other personal information about the employee. Armed with such information, it becomes possible for individuals to monitor the physical movements and activities of these employees, potentially jeopardizing their physical security and operational activities. Further, disclosure of an employee's identity could end their continued usefulness to the Service and prejudice ongoing collection of information and intelligence.

For these reasons, the Service seeks to protect from disclosure the information as listed above. [redacted]

Footnotes:

The footnotes throughout the final report which reference CSIS exhibits and documentation have been redacted when [redacted]

Please do not hesitate to contact me should you require additional information or clarification. I remain available to assist SIRC in its obligation to consult as per section 55 of the *CSIS Act* if you have any specific questions or concerns.

Sincerely,

for

Stephanie Dion
Counsel
613-842-1356

cc: Canadian Security Intelligence Service, ER&L

[redacted] 51000-677

Security Intelligence Review Committee

Comité de surveillance des activités de renseignement de sécurité

TOP SECRET

File No. 1500-481

SECURITY INTELLIGENCE REVIEW COMMITTEE

IN THE MATTER of a complaint filed pursuant to section 41 of the *Canadian Security Intelligence Service Act*, R.S.C., 1985, c. C-23.

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Complainant

- and -

CANADIAN SECURITY INTELLIGENCE SERVICE

Respondent

REPORT BY

The Honourable Yves Fortier, P.C., C.C., O.Q., Q.C.
Security Intelligence Review Committee, Presiding

Security Intelligence Review Committee
P.O. Box 2430
Postal Station D
Ottawa, ON
K1P 5W5
Phone: (613) 990-8441
Fax: (613) 990-5230

Dates of Hearing: -Case management Conference (via teleconference), Friday, July 24, 2015 in Ottawa
-Case Management Conference (via teleconference), May 20, 2015 in Ottawa
-*In camera* hearing, August 12 - 13, 2015 in Vancouver
-*In camera/ ex parte* hearing January 28, 2016 in Ottawa
-*In camera/ ex parte* hearing March 22, 2016 in Ottawa

Place of Hearing: -Case Management Conferences in Ottawa, Ontario
-*In camera* hearing in Vancouver
-*In camera/ ex parte* hearing in Ottawa

Before: The Honourable Yves Fortier, P.C., C.C., O.Q., Q.C.
Member, Security Intelligence Review Committee ("Committee")

Counsel: P. Champ and B. Roy, for the Complainant, BCCLA
S. Dion, for the Respondent, the Canadian Security Intelligence Service ("Service")
C. Bowers, for the Committee

Witnesses: ***In camera* hearing on August 12, 2015 in Vancouver**
J. Paterson for BCCLA
***In camera* hearing on August 13, 2015 in Vancouver**
C. Trojand, for BCCLA
T. Dance-Bennink, for BCCLA
J. Biggar, for BCCLA
C. Vernon, for BCCLA
N. Skuce, for BCCLA
Robert, for CSIS
Professor Reg Whitaker, *by way of affidavit*

***In camera, ex parte* hearing on January 28, 2016 in Ottawa**
CSIS Witness 1, [redacted]
CSIS Witness 2, [redacted]
CSIS Witness 3, [redacted]
***In camera, ex parte* hearing on March 22, 2016 in Ottawa**
CSIS Witness 4, [redacted]

Also In Attendance: S. Stawicki, Hearing Registrar
Noel C. Keeley, C.S.R, Court Stenographer
CSIS ER&L Staff (1)

TABLE OF CONTENTS

A. INTRODUCTION

1. This report is made pursuant to subsection 52(1) of the *Canadian Security Intelligence Service Act*, R.S.C., 1985, c. C-23 ("*CSIS Act*"), after the completion of an investigation in relation to a complaint made pursuant to section 41 of the *CSIS Act* by the British Columbia Civil Liberties Association ("BCCLA" or "Complainant").

2. This report is made to the Minister of Public Safety and to the Director of the Canadian Security Intelligence Service ("CSIS" or "Service"). It contains the findings and recommendations of the Security Intelligence Review Committee ("Committee" or "SIRC") based on all the documentation, oral evidence and representations available to it during its investigation. This report, subject to the limitations of the *CSIS Act*, will be forwarded to the Complainant.[1]

B. THE COMPLAINT AND THE COMMITTEE'S JURISDICTION

3. Section 41 of the *CSIS Act* entitles a person to complain to the Committee with respect to "any act or thing" done by the Service. The Committee shall investigate the complaint if the Committee is satisfied that:

   - the Complainant has first made a complaint to the Director with respect to that "*act or thing*";
   - the Complainant has not received a response within such period of time as the Committee considers reasonable, or the Complainant is dissatisfied with the response given; and,
   - the complaint is not trivial, frivolous, vexatious or made in bad faith.

4. In a letter dated February 6, 2014, the Complainant wrote to the Committee to make a complaint pursuant to section 41 of the *CSIS Act* "regarding improper and unlawful actions of CSIS 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." [2]

5. The Complainant alleges that media reports indicate that the National Energy Board ("NEB") has engaged in systematic information and intelligence gathering about organizations seeking to participate in the NEB's Northern Gateway Project hearing. The Complainant also contends that "records obtained under the Access to Information Act confirm that this information and intelligence gathering was undertaken with the co-operation and involvement of CSIS and other law

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[1] See subs.48(2), 52(1) and paragraph 55(b) of the *CSIS Act*, Rule 13 of the *Rules of Procedure of The Security Intelligence Review Committee in relation to its Function under Paragraph 38(c) of the Canadian Security Intelligence Service Act* ("Rules of Procedure")

[2] Complainant's letter to the Committee dated February 6, 2014, re: Surveillance of Canadian Citizens and Information sharing with the National Energy Board.

enforcement agencies, and that CSIS participates in sharing intelligence information with the Board's security personnel, the Royal Canadian Mounted Police ("RCMP"), and private petroleum industry security firms." [3]

6. In that same letter, the Complainant sets out the following questions that formed the basis of the complaint to the Committee:

> -Why is CSIS (and other branches of Canadian law enforcement and security apparatus) monitoring public interest, environmental and advocacy groups, in particular Leadnow, ForestEthics Advocacy Association, Council of Canadians, the Dogwood Initiative, EcoSociety, the Sierra Club of British Columbia, and Idle No More, despite an absence of any basis for believing that these groups have engaged in criminal wrongdoing?
> -For how long has CSIS been involved in surveillance of these, and other, groups?
> -Under what law, regulation or other authority is CSIS acting when it monitors these groups?
> -Why is CSIS hearing information about public interest, environmental and advocacy groups with members of the petroleum industry?
> -What information has been conveyed by CSIS to members of the petroleum industry?

7. The Complainant also copied its complaint letter of February 6, 2014 to Michel Coulombe, Interim Director of the Canadian Security Intelligence Service ("CSIS"), pursuant to section 41 of the *CSIS Act*.

8. In a letter dated March 14, 2014, the Assistant Director, Policy and Strategic Partnerships, Tom Venner, replied to the Complainant that he could find no evidence that the Service acted inappropriately. He commented that the information and observations are largely speculative and based on third-party information. He added however, that the Service conducts itself according to the law, policy, and Ministerial Direction. He stated: "I understand your concerns that Canadians engaged in peaceful advocacy and protest would be targeted illegitimately by a Government agency. In fact, the employees of CSIS are devoted to protecting Canada's national security and ensuring that the very rights of privacy and free speech which you refer to are indeed protected from individuals and groups who would reject peaceful democratic processes to attain their goals."[4]

9. By letter dated March 20, 2014, the Complainant wrote to the Committee, explaining its position that CSIS has failed to provide any substantive response to

[3] Complainant's letter to the Committee dated February 6, 2014, re: Surveillance of Canadian Citizens and Information sharing with the National Energy Board.
[4] Letter of reply from CSIS to the Complainant, dated March 14, 2014.

BCCLA's complaint, and requesting the Committee to commence its investigation regarding the Service's actions.[5]

10. By letter dated March 28, 2014, the Committee wrote to both the Complainant and the Service, providing them with the opportunity to make representations regarding the Committee's jurisdiction to investigate the complaint of BCCLA. [6]

11. The Complainant responded by letter dated April 4, 2014 with its representations regarding the Committee's jurisdiction to investigate the complaint under section 41, highlighting that the jurisdiction includes the investigation and determination of all legal issues raised by the complaint, including the Service's compliance with the *CSIS Act* and the *Charter*. [7]

12. On April 7, 2014, counsel for CSIS responded that its client did not wish to make representations on the Committee's jurisdiction at that time. [8]

13. On May 27, 2014, the Committee determined that it had the jurisdiction to investigate the complaint, and this was conveyed to the Complainant and the Service by letter dated June 2, 2014. [9]

C. BACKGROUND

14. In accordance with the *Rules of Procedure of the Security Intelligence Review Committee in relation to its function under paragraph 38(c) of the CSIS Act,* I was appointed by the Chair of the Committee to conduct an investigation into this complaint. The parties were advised of the Committee's determination by letters dated September 8, 2014.[10]

15. On September 22, 2014, CSIS wrote to the Committee, with a copy to the Complainant, requesting a management conference call for the purpose of identifying the issues that will be investigated as part of the complaint. CSIS asked that the BCCLA's complaint be better defined and articulated into a complaint of a discrete act or thing done by the Service that the Committee is capable of investigating. CSIS proposed to focus its document collection to documents dated after December 31, 2011, which was the latest period reviewed by the Committee in its review on the topic of lawful advocacy, protest or dissent. The letter from CSIS stated, "Based on the Complainant's letter and the scope of

[5] Complainant's letter to the Committee dated March 20, 2014 requesting it commence its investigation.
[6] Letter from the Committee to CSIS, dated March 28, 2014 regarding representations on jurisdiction and Letter from the Committee to the Complainant, dated March 28, 2014 regarding the same.
[7] Letter from the Complainant to the Committee, dated April 4, 2014, regarding jurisdiction.
[8] Letter from CSIS to the Committee dated April 7, 2014, regarding jurisdiction.
[9] Letter from the Committee to the Complainant and the Service, dated May 27, 2014.
[10] Letter from the Committee to the Complainant and CSIS dated September 8, 2014, regarding the assignment of Committee member.

section 41 of the *CSIS Act*, the Service proposes that the following issues be investigated as part of this complaint:

1) Did the Service investigate groups or individuals for their engagement in lawful advocacy, protest or dissent activities in relation to the Northern Gateway Pipeline Project?
2) If yes, was the investigation lawful?
3) Did the Service provide information relating to individuals or groups involved in lawful advocacy, protest or dissent in relation to the Northern Gateway Pipeline Project with the National Energy Board or non-government members of the petroleum industry?
4) If yes, was it lawful to provide this information? "[11]

16. On September 25, 2014 the Complainant wrote to the Committee, with a copy to CSIS, regarding my assignment as presiding member over the complaint. The letter stated that "while BCCLA recognizes Mr. Fortier's exemplary reputation, and does not question his personal or professional integrity, the organization must nevertheless object to his appointment as the presiding SIRC member in the present complaint, given that BCCLA maintains that the involvement of any SIRC members with significant ties to the petroleum industry in this complaint gives rise to a reasonable apprehension of bias". In BCCLA's February 6, 2014 complaint letter, it referred to the "highly publicized ties between several SIRC members and the petroleum industry, including Mr. Fortier's former position on the board of Trans-Canada Pipelines, the company behind the controversial Keystone XL pipeline project."[12]

17. On October 8, 2014, the Committee wrote to counsel for the Complainant regarding the matters raised in their letter mentioned above. As the presiding member investigating the complaint, I responded to the Complainant stating:

> *"On the issue of the potential conflict of interest allegations, the proper course of action to deal with such matters is for a party to formally raise the matter with the presiding member through a motion asking that the member recuse himself from the file and that a ruling on the matter be made thereafter considering the relevant jurisprudence on the issue."*

I noted that the conflict of interest issue was raised in the Complainant's letter dated September 25, 2014, but I asked them to confirm whether they intended to bring a formal motion with supporting documentation and argument, or whether I should proceed on the basis of their letter alone. [13]

18. On October 28, 2014, the Complainant wrote to the Committee, advising: "Having reviewed the matter, we must advise that, at this time, we do not have sufficient

[11] Letter from the Respondent, CSIS, to the Committee, dated September 22, 2014.
[12] Letter from the Complainant to the Committee, dated September 25, 2014.
[13] Letter from the Committee to the Complainant, dated October 8, 2014.

information regarding Mr. Fortier's ties to the companies involved in the complaint. We initially raised our concern in the original complaint dated February 6, 2014, citing a news story that Mr. Fortier had previously sat on the board of directors of TransCanada, a company implicated in this complaint." The Complainant indicated that they did not know further details, and posed several questions regarding my involvement with that board of directors. [14]

19. On November 25, 2014, the Committee wrote the following to the Complainant:

> *"It is a matter of public record that Mr. Fortier was a non-executive member of the TransCanada Board of Directors from April 1992 to July 1998. Since he resigned from the Board in July 1998, Mr. Fortier has never occupied any position with TransCanada. Mr. Fortier has never occupied any position with Enbridge."*[15]

20. On December 9, 2014, the Complainant wrote to the Committee indicating that BCCLA is prepared to proceed with its complaint before me as the presiding member.[16]

21. On March 25, 2015, the Complainant wrote to the Committee, calling attention to additional records which had been disclosed to the Canadian Press, under the *Access to Information Act*. The Complainant contends that this provides further evidence of CSIS' ongoing involvement in gathering and sharing information and intelligence about protests concerning the petroleum industry, including the Northern Gateway Project.[17]

22. On April 7, 2015, CSIS wrote to the Committee, with a copy to the Complainant, in response to the Committee's inquiry on its availability for a pre-hearing conference. The Service asked that its request dated September 22, 2014 for a management conference be held for the purpose of identifying the issues that will be investigated, and the timeframe for document collection, and that the issues to be investigated be limited to the four points it outlined in its letter. The Service also indicated that it has "been made aware through media reports of further allegations made by the Complainant and asked to be informed of the allegations as a matter of procedural fairness and in order to proceed with the document collection and respond to the allegations that are being made."[18]

23. On April 9, 2015, the Complainant wrote to the Committee in response to the April 7, 2015 letter from the Service. The Complainant suggested that the issues raised by counsel for CSIS are the kind of matters that can and would be discussed in a pre-hearing conference call. The Complainant generally agreed with the broad issues defined by CSIS with a few revisions to the four questions. The

[14] Letter from the Complainant to the Committee dated October 28, 2014.
[15] Letter from the Committee to the Complainant, dated November 25, 2014.
[16] Letter from the Complainant to the Committee, dated December 9, 2014.
[17] Letter from the Complainant to the Committee, dated March 25, 2015.
[18] Letter from CSIS to the Committee dated April 7, 2015.

Complainant stated that their "concern is that CSIS is choosing to frame the issues in a way that would allow CSIS to screen or filter out documents or information that are encompassed by the complaint. It is the BCCLA's position that the first step should be to identify any CSIS investigations of individual or groups that are opposed to the Northern Gateway Project." The Complainant also suggested that the cut off for document collections should be December 31, 2009, not 2011. [19]

24. On April 15, 2015, CSIS acknowledged receipt of and responded to the Complainant's letter of April 9, 2015. The Service agreed with the document collection date as of December 31, 2009. There was also general agreement with the issues as re-formulated by the Complainant with one other minor change. [20]

25. On May 15, 2015, the Committee wrote to both parties in preparation of a pre-hearing conference to be conducted on May 20, 2015, and I invited the parties to consider and address the following questions: [21]

    1) Given the wording of section 12 of the *CSIS Act* which provides that the Service "shall collect, by investigation or otherwise" and the allegations in the letter of complaint to the effect that the Service is "gathering information" and "monitoring and surveillance", what meaning shall be attributed to the words "investigate" and "investigation" in the April 15th 2015 letter (from CSIS)?
    2) Whether the "groups or individuals" referred to in questions 1 and 3 of the April 15th letter are those set out on pages 2 and 6 of the letter of complaint?
    3) Whether the expression "non-government members of the petroleum industry" is limited to the private-sector industry?
    4) While the issues to be examined in the April 15th letter only refer to the Northern Gateway Project, the March 25th 2015 letter (from the Complainant) refers to "protests concerning the petroleum industry, including the Northern Gateway Project" and the attachment to the letter refers to hydraulic fracturing protests in New Brunswick. What is the intended purpose of the references to the protests in New Brunswick?

26. A pre-hearing conference call was held in Ottawa on May 20, 2015. The parties agreed to the issues to be examined and that the document collection shall only include information after December 31, 2009. [22] The parties also agreed that an oral *in camera* hearing be conducted in Vancouver, which is where the Complainant is based. The Committee sent to both parties a copy of the transcript of the pre-hearing conference call, which had been reviewed for national security concerns pursuant to section 37 of the *CSIS Act*. [23]

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[19] Letter from the Complainant to the Committee dated April 9, 2015.
[20] Letter from CSIS to the Committee dated April 15, 2015.
[21] Letter from the Committee to the Complainant and to CSIS, dated May 15, 2015.
[22] Transcript of the pre-hearing conference call, Ottawa, May 20, 2015.
[23] Letter from the Committee to the Complainant and CSIS, dated June 25, 2015.

27. In response to my first question set out for the pre-hearing conference call, the parties confirmed the inclusion of the word "investigation" in the context of "collect, by investigation or otherwise." With respect to my second question, the parties confirmed that the term "groups or individuals" refer to the individuals or members of the groups that are specifically named in BCCLA's February 2014 complaint.

28. They answered my third question that the expression "non-government members of the petroleum industry" is limited to the private-sector industry, but agreed that the information sharing is broad enough to include any kind of information that is shared with either the private sector or the NEB about groups or individuals, or members of those groups, participating in the NEB proceedings or speaking out about the Northern Gateway Pipeline, and not simply the intelligence or security briefings. It was also agreed that Section 13 security assessments which empower the Service to conduct security assessments, would be excluded from the information sharing.

29. Regarding my last question, the parties agreed that references to the New Brunswick protests were background information only, and that the complaint is focused on the Northern Gateway Project protests, including those in the proceedings before the NEB. [24]

30. A case management conference call was held in Ottawa on July 24, 2015 in preparation for the *in camera* hearing.[25] On August 7, 2015, the Committee provided a copy of the transcript of that case management teleconference call, the transcript having been reviewed for national security concerns pursuant to section 37 of the *CSIS Act*. [26] The parties reiterated their agreement from the pre-hearing conference call on the four questions or issues forming this complaint,[27] as set out later in my report under the section entitled "Analysis".

[24] Transcript from the pre-hearing conference call, Ottawa, May 20, 2015, pages 9 – 22.
[25] Transcript of the case management conference call, Ottawa, July 24, 2015.
[26] Letter from the Committee to the Complainant and to CSIS, dated August 7, 2015.
[27] Transcript from the case management conference call, Ottawa, July 24, 2015, pages 8-9.

D. THE COMMITTEE'S INVESTIGATION

31. I conducted the Committee's investigation of the complaint and presided over an *in camera* hearing (private but in the presence of the Complainant) in Vancouver, British Columbia on August 12 and 13, 2015. [28] On September 30, 2015, the Committee provided a copy of the transcripts from the *in camera* hearing to the Complainant, which had been reviewed for national security concerns pursuant to section 37 of the *CSIS Act* and certain redactions had been made. [29]

32. At the outset of the *in camera* hearing on August 12, 2015, I heard opening statements from both parties. I also heard submissions in terms of a preliminary, procedural matter regarding the privacy of proceedings under section 48 (1) of the *CSIS Act*. As will be seen, I have addressed this matter in greater detail at the end of the analysis section of this report.

Testimonies from the Complainant during the in camera hearing:

33. I heard testimony from Mr. Josh Paterson, the first witness for the Complainant. Mr. Paterson is the Executive Director of the BCCLA and a lawyer employed with the BCCLA in Vancouver. He testified that the BCCLA is a non-partisan, non-profit charitable organization established in 1962, incorporated in 1963, whose mandate is to promote, defend and extend human rights and freedoms within Canada.[30] He testified that the BCCLA was one of the parties involved in the McDonald Inquiry and has participated in other commissions of inquiry, and that national security issues have been a key preoccupation for BCCLA during its existence.[31]

34. Mr. Paterson testified as to the impact of a news article from the *Vancouver Observer*, entitled "Harper government's extensive spying on anti-oil sands groups revealed in FOIs – Independent federal agency, National Energy Board, directly coordinated effort between CSIS, the RCMP and private oil companies". [32] Mr. Paterson testified that he had been in contact with the journalist after the story had been filed and the journalist had provided him with the documents that had formed the basis of his story. [33] Both parties agreed that there was no dispute that the Access to information documents provided by the Complainant are in fact access to information documents from the NEB and CSIS. [34]

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[28] Transcript of *in camera* hearing, August 12 – 13, 2015 at Vancouver British Columbia, volumes 1 & 2. ("hereafter cited as Transcript, *in camera* hearing, Vol. 1 or 2).
[29] Letter from the Committee to the Complainant, dated September 30, 2015.
[30] Complainant's Book of Documents from the *in camera* hearing, August 12, 2015, Vancouver, British Columbia, Volume I, Tab 14.
[31] Transcript, *in camera* hearing, Vol. 1, p. 73.
[32] Complainant's Book of Documents, Volume I, Tab 9.
[33] Transcript, *in camera* hearing, Vol. 1, p. 74.
[34] Transcript, *in camera* hearing, Vol. 2, p. 108.

35. Mr. Paterson explained that he had contacted representatives of ForestEthics, Sierra Club, LeadNow and the Dogwood Initiative about this complaint, and that the staff members of those organizations were also concerned about the news story "that they personally and their organizations, and people associated with their organizations, may have been spied on."[35]

36. When asked by counsel for the Complainant whether he had any prior involvement with the NEB, Mr. Paterson explained that he was invited by the NEB to sit on the steering committee of their stakeholder advisory group through his previous job as a lawyer with West Coast Environmental Law, a non-profit organization in Vancouver. Mr. Paterson explained that he left his voluntary position with the NEB's Committee when he assumed his role with BCCLA. He also explained that he had testified in his own right, as a private individual, at the public hearing in relation to the Enbridge Northern Gateway Pipeline.[36] He testified that BCCLA takes no position concerning the Northern Gateway Pipeline Project, and the extent of its involvement in the NEB proceedings was a letter to the NEB stating that, according to the open courts principle, (they) questioned why those hearing ought to be closed off to the public."[37]

37. The witness testified that BCCLA's interest is as "a watchdog in relation to people's right to protest and to be engaged in public processes, both here in B.C. and across the country...our interest in this, then, is solely in relation to the fact that we were concerned, and remain concerned, about the possibility that security services of the Government of Canada were gathering information or participating somehow in the collection of information on the activities of people engaged in lawful, democratic and peaceful political activities."[38]

38. Mr. Paterson explained the inferences that he drew about communications between the NEB and CSIS from emails that were released from the NEB to the journalist, and then to Mr. Paterson. Specifically, an email from Mr. Rick Garber, Group Leader of Security at NEB dated January 31, 2013, regarding Prince Rupert security assessment. [39] Mr. Paterson testified that the BCCLA drew an inference from that email that the NEB had asked for, and received, information from both CSIS and the RCMP, and that he understood reference to "the security team, together with our police and intelligence partners, will continue to monitor all sources of information and intelligence" referred to the NEB working with CSIS. [40]

39. Mr. Paterson also testified that BCCLA drew an inference that the NEB had received information from CSIS as part of their threat assessment[41], based on a

[35] Transcript, *in camera* hearing, Vol. 1, p. 76.
[36] Transcript, *in camera* hearing, Vol. 1, pp. 79- 80.
[37] Transcript, *in camera* hearing, Vol. 1, p. 82.
[38] Transcript, *in camera* hearing, Vol. 1, pp. 83 – 84.
[39] Complainant's Book of Documents, Vo. I, Tab 4, p. 37.
[40] Transcript, *in camera* hearing, Vol. 1, pp. 86-87.
[41] Transcript, *in camera* hearing, Vol. 1, p.88.

released document entitled "Enbridge Northern Gateway Project Security Plan, Prince Rupert".[42] In that same document, the witness explained his interpretation of the section under the heading "Security Information- Background", which refers to planned protests, and lists Idle No More, People's Summit and LeadNow and Dogwood Initiative.[43] The inference drawn from Mr. Paterson was that CSIS, at both National Headquarters and Regional offices, had provided the reference information to the NEB. When counsel for the Complainant questioned the witness as to whether he had direct knowledge about who provided this information about Dogwood Initiative, LeadNow and Idle No More to the NEB, he confirmed that he had no direct knowledge about who provided it.[44]

40. The witness provided BCCLA's position regarding a released document following a request for information by the Government Operations Centre entitled "Government of Canada Risk Forecast 2014 Protests & Demonstrations Season" dated May 1, 2014.[45] He commented: "We have publicly expressed concerns about the Government Operations Centre's work in this regard. While, of course, it is completely appropriate for Government to take note of protests – indeed, part of the purpose of most protests is to catch the attention of Government – it seems to us, from what we understand of the GOC, that its purpose is not to provide policy input to, say, Fisheries and Oceans Canada or other Ministries about what people are concerned about; rather, it is more gathering this kind of information in order to make these kinds of assessments of threat and provide that information to Government agencies.....Our concerns around what the GOC has been doing is that it at least tends to a suggestion that the government, or at least portions of the Government, are viewing protests in a spirit other than democratic engagement; that it is viewing protest, rather, as something to be concerned about, monitored and reported upon." [46]

41. Mr. Paterson's testimony was that, to the best of his knowledge, the organizations in question, such as Idle No More, LeadNow and Dogwood Initiative, have never been involved in violent activities.[47] For example, reference was made to the publicly-stated commitment from the Council of Canadians against violent activities.[48]

42. When cross-examined by counsel for CSIS, Mr. Paterson understood the NEB to fall under the Government of Canada and to be part of the Crown.[49] When cross-examined by CSIS counsel regarding the email from Rick Garber of the NEB

[42] Complainant's Book of Documents, Vol. 1, Tab 4, p. 68.
[43] Complainant's Book of Documents, Vol. I, Tab 4, p. 80.
[44] Transcript, *in camera* hearing, Vol. 1, p. 92.
[45] Complainant's Book of Documents, Vol. I, Tab 5, pp.1-8.
[46] Transcript, *in camera* hearing, Vol. 1, pp. 98-99.
[47] Transcript, *in camera* hearing, Vol. 1, p.90.
[48] Transcript, *in camera* hearing, Vol. 1, p. 104 and reference to the Complainant's Book of Documents, Vol. II, Tab 50, p. 1.
[49] Transcript, *in camera* hearing, Vol. 1, p. 108.

Security team, the witness read aloud the statement "Based on the intelligence received, we have no indication of threats to the panel at this time".[50] Mr. Paterson confirmed his understanding from this sentence that CSIS actually did provide information to the NEB.[51]

43. Counsel for CSIS asked the witness to refer to the NEB document entitled "Enbridge Northern Gateway Project Security Plan" and the section which reads: "NEB Security and the RCMP have been in regular communications since an initial meeting on October 24, and have discussed the hearing, associated venues and threat intelligence". When asked whether there was any indication in this document to suggest that any of this information about the planned protests referred to was information that was actually provided by the Service, Mr. Paterson agreed that there was nothing that hadn't been redacted that states that the information had been provided by CSIS. [52]

44. The following day of the *in camera* hearing on August 13, 2015 in Vancouver, I heard testimony from five other witnesses for the Complainant, as well as from one witness for the Service.

45. Ms. Celine Trojand testified regarding her position since 2009 as Director of organizing for the Dogwood Initiative, which is based in Victoria. She explained that Dogwood Initiative is a non-partisan pro-democracy group, with 315, 000 supporters in their database, 2, 200 active volunteers and 28 staff.[53] She testified as to some of the activities that Dogwood encourages and promotes, and provides training and promotion for its supporters surrounding political organizing, and involvement in community events.[54] The witness explained Dogwood Initiative's Policy on civil disobedience[55] and confirmed that it would not include vandalism to property or violence of any kind.[56]

46. With respect to Dogwood Initiative's involvement regarding the Northern Gateway Pipeline, Ms. Trojand explained that "after the National Energy Board recommended approval and it was clear that the federal government was poised to approve the project, our group and other groups were considering the options around our work....Dogwood very strongly felt that our work should be about legitimate political organizing and pressure. So we launched the "Let B.C. Vote" campaign, which is utilizing our provincial legislation in B.C. to trigger and launch a

[50] Complainant's Book of Documents, Vol. I, Tab 4, p. 37
[51] Transcript, *in camera* hearing, Vol. 1, p. 109.
Complainant's Book of Documents, Vol. I, Tab 4, p. 77 and Transcript, Vol. 1, p.113
[53] Transcript of *in camera* hearing, August 13, 2015, Vancouver, British Columbia, Vol. 2, pp. 9- 10, and pp. 15-16.
[54] Transcript, *in camera* hearing, Vol. 2, p. 18
[55] Complainant's Supplementary Book of Documents Tab 5, and Complainant's Book of Documents, Vol. 1, Tab 24.
[56] Transcript, *in camera* hearing, Vol. 2, p. 23.

citizen's initiative that could lead to British Columbians having a province-wide democratic vote on whether or not these projects should go through."[57]

47. Ms. Trojand also testified about the workshops around the NEB hearing, which Dogwood Initiative had assisted in organizing, and the door to door campaign around "Knock the Vote". [58] Upon cross-examination by CSIS counsel, the witness agreed that there was no explicit mention of CSIS monitoring open source information in the NBEB document entitled "Enbridge Northern Gateway Project Integrated Security, Logistics and Communications Plan, Kelowna".[59] Rather, the document reads "The Kelowna RCMP as well as NEB Communications and Security continue to monitor open source information." [60]

48. I next heard from Ms. Dance-Bennink, who testified as to her role as a retired volunteer with Dogwood Initiative, and regional organizer for the South Island, responsible for two federal ridings, Victoria and Esquimalt Saanich Sooke. The witness works with approximately 100 volunteers.[61] The witness gave evidence as to how she became involved with Dogwood Initiative and its campaigns around oil pipelines and oil tankers, and her blogs regarding her pilgrimage to the tar sands in Alberta.[62]

49. Counsel for the Complainant asked the witness what, if any, impact the newspaper stories that were published suggesting that the RCMP and CSIS might be monitoring Dogwood activities related to the NEB hearing, had on the other volunteers that she works with. Ms. Dance-Bennick testified that Dogwood Initiative volunteers were finding it sometimes more difficult to encourage people to sign the petitions due to concerns that "their name may end up on a government security list." She also testified that "the same concern has sometimes been raised by donors, and sometimes in terms of potential volunteers being concerned about how Dogwood is viewed, and whether, if they become a volunteer means that they are viewed as a radical extremist. My answer, always is: We are the exact opposite of that. We are committed to peaceful, non-violent, following the democratic process, particularly electoral processes."[63]

50. When cross-examined by counsel for CSIS with respect to the concerns raised by some of the volunteers that "they may end up on "Canada's security list", Ms. Dance Bennick agreed that she was aware that the Service is precluded from investigating unless there is a "threat to the security of Canada", but that there is a strong suspicion, based on the Access to information material that came out, that in fact they (the Service) have been engaged in gathering intelligence on very

[57] Transcript, Vol. 2, pp. 27-28.
[58] Transcript, Vol. 2, p. 36 and Complainant's Supplementary Book of Documents, Tab 4.
[59] Transcript, Vol. 2, p. 53.
[60] Complainant's Book of Documents, Tab 4, p. 62.
[61] Transcript, Vol. 2, p. 62.
[62] Transcript, Vol. 2, p. 64, and Complainant's Book of Documents, Vol. II, Tab 27.
[63] Transcript, Vol. 2, pp. 78-79.

lawful, peaceful, democratic processes."[64] When asked by counsel for CSIS who was the sender of an email dated April 19, 2013 entitled "Security Concerns – National Energy Board"[65], the witness agreed that CSIS was mentioned in the email, but that the email itself came from the RCMP. [66] Counsel for CSIS referred the witness to emails which referred to the NEB consulting with CSIS[67], and asked the witness where it refers to "sharing of information...where does it say that CSIS has provided information?" The witness answered that she had assumed that information had been shared.[68]

51. The next witness for the Complainant was Mr. Jamie Biggar who testified regarding his employment as the Campaigns Director of LeadNow in Vancouver, and described it as a non-profit corporation registered in Canada, with a membership of 450,000 Canadians who subscribed to its email communications. He stated that "it has three major priorities, including working for a strong democracy, working for a fair economy and working for a clean environment. LeadNow organizes campaigns that help people speak to government, and particularly the federal government – around particular policy issues and changes that we would like to see, reflective of the community's values..." [69]

52. The witness gave detailed evidence of LeadNow's views on the news stories and articles. He stressed their particular concern with the open letter from the Honourable Joe Oliver, Minister of Natural Resources on "Canada's commitment to diversify our energy markets and the need to further streamline the regulatory process in order to advance Canada's national economic interest" dated January 9, 2012. That open letter provides, *inter alia*:

> *"Unfortunately, there are environmental and other radical groups that would seek to block this opportunity to diversify our trade. Their goal is to stop any major project no matter what the cost to Canadian families in lost jobs and economic growth. No forestry. No mining. No oil. No gas. No more hydro-electric dams. These groups threaten to hijack our regulatory system to achieve their radical ideological agenda. They seek to exploit any loophole they can find, stacking public hearing with bodies to ensure that delays kill good projects..."* [70]

53. Mr. Biggar commented that: "there was a perception amongst our staff team and amongst volunteers and folks in our community who we were speaking with that we were part of a community of people that was being targeted. There was a feeling of being targeted and kind of put on an "enemy list." [71] In relation to the news story on the Vancouver Observer website, Mr. Biggar added that "in terms of

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[64] Transcript, *in camera* hearing, Vol. 2, pp.85-86.
[65] Complainant's Book of Documents, Vol. I, Tab 4, p. 14.
[66] Transcript, *in camera* hearing, Vol. 2, pp. 88-89.
[67] Complainant's Book of Documents, Vol. I, Tab 4, p. 37
[68] Transcript, *in camera* hearing, Vol. 2, p. 92.
[69] Transcript, *in camera* hearing, Vol.2, pp. 115-117.
[70] Complainant's Supplementary Book of Documents, Tab 7.
[71] Transcript, *in camera* hearing, Vol. 2, p.133.

the revelation about this spying, part of the concern that it raised for us is the fact that we really have no way of knowing the breadth or depth or scope of the surveillance of our organization and so we have come to simply assume that any device that could be monitored or any way in which data could be recorded in relationship to our organization should be treated as thought it would be public to a spy agency or to government, or potentially to the oil industry." [72] He also states that the stories have scared LeadNow's membership and made them concerned that if they participate in normal peaceful democratic channels, particularly through us, they may end up on a list and that their information may be used improperly or in some way used against them.[73]

54. Ms. Caitlyn Vernon next testified before me, on behalf of the Complainant. She testified regarding her work in Victoria at the Sierra Club of British Columbia as the Campaigns Director. She explained that Sierra Club BC is a registered charity, founded in 1969, whose mandate is to protect, conserve and educate the public about B.C.'s wilderness, ecosystems, in light of the urgency of climate change. Sierra Club B.C. has approximately 15,000 people on its email list, 10 full time employees, and a 1 million dollar budget. She also explained that Sierra Club BC is a separate entity from both Sierra Club Canada and Sierra Club U.S.[74] In terms of the methods or techniques Sierra Club uses to promote its goals and objectives, she explained that its primary goal is to raise public awareness. It also produces science-based reports and maps.[75]

55. I then heard from Ms. Nikki Skuce, from Smithers, British Columbia, who testified regarding her work with ForestEthics, a non-profit organization where she had worked for almost six years as Senior Energy Campaigner. [76] She explained that the goal of ForestEthics has been to improve conservation, and the way that it operates is by looking at the markets, such as who was buying the forest and wood products. The organization also addressed climate and energy issues, but still kept its name as ForestEthics. [77]

56. Ms. Skuce testified as to the activities that ForestEthics engages in and the nature of its work in Canada. She explained that much of its work surrounding a campaign involves education and outreach. She provided examples such as "tabling at events; having postcards and information booths. In the case of Enbridge Northern Gateway, it was having, also, speakers' tours across the northwest talking about the issue. Often, we would come up with a few different strategies of how we think we can win a campaign. In the case of Enbridge, one of the first ones that we spent a lot of time on was trying to get a federally-legislated

[72] Transcript, *in camera* hearing, Vol. 2, p. 136.
[73] Transcript, *in camera* hearing, Vol. 2, p. 138.
[74] Transcript, *in camera* hearing, Vol. 2, pp. 144-148.
[75] Transcript, *in camera* hearing, Vol. 2, p. 152.
[76] Transcript, *in camera* hearing, Vol. 2, pp. 186-187.
[77] Transcript, *in camera* hearing, Vol. 2, pp. 190-195.

tanker ban." She also explained that ForestEthics was involved with one of its partners in the United States regarding the tar sands campaign.[78]

57. The witness also provided details regarding ForestEthics involvement in the NEB hearing as a formal legal party in the proceedings, represented by the law firm EcoJustice. She provided an overview of her own testimony before the NEB hearing concerning an Enbridge oil spill. [79] She also explained that, in addition to participating as an intervenor in the hearing, ForestEthics thought it important to have a public process and they "encouraged people to sign up for the community hearing where they could speak for ten minutes to the panel in various communities around British Columbia, as well as to encourage people to submit written comments."[80] Ms. Skuce also provided details regarding her blog entries that she, and/or others with ForestEthics prepared regarding the Enbridge Pipeline Project. [81]

58. When asked by counsel for BCCLA what was ForestEthics view regarding statements made in the open letter from the then Minister of Natural Resources Canada, the witness testified that they felt targeted and commented that "it was shocking to get this from a Canadian government official and our head of Ministry of Natural Resources. It came out the day before the joint review panel hearing began...it created a lot of anxiety and created quite a chill that passed through everyone."[82] She explained that as an organization and individually, there were concerns that they were being labelled and spied on.

59. Ms. Skuce also testified regarding her concerns, and those of her colleagues, regarding the news article from the Vancouver Observer on November 19, 2015, and the fact that the RCMP had known about a community meeting between the first nations and community members that had not even been advertised, which showed how much they felt that they were being watched and monitored. [83] She concluded her testimony indicating that ForestEthics has not been involved in any vandalism or violence, or other kinds of direct actions of that nature. [84]

60. The Complainant's final witness, Professor Reg Whitaker, was unable to be present at the *in camera* hearing. With the agreement of both parties, I accepted the testimony of Professor Whitaker by way of a written affidavit, which I received after the *in camera* hearing.[85] I note that the affidavit of Professor Whitaker, while of general interest to me by way of background, does not deal in any way with the specific allegations of the Complainant.

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[78] Transcript, *in camera* hearing, Vol. 2, p. 197-198.
[79] Transcript, *in camera* hearing, Vol. 2, p. 200.
[80] Transcript, *in camera* hearing, Vol. 2, p. 204.
[81] Transcript, *in camera* hearing, Vol. 2, p.213.
[82] Transcript, *in camera* hearing, Vol. 2, pp. 215-218.
[83] Transcript, *in camera* hearing, Vol. 2, pp.223-224.
[84] Transcript, *in camera* hearing, Vol. 2, pp.229.
[85] Affidavit of Professor Reg Whitaker, received by SIRC on September 18, 2015.

61. Professor Whitaker is a distinguished Research Professor Emeritus in the Department of Political Science at York University and an adjunct professor of Political Science at the University of Victoria. He completed his PhD in Political Economy at the University of Toronto in 1976 and has been a university professor since that time.

62. One of his primary areas of study has been the security and intelligence activities of the RCMP and CSIS and he has published numerous scholarly articles and books over the years. Professor Whitaker provided an overview of the RCMP/CSISS selection of targets for intelligence investigations in Canada, and suggested that for much of Canada's history, there had been no clear demarcation between legitimate and illegitimate targets for investigation. He argued that "beyond protecting the country from espionage, sabotage, terrorism, political violence and covert foreign interference – threats generally recognized as reasonable targets for intelligence investigations – RCMP and CSIS have also targeted groups and individuals said to be "subversive", a vague and elusive term that can take many forms in the minds of those hunting it...operating under a statutory mandate that imposes restraints on its reach and methods, CSIS has shed some, but not all, of the ideological baggage of the RCMP." [86]

Testimony from the Service during the in camera hearing:

63. The last witness I heard from during the *in camera* hearing was from CSIS' witness Robert, who provided his background with the Service and his role with the Vancouver local office. The witness testified that he joined the Service in 1986 and began his career as an intelligence officer, and worked as an analyst in Ottawa, and an investigator in regional offices. Since January 2015, he has been the Regional Director General for British Columbia and the Yukon for CSIS. He explained that his responsibilities include the overall management of the B.C. regional office, including human resources, finances, administration and the conduct of investigations pursuant to the *CSIS Act*. [87]

64. Robert provided an overview of CSIS' mandate to collect information under section 12 of the *CSIS Act* in terms of its obligation to investigate threats to the security of Canada. He explained that "section 2 a) comprises "espionage or sabotage"; 2 (b) "foreign influenced activities"; 2 (c) would be terrorism or any activity that is done with "serious violence...for the purpose of achieving a political, religious or ideological objective"; and 2 (d) would broadly be defined as "subversion activities or threats."[88] When asked what "subversion" meant, the witness referred to the legislation, citing: "activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by

[86] Affidavit of Professor Reg Whitaker, received by SIRC on September 18, 2015, p.2.
[87] Transcript, *in camera* hearing, Vol. 2, p. 238.
[88] Transcript, *in camera* hearing, Vol. 2, pp. 240-241.

violence of the constitutionally established system of government in Canada. The witness indicated that, to his knowledge, the Service had not conducted a subversion investigation for the last 20 – 25 years. [89]

65. When asked by counsel for CSIS whether "threats to the security of Canada" could include lawful advocacy, protest or dissent, Robert responded that it could, but that because of the statutory prohibition, the Service did not investigate lawful advocacy, protest or dissent unless it was done in conjunction with 2 (a), (b), (c), or (d) of the *CSIS Act*.

66. Robert then explained how the Service's priorities are established every year, commencing with an articulation from the Minister of Public Safety as to what are the security priorities of the federal government. He stated: "this letter is sent from the Minister to the Director of the Service and these priorities are then further articulated into intelligence requirements by a branch in our headquarters in Ottawa, the Intelligence Assessment Branch. These intelligence requirements are then sent out to the regional offices, which are the collectors of intelligence and information is then collected and sent back to headquarters, with analysis then done at headquarters, followed by dissemination to our domestic and foreign partners." [90] He also explained that in addition to Ministerial directives, the Service has other tools to guide it regarding the conduct of its operations and activities.

67. He referred to CSIS' Operating Principles, "which include the respect for the rule of law; the principle of using lesser investigative techniques before making use of more intrusive techniques; dozens of policies which guide virtually every aspect of Service life, especially when it comes to investigative activities; procedures. Every few months, as an adjustment on current policies, will be Directional Statements that come out from Headquarters to the regional offices to bare left or right of a certain activity; plus ongoing training and just the management's approach to guide and contextualize the conduct of investigations."[91]

68. Robert also testified as to how CSIS' policies, procedures, directional statements provide guidelines on how to deal with a situation that may have a "lawful, advocacy, protest or dissent" component. He added that this is also dealt with through training, "in that it is a statutory prohibition to get involved in that type of activity. It is very much front and foremost in how we conduct our investigations. There is great sensitivity around that."[92]

69. He explained the distribution of resources within the Service in terms of the different type of investigations, with the emphasis being on counter-terrorism and the focus on foreign fighters. The remaining third or quarter of the Service's efforts

[89] Transcript, *in camera* hearing, Vol. 2, pp. 241.
[90] Transcript, *in camera* hearing, Vol. 2, p. 242.
[91] Transcript, *in camera* hearing, Vol. 2, pp. 244
[92] Transcript, *in camera* hearing, Vol. 2, p. 245.

are focused on counter-intelligence activities, relating to the intentions or activities of foreign government activities within Canada. [93]

70. Robert provided an overview of how the Service obtains categories of information in the context of the Service's requirement to use lesser invasive investigation techniques before using more invasive ones. He explained that the Service would first seek open information from domestic partners, voluntary interviews and other techniques or surveillance. He added that "what sets the Service apart from other law enforcement agencies is our focus on the development/recruitment of human sources. But it would be a composite generic-type picture, to get as rich as possible an assessment on a current threat. Once these techniques are used, and if it is deemed necessary and appropriate, consideration would then be given, in exceptional circumstances, to apply through the Federal Court for a warrant." [94]

71. Counsel for CSIS asked Robert for his opinion regarding the concerns raised by witnesses for the Complainant that there is a feeling that emails may be being intercepted or read by the Service, or that their communications may somehow be listened to by the Service. Robert responded with an explanation of the "arduous process that is involved in applying for section 21 powers, requiring weeks and months of preparation, Department of Justice consultation, independent counsel from Justice looking at Service affidavits; management chain right up to our Director, who would have to approve the application; and then seeking the approval of the Minister of Public Safety; and then needing to convince a Federal Court judge that the powers sought are justified." [95]

72. With respect to surveillance by the Service, Robert explained that before such a technique could be deployed, there would have to be a targeting authority approved by the Regional Director General. Once a targeting approval is in place, a separate approval would be required from the Regional Director General, to move ahead with the surveillance. He also explained that it is an invasive and costly technique. Robert was of the view that the concerns raised by members of the public that participation in lawful advocacy, dissent or protest may have an impact on job opportunities, on security clearance applications, on mobility rights, or on any fundamental rights that individuals have here in Canada are without foundation.[96]

73. Aside from section 12 of the *CSIS Act*, regarding the Service's mandate to report and advise the Government of Canada, Robert also made reference to the various sections that enable the Service to share information beyond the Government of Canada, including sections 19 and section 17. He acknowledged that in order to meet its mandate, the Service is often times required to share information with

[93] Transcript, *in camera* hearing, Vol. 2, p. 243.
[94] Transcript, *in camera* hearing, Vol. 2, p.p. 245-246.
[95] Transcript, *in camera* hearing, Vol. 2, pp. 246-247.
[96] Transcript, *in camera* hearing, Vol. 2, p. 248.

other entities. [97] The Service also has an interest in sharing information with members of the public or private-sector entities. He mentioned that "we have shared with various domestic entities, again when it fulfills our section 12 statutory need. Above and beyond that, one of the federal government's security priorities is to protect critical infrastructure, and as part of that broad-based mandate, the Service has a niche role if there is a threat-related information that impacts critical infrastructure".[98]

74. The witness spoke of the Service's public outreach initiatives, including speaking to various communities, security representatives of banking institutions, critical infrastructure and various associations. He also explained the bi-annual meetings with Natural Resources Canada (NRCan), which "given its convenient venue, were hosted at CSIS Headquarters and attended by a variety of federal, provincial, municipal, private sector associations, critical infrastructure, to discuss threat-related activities of mutual interest."[99]

75. Upon cross-examination by counsel for BCCLA, Robert agreed that the wording in section 2 b) of the *CSIS Act* of "foreign influenced activities", is not restricted to foreign states, and that the Service could conceivably look at foreign corporations.[100]

76. When asked whether the "interests of Canada" outlined in Ministerial Directives could include environmental objectives, Robert responded that he did not recall ever having seen such a reference in any Ministerial Directive. [101]

77. Counsel for the Complainant questioned Robert as to whether he was familiar with the new definition of "threats to the security of Canada" found in the new Security of Canada Information Sharing Act, which counsel suggested was "broader than what we see in section 2 here of the *CSIS Act* and it includes threats to the economic interests of Canada." The witness answered that he was not sufficiently familiar with that definition to provide a useful comment on that.[102]

78. When asked by counsel for the Complainant for his interpretation of the open letter from the Honourable Joe Oliver dated January 9, 2012, with respect to the words, "radical group", Robert answered that it would "depend on the group being referred to, for instance a foreign threat, a C.T. threat.".[103] In terms of the sentence that "they use funding from foreign special interest groups to undermine Canada's national economic interest", counsel for BCCLA queried whether that could not fall under the definition of "foreign influenced activities detrimental to Canada's

[97] Transcript, *in camera* hearing, Vol. 2, p. 251.
[98] Transcript, *in camera* hearing, Vol. 2, p. 252.
[99] Transcript, *in camera* hearing, Vol. 2. p. 254.
[100] Transcript, *in camera* hearing, Vol. 2, p. 256.
[101] Transcript, *in camera* hearing, Vol. 2. p. 257.
[102] Transcript, *in camera* hearing, Vol. 2. p. 259.
[103] Transcript, *in camera* hearing, Vol. 2. p. 266

interests?" Robert responded that it could, conceivably, but that it "would be a stretch" and reiterated the fact that most of the Service's resources are focused on counter-terrorism. He stated: "Just in terms of priority, this falls way beyond the pale, below the pale. In terms of actually triggering our mandate, a real stretch for the Service to have any interest. [104]

79. Robert was also questioned about how the Service interprets section 12 in terms of the collection of information, and specifically how it does this, if not by investigation. For instance, in some circumstances, the Service may be "receiving" and not "investigating. Robert responded that "it's one thing to accept. It's totally another issue to actually report and put into a system. ...nothing should be reported that is not germane to the mandate. [105]

80. Robert also answered questions regarding the Service's warrants under section 21 and indicated that information that is publicly available does not require a warrant, but that the interception of an email would require a warrant. [106] The witness also agreed that he was connecting the "report and advise" duty and function under section 12 with the authorization to disclose information under subsection 19 (2). He agreed with counsel for BCCLA's statement that: "for example the National Energy Board would be authorized by subsection 19 (2) if you were looking into a threat assessment. You could report and advise the National Energy Board." He also agreed that "with the report and advise function- or duty under section 12, you don't even have to get into this a), b) c) or d) under subsection 19 (2); just reporting and advising on what you collected in section 12 is sufficient to trigger the authorization."[107]

81. With respect to the questions regarding section 17 of the Act regarding cooperation agreements under subsection 2 (a), he explained that "whether it's formalized or not in terms of an instrument, each agreement has to be approved by the Minister", and "sometimes it is not formalized into a written instrument."[108] Robert was also questioned on the agreements that the Service has with other government departments, for example the one with the RCMP. He also stated that he was not aware of whether CSIS had an agreement with the NEB.[109]

82. Counsel for BCCLA questioned Robert regarding the agreement with the RCMP in the context of the RCMP doing an investigation and sharing the results with CSIS, and whether that would be considered collection, Robert referred to the Service's procedures and policies and explained that: "it would be one thing, again to accept; but we would need a managerially approved targeting authority in which to put information. If there is no place to park it, if a regional director hasn't signed off

[104] Transcript, *in camera* hearing, Vol. 2, p. 268.
[105] Transcript, *in camera* hearing, Vol. 2, pp. 273-274.
[106] Transcript, *in camera* hearing, Vol. 2, pp. 283-284.
[107] Transcript, *in camera* hearing, Vol. 2, pp.276-277.
[108] Transcript, *in camera* hearing, Vol. 2. p. 279.
[109] Transcript, *in camera* hearing, Vol. 2, pp. 280-281.

on any particular investigation, that information would not be retained. There are exceptions to that....if there is a certain relevance to national security, writ large, it may be reported without going under any specific targeting authority. But it will sit there before we are authorized to further pursue an investigative level or direction on an individual, it would just sit there."[110]

83. When asked about whether he had knowledge of the groups named in the complaint, Robert commented that the Service's position for the last thirty years or so, in litigation and SIRC hearing, has been not to confirm or deny the existence of an investigation." [111] However, Robert commented that he is a proponent of "dialoguing with representatives of various groups and community groups".[112]

84. Robert responded that the only thing he knew about the consultation between the NEB with CSIS was what he had read in the NEB documents. He stated: "I have only read the redacted exchanges on that point, so I am not sure what the context was, what triggered the request for the consultation. But surely if the Service had information that there was a foreign influenced activity, done covertly, that would have some impact on the National Energy Board, or "serious threat against the proceedings, against the members, or against those attending, we would reach out to the RCMP, or alternatively to the National Energy Board, saying: we have intelligence to indicate that there is a threat against your premises." [113]

85. When asked by counsel for the Complainant about his interpretation of the term "risk", Robert categorized it in the "context of a risk of serious violence under 2 c). So presumably – I am speculating here – if the Service had information about an individual or others who might be participating in an otherwise democratic lawful protest, there might be a potential or a risk for violence, as has been known to happen in Canada and in many other countries. We have no interest in the group or the protest, or the objective. It's one or two, three individuals who might use that as a venue, as a pretext, for violence, for serious violence.....But if there is some linkage between that protest and our mandate -if their purpose in going to that group, that protest, is to wreak havoc, then, yes, it hits our mandate." He also added that he thinks the vast majority of protests in Canada are peaceable.[114]

86. When asked if he appreciated the concerns of the people who are involved in protests and demonstrations that they might be watched by either the RCMP or CSIS, notwithstanding the fact that they are engaging in completely peaceful activities, Robert responded that he is "keenly empathetic to that. As I mentioned before, in trying to dissuade, dispel stereotypes or misguided views, erroneous views, we engage in Outreach. We talk to a whole variety of groups and individuals. At the end of the day, I can only control what I can control. The best I

[110] Transcript, *in camera* hearing, Vol. 2, pp. 286-287.
[111] Transcript, *in camera* hearing, Vol. 2, p. 291.
[112] Transcript, *in camera* hearing, Vol. 2, p. 293
[113] Transcript, *in camera* hearing, Vol. 2, p. 302.
[114] Transcript, *in camera* hearing, Vol. 2, pp. 309-310.

can do is just to testify to the fact that how we investigate is tightly controlled and that we are statutorily precluded from looking at LAPD." [115]

87. When asked by counsel for the Complainant regarding the agenda for the classified NRCan briefing meeting that it "sounds like CSIS might possibly be sharing information about environmental groups with these oil companies that are sponsoring and attending it," Robert testified that he did not see the connection.[116]

Testimony from the Service during the ex parte hearing:

88. At the request of the Service, I also presided over ex parte hearing (private and in the absence of the Complainant) that were held in Ottawa, Ontario on January 28,[117] and March 22, 2016.[118]

89. During these ex parte hearing, I heard testimony from four CSIS Witnesses. A summary of this evidence was prepared pursuant to sections 37 and 48 of the *CSIS Act* and provided to the Complainant. The summary had been vetted for national security concerns to ensure compliance with sections 37 and 55 of the *CSIS Act*.[119]

90. In support of their testimony in the ex parte hearing, the CSIS witnesses relied on several books of documents. CSIS Book of Documents (*ex parte* hearing), [redacted] all of the BRS Reporting [redacted] The Service indicated that it had provided these documents for the Committee's ease of reference in the conduct of its investigation, but that it did not rely on them for the purpose of the hearing. [120] CSIS Book of documents (*ex parte* hearing), [redacted] Ministerial Direction on intelligence priorities, directional statements [redacted] targeting information [redacted] operational reporting [redacted] as well as CSIS policy information.[121] CSIS Book of Documents (*ex parte* hearing), [redacted] documentation in relation to exchanges with the National Energy Board and the private sector; information from the Intelligence Assessments Branch, including a sampling of products, briefings and information relating to the NRCan classified briefings mentioned in the complaint letter. [122] CSIS Book of Documents (*ex parte* hearing), [redacted] information [redacted]

[115] Transcript, *in camera* hearing, Vol. 2, p. 313.
[116] Transcript, *in camera* hearing, Vol. 2, p. 323.
[117] Transcript of *ex parte/ in camera* hearing, January 28, 2016 at Ottawa, Ontario.
[118] Transcript of *ex parte/ in camera* hearing March 22, 2016.
[119] Summary of evidence presented at the *in camera/ ex parte* hearing on January 28, and March 22, 2016, provided to the Complainant by the Committee, July 21, 2016.
[120] CSIS Book of Documents, (*ex parte* hearing), [redacted]
[121] CSIS Book of Documents, (*ex parte* hearing) [redacted]
[122] CSIS Book of Documents (*ex parte* hearing) [redacted]

[redacted] and is stored at the CSIS premises.[123] Lastly, CSIS Book of Documents (*ex parte* hearing), [redacted] information regarding the domestic threat environment in Canada, and additional notes from the Intelligence Assessments Branch.[124]

91. CSIS Witness 1, [redacted], provided testimony concerning her work experience with the Service from 2001, and her role as Chief of the unit responsible for the Service's domestic extremism investigation between November 2013 and January 2015. She testified regarding the Service's collection priorities and the Ministerial Directions provided to the Director of CSIS from the Minister of Public Safety.[125]

92. [redacted] explained that once the Service gets the Ministerial Directives setting out the priorities, they are applied to their operations through intelligence requirements that are set out by the Intelligence Assessments Branch. This sets the basis for what the Service collects based on those intelligence requirements ("IRD"). She explained that information is only collected if it falls into one of the IRDs. The priorities of the government of Canada are tiered into three main categories, with tier 1 being fully resourced, and tier 3 allowing for the collection of information only if resources permitted. She further explained that there is a fourth category, known as a "watch brief" which means that the Service is monitoring the situation and if there is an actionable piece of intelligence, then it will deploy resources.[126] In terms of the term "actionable piece of intelligence", [redacted] provided an example of intelligence requirements in relation to [redacted]

93. She oversees the three Heads of the desks below her, and some of her responsibilities include approving messages to be put into the Service's systems and databases, as well as managing human sources in general terms. She also explained that Headquarters Branch is responsible for sending out "Directional Statements" to the regions so that they are able to prioritize and put their resources towards what is important and what is deemed a higher priority for the Service.[128]

94. [redacted] explained the nature of targeting authorities and how they are obtained by CSIS to investigate any threat to the security of Canada. She also identified particular targeting files which her unit was investigating during the time period

[123] CSIS Book of Documents (*ex parte* hearing) [redacted]
[124] CSIS Book of Documents (*ex parte* hearing) [redacted]
[125] Summary of evidence presented at the *in camera/ ex parte* hearing on January 28, and March 22, 2016, pp. 2-3
[126] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, p. 26.
[127] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, p. 28.
[128] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, at pp. 22-29.

related to this complaint. She described CSIS' practices in relation to investigating threats to the security of Canada by groups involved in domestic extremism.

95. She testified in respect of the certificates pursuant to which domestic threats were being investigated as well as having reviewed the list of targets under the domestic threat certificates that have been the subject of an investigation within her unit since [redacted] She provided information on the individuals, groups, organizations or events that were, and are, targeted under these certificates, and in particular the [redacted]

96. She explained that, with a certificate, the Service must make the case that this issue is actually a threat to the security of Canada, and once that is established, there is a validity date that has to be renewed approximately every 2 years. When the Service targets an individual, that person falls under one of the certificates. She explained that [redacted] She also explained that each individual would have his or her own targeting authority.[130] The targeting authorities against individuals, and the renewals of those authorities, were also provided in the ex parte evidence.[131] For example, a certificate is renewed [redacted]

97. [redacted] testified that [redacted] have proven that the intent of the Service's [redacted] Domestic Extremism" file is [redacted]

98. In the context of the Northern Gateway Pipeline Development project, [redacted] testified that [redacted] She clarified that when the Service refers

[128] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, at pp. 47-55.
[130] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, at pp. 38-39.
[131] CSIS Book of Documents, *ex parte* hearing [redacted]
[132] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, at p. 35.
[133] CSIS Book of Documents, *ex parte* hearing [redacted]
[134] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, p.44

to extremism, it is specifically interested in issues that go from peaceful demonstrations to acts of serious violence.[135]

99. She testified that when conducting investigations, CSIS officers are governed by the *CSIS Act* and CSIS policies stipulate that they do not look at legitimate protest and dissent, unless it is associated with serious acts of violence. She provided testimony about the tasking provided to the regions related to politically-motivated violence and/or sabotage.[136] The *ex parte* evidence showed that the Directional Statement from Headquarters [redacted] However, Headquarters reminded the regions that the focus is not on legitimate protest or dissent but rather on serious violence [redacted]

100. [redacted] explained the targeting levels and warrants for certain targets within the Service. She testified that [redacted] were never the target of a Service investigation. However, she explained that there were some instances [redacted] opposition to the Northern Gateway Pipeline project.

101. CSIS Witness 2, [redacted] testified regarding his work experience with the Service as an analyst with the Intelligence Assessments Branch (IAB) and his specialization in domestic extremism. He outlined the main responsibilities of the IAB, which is to provide timely and relevant intelligence which meets the Government of Canada' s stated requirements and priorities. He provided an overview of the Intelligence Assessment Branch's responsibilities, which includes actively engaging with the Government of Canada to identify its intelligence needs and deliver briefings, assessments and reports, providing background information on operational and managerial programs and preparing Threat and Risk Assessments, and providing outreach and education to the federal government.

102. [redacted] testified that he had prepared several intelligence products and briefings on the issue of domestic extremism, and more specifically [redacted] He provided a sample of briefings that he has delivered to various stakeholders (private and public sector) on the issues of domestic [redacted] extremism. He testified that, during the timeframe related to the complaint, CSIS

[135] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, p. 56.
[136] Summary of evidence presented at the *in camera / ex parte* hearing on January 28, and March 22, 2016, pp. 2-3.
[137] CSIS Book of Documents, ex parte hearing, [redacted]

was mainly focused on issues related to the Winter Olympics and the G-8/G-20 meetings and any potential threats from domestic extremist for either event.[138]

103. The witness also provided an overview of the Service's work conducted in the area of domain awareness. Domain awareness is done in part to ascertain potential triggers and flashpoints, and in part to ensure that the Service is aware of what is happening should a threat arise. Reference is made to SIRC's study entitled "CSIS Activities Related to Domestic Investigations and Emerging Threats".

104. [redacted] testified regarding the biannual classified briefings held by the NRCan and the fact that this forum is used by the Service to share classified information with energy sector stakeholders, such as the NEB. He provided the Committee with concrete examples of serious acts of ideologically-motivated violence which were discussed at some of the NRCan briefings that related to energy and utilities sector stakeholders. He spoke of specific intelligence assessments that were given to the NEB by the IAB of the Service involving domestic extremism issues.

105. The witness described how the Service engages in outreach with energy stakeholders and also identified means, other than the classified briefings, through which the Service communicates severe emerging domestic threats to certain industries. He described the policies and requirements for any meeting between the Service and any outside organization, emphasizing the importance of fostering collaboration between CSIS and any organization to prevent terrorism, whether it be within the government of Canada, with law enforcement partners or private industries. On the issue of the delivery of briefings to the private sector, he referred me to a review conducted by the Committee in 2011 entitled Review of CSIS' Private Sector Relationships. He testified that the Service does not attend nor interfere with any events that involve legal and legitimate protest and/or dissent as it falls outside of its mandate.[139]

106. CSIS Witness 3 [redacted] provided testimony regarding his education and background. He has a degree in [redacted] a J.D. degree [redacted] and a Masters in [redacted] as well as a Certificate in [redacted] following which, he joined the federal public service. He also testified regarding his work experience with the Service as an analyst within the IAB and his specialization in the energy sector.[140]

107. He explained that his primary responsibility was to provide intelligence assessments related to threats to Canada's energy and mineral activities. He

[138] Summary of evidence presented at the *in camera / ex parte* hearing on January 26, and March 22, 2016, pp. 2-3, pp. 3-4.
[139] Summary of evidence presented at the *in camera/ ex parte* hearing on January 28, and March 22, 2016, pp. 4-5.
[140] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, at p. 287

highlighted that the interests of his portfolio were restricted to threats to energy and primarily to critical energy infrastructure mostly from domestic extremism, terrorism, or possibly from foreign states. He testified that a secondary responsibility of his branch was to provide assessments relating to economic threats or threats to Canada's economic interests related to energy in the field of proprietary information. [141] He commented that the threats to Canada's economic interests could arise from a variety of sources. "In the primary case, in the first case of infrastructure, primarily from domestic extremism, terrorism, or possibly foreign States. In the case of Canada's economic interests, largely from foreign States and espionage, and threats of that nature." [142]

108. [redacted] testified that he had been a coordinator for the NRCan biannual classified briefings since 2010 and described the origin and purpose of these briefings as well as the Service's role. [143] He explained that the lead agency for these classified briefings is NRCan, and that CSIS cooperates with NRCan and with the RCMP in this regard: "(t)he subject matter of what is discussed is in the hands of NRCan, as is the list of invitees, who attends on the basis of their need to know and on having the requisite security clearance."[144]

109. He provided details of his own role in terms of the arrangements for such meetings, including ensuring that the briefing room they have, which is a secure facility, is available to NRCan as a convenience, so that they can bring in members of the private sector, largely individuals responsible for security at their respective companies, and other participants, occasionally from the Government. During the actual briefings, the Service will occasionally provide speakers. While he does not speak at these briefings, the witness explained that he prepares speaking notes for his Director General. For example, he had written notes regarding domestic extremism threats, based on open source material regarding events that had actually happened and had been reported in the newspapers.[145]

110. He testified that while he is responsible for writing a memo to management regarding the briefings, there is no formal Memorandum of Understanding. The witness testified that he has not seen any information collected at these briefings by the Service, and that, should members of the private sector wish to provide information to the Service, he explains to them that the proper channel is to notify the regional office. In terms of participants at the NRCan meetings, the witness provided some examples from the private sector including the [redacted]

[141] Summary of evidence presented at the *in camera/ ex parte* hearing on January 28, and March 22, 2016, pp. 5-6
[142] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, at p. 289.
[143] Summary of evidence presented at the *in camera/ ex parte* hearing on January 28, and March 22, 2016, pp. 5-6
[144] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, at p. 291.
[145] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, at p. 291 and pp. 293-296.

[redacted]

111. The witness also gave examples of some briefings or liaisons with government or private sectors in which CSIS participates other than the NRCan briefings. He explained that the Service contributes to the Government of Canada's strategy, through Public Safety on the "National strategy and action plan on the protection of critical infrastructure". The term "infrastructure" is not just the energy infrastructure, but includes the infrastructure of the financial, transportation, water, agriculture and health sectors."[147]

112. [redacted] also testified of his participation in other briefings or liaison with the government or private sector. He provided the example of "other than the classified briefings, there is an unclassified briefing for what is called the International Pipeline Security Forum, which alternates between Canada and the United States, but explained that "as threats to that sector [redacted]

113. [redacted] also spoke about the context and content of the April 19, 2013 email from Mr. Tim O'Neil referred to in the complaint's exhibit book, which mentions security concerns regarding the Northern Gateway Project. He explained that [redacted] the email from Tim O'Neil, [redacted] by way of information only, as there was no action required on the part of the Service. The email discusses the possible threats to National Energy Board hearing and concludes that there is nothing specific that he is aware of. [redacted] testified that [redacted]

114. CSIS Witness 4, [redacted] testified, following the Committee's request to hear testimony from an investigator in the British Columbia region during the years relevant to this complaint. He provided testimony regarding his work experience with the Service from 1995 onwards, including his various positions in the British Columbia Region from 1998 to the present. He also described his roles and responsibilities as the supervisor for the unit responsible for the Service's domestic extremism investigation in Vancouver from 2010-2013. [150]

115. [redacted] testified that he was responsible for overseeing the investigations that fell under his remit. This included providing input as to an intelligence officer's plan to debrief a source; approving the interview and its objectives; approving

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[146] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, at p. 291.
[147] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, p. 298.
[148] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, p. 304.
[149] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, p. 309.
[150] Summary of evidence presented at the *in camera/ ex parte* hearing on January 28, and March 22, 2016, p. 6

operational reports, and initiating the dialogue with his Chief to put into place warrant powers against a target, if it were necessary. [151]

116. He discussed the mandatory process and requirements for an intelligence officer to make a request to conduct a community interview related to the Service's domestic extremism investigations. He explained that he was the head of the [redacted]. He also provided details regarding [redacted] by Headquarters as a sensitive investigation because it might have some kind of impact on the civil liberties of individuals. He explained that they were extremely careful when they actually made the decision to go out and conduct an interview. He testified that [redacted]

117. [redacted] testified that the Service is "not in the business of investigating environmentalists because they are advocating for an environmental cause, period."[153] For example, he explained that [redacted] because that is not what we are about. We are only interested in our targets."[154]

118. The witness said that he had not heard of most of the groups prior to this complaint. The witness testified that it was not surprising that there were protests related to the Northern Gateway Pipeline Project but underscored that Service employees are mandated and limited by the *CSIS Act* which does not permit CSIS to investigate groups or individuals for their activities related to lawful advocacy, protest or dissent, unless it is tied directly to a threat. [155]

119. When asked what the term [redacted] brings to his mind at the time of the protests related to the Northern Gateway Pipeline Project, [redacted] explained that his consideration went to [redacted] He also explained that the Service had no remit vis-à-vis the protests

[151] Transcript of *in camera/ ex parte* hearing held on Tuesday, March 22, 2016 at Ottawa, at p. 13
[152] Transcript of *in camera/ ex parte* hearing held on Tuesday, March 22, 2016 at Ottawa, at pp. 15-18.
[153] Transcript of *in camera/ ex parte* hearing held on Tuesday, March 22, 2016 at Ottawa, at p. 19.
[154] Transcript of *in camera/ ex parte* hearing held on Tuesday, March 22, 2016 at Ottawa, at p. 23.
[155] Summary of evidence presented at the *in camera/ ex parte* hearing on January 28, and March 22, 2016, p. 6.
[156] Transcript of *in camera/ ex parte* hearing held on Tuesday, March 22, 2016 at Ottawa, at p. 25.

against the building of the Northern Gateway Pipeline [redacted]

120. [redacted] also testified that [redacted] He clarified that the "Service [redacted] but through the course of our investigations, incidentally, some reporting on [redacted] might come up because [redacted]

121. He further testified that the information flow between CSIS and private or other public stakeholders was generally a one-way process in which CSIS received the information. He did not recall having seen the article written by the Honourable Joe Oliver prior to the hearing.[159]

Final submissions:

122. With the completion of the *ex parte* hearing, the parties were subsequently invited to provide their final submissions in writing to the Committee.

123. The Committee received the Complainant's final submissions on September 19, 2016, in which BCCLA submits:

> *"that the evidence demonstrates that CSIS was collecting information about these groups, at least passively, and perhaps actively, and in the absence of evidence that these groups constituted a threat to the security of Canada, this collection was not authorized by section 12 of the CSIS Act. The Complainant also argues that CSIS' collection activities, combined with intemperate language by a federal Cabinet minister criticizing environmental groups opposed to the pipeline policy as pushing a "radical ideological agenda" created a real chilling effect for groups and individuals that wished to organize and collectively express their opinions on the proposed pipeline. The sharing of this information in confidential briefings with private sector actors in the petroleum industry served to heighten the perception that CSIS was exercising its powers in support of the political or economic status quo."*[160]

124. The Committee received the Service's final reply submissions on October 17, 2016, in which it submits that the evidence has shown that CSIS' actions were lawful and in accordance with its mandate pursuant to the *CSIS Act*, stating that:

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[157] Transcript of *in camera/ ex parte* hearing held on Tuesday, March 22, 2016 at Ottawa, at p. 48.
[158] Transcript of *in camera/ ex parte* hearing held on Tuesday, March 22, 2016 at Ottawa, at p. 30
[159] Summary of evidence presented at the *in camera/ ex parte* hearing on January 28, and March 22, 2016, p. 6.
[160] Complainant's Final Submissions, dated September 19, 2016, p. 72.

"any collection and dissemination of information by CSIS was done lawfully in conformity with its mandate. Furthermore, the Complainant has failed to establish that CSIS has done the acts or things alleged in its complaint. Requests for information or advice from the NEB to CSIS do not demonstrate that CSIS collected information about the groups seeking to participate in the NEB hearing. The Complainant has also failed to establish a causal connection between the acts or things done or allegedly done by the Service and the "chilling effect" on freedom of expression and association." [161]

125. The Committee received the Complainant's rebuttal submissions on November 3, 2016.[162] Following receipt of the Complainant's rebuttal submissions, the Committee inquired on November 24, 2016, whether the Service had any national security concerns with the Complainant's request that BCCLA may publicly disclose the transcripts from the *in camera* hearing.

126. On December 1, 2016, the Committee received the Service's written submissions in regards to the Complainant's request.

127. On December 23, 2016, the Committee provided the Complainant with a copy of the Service's submissions and the Complainant was given an opportunity to reply.

128. On January 16, 2017, the Committee received the Complainant's comments, in response to the Service's letter of December 1, 2016. The Complainant reiterated its request that "the Committee confirm, prior to the issuance of its final report and at its earliest convenience on an interim basis, that witnesses who appeared before the Committee on August 12-13, 2015 may speak publicly about the evidence and testimony they provided during the *in camera* portion of the hearing and that BCCLA may publicly disclose those transcripts and its submissions in this matter, without limitation due to security concerns under section 48 of the Act."[163]

129. I have decided that it would be in the best interests of justice for me to address this matter in the context of my final report.

130. In preparing this final report, in addition to reading the submissions of the parties, I have considered the evidence given by witnesses, the documentation submitted by the parties and the Committee's counsel for the *in camera* and the ex parte hearing, as well as other relevant material made available to me in the course of my investigation of this complaint.

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[161] Respondent's Final Submissions, dated October 17, 2016, p. 2.
[162] Complainant's Rebuttal Submissions, paragraph 17, dated November 3, 2016.
[163] Letter from the Complainant to the Committee, dated January 16, 2017.

E. ANALYSIS

131. This complaint is filed by the Complainant under section 41 of the *CSIS Act*, concerning the conduct of CSIS.

132. The Complainant's complaint is set out in its letter of February 6, 2014, and was summarized by counsel for the Complainant at the in camera hearing as follows: "Firstly, that the BCCLA believes that the Service was gathering information – or, in accordance with the language of section 12 of the Statute, "collecting" information about Canadian citizens and groups engaging in peaceful and lawful expressive activities"; and then the second part of the complaint is that it then shared this information with government bodies and private sector factors."[164]

133. The Complainant is relying, first, upon information that initially came out in the press in November of 2013 that suggested that the RCMP and CSIS were collecting intelligence or information on groups and individuals opposed to the Northern Gateway Pipeline and then secondly, that they were sharing that information with the National Energy Board and members of the petroleum industry. [165]

134. Some of the groups named in those documents include LeadNow, ForestEthics, the Council of Canadians, the Dogwood Initiative, EcoSociety, the Sierra Club of British Columbia and Idle No More. The Complainant provided testimonial evidence from most of those groups and provided me with background about their organizations and about their activities in relation to the Northern Gateway Pipeline Project. The Complainant has stressed that none of these groups are criminal organizations, nor do they have any history of advocating, encouraging or participating in violent or other criminal activity.[166] The evidence before me has confirmed this, and it is not in issue.

135. As agreed by the parties during the preliminary conference calls in this matter,[167] the complaint requires me to answer the following four questions in relation to the groups listed in the Complaint letter of February 2014, namely Leadnow, ForestEthics Advocacy Association, the Council of Canadians, the Dogwood Initiative, EcoSociety, the Sierra Club of British Columbia and Idle No More.[168]

Question 1:
Did the Service collect information about groups or individuals for their activities in relation to the Northern Gateway Pipeline Project?

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[164] Complainant's Complaint Letter, dated February 6, 2014 and Transcript of *in camera* hearing, Vol. 1, p.20.
[165] Complainant's Complaint Letter, dated February 6, 2014 and Transcript of *in camera* hearing, Vol. 1, pp.21-22.
[166] Transcript of *in camera* hearing, Vol. 1, p. 22.
[167] Respondent's Letter of April 15, 2015, and Transcript of Pre-hearing conference of May 20, 2015.
[168] Exhibit SIRC-1, Tab 1, Complaint letter of February 2014, p. 6.

Question 2:

If so, was it lawful?

Question 3:

Did the Service provide information relating to individuals or groups opposed to the Northern Gateway Pipeline Project to the National Energy Board or non-governmental members of the petroleum industry?

Question 4:

If so, was it lawful?

136. I have addressed each of these questions separately below in my report.

Question 1:

137. Through the *ex parte* evidence and hearing, I heard that the Service [redacted] However, I have seen no evidence that the Service was collecting information or investigating [redacted] as a result of [redacted] peaceful advocacy or dissent.

138. [redacted] the collection of information [redacted] conducted in an ancillary manner, in the context of other lawful investigations.

139. Through the evidence presented to me in the *ex parte* hearing, I am aware of the collection of information in accordance with section 12 and the provision of information as it pertains to certain individuals for whom the appropriate targeting authorities were in place.

140. The groups and/or individuals named in this complaint [redacted]

141. The *ex parte* evidence has convinced me that [redacted] was done as ancillary information in respect of lawful targeting authorities against targets in place at the time, unrelated to groups or individuals engaged in legitimate protest and dissent.[169]

[169] CSIS Book of Documents, *ex parte* hearing, [redacted]

142. For example, I note that in the BRS reporting regarding [redacted] the Service indicates in its analysis sections that "the information had been collected and reported to assist the Service in assessing the threat environment and the potential for threat-related violence stemming from [redacted] protests/demonstrations."[170] However, the Service clearly acknowledged that the [redacted] no threat to the security of Canada. [171]

143. In the *ex parte* hearing [redacted] and [redacted] testified that these groups were [redacted] I have considered these instances carefully.

144. The Respondent's evidence with respect to the collection of information [redacted] is twofold: 1) the Service presented evidence on the subjects of investigation under a targeting authority and 2) the Service provided all the operational reporting [redacted] after December 31, 2009.

145. The Service provided me with the list of groups and individuals that were CSIS targets at the time, [redacted]

146. In terms of operational reports [redacted] I note that there are [redacted] CSIS operational reports issued during the review period which reference [redacted] This prompted the Service to conduct an open-source search on what [redacted] was. In another instance, [redacted] provided information to CSIS [redacted] was also mentioned in a report related to the activities of another subject of investigation.

147. There are [redacted] CSIS operational reports which reference [redacted] In one case, it was named [redacted] that was shared with the Service. In another instance [redacted] is mentioned because a

Tab 1: [redacted]

[170] CSIS Book of documents, *ex parte* hearing, [redacted]
[171] CSIS Book of Documents, *ex parte* hearing, See [redacted] and also [redacted] which includes the BRS messages wherein [redacted] is mentioned.

[redacted] which prompted the Service to conduct a google search to learn information about [redacted]

148. [redacted] was mentioned in [redacted] operational reports issued during the review period, largely because [redacted]

149. [redacted] is mentioned in [redacted] operational reports. Some of these reports refer to [redacted] It was also the subject of operational reports regarding [redacted]

150. [redacted] is referenced in [redacted] operational reports because [redacted] and because [redacted]

151. [redacted] is mentioned in [redacted] operational report [redacted]

152. [redacted] is mentioned in [redacted] operational reports, mostly with reference [redacted]

153. I fully expect that the Service will review the information collected in its holdings [redacted] in accordance with the recent decision of the Honourable Simon Noël of the Federal Court.[172], to ensure that the only information retained is that which meets the "strictly necessary" retention threshold.

[172] *In the Matter of an Application for warrants pursuant to sections 12 and 21 of the CSIS Act*, 2016 FC 1105.

154. The Complainant's final submissions[173] refer to a SIRC Review conducted in 1989 entitled "*Report on CSIS Activities regarding the Canadian Peace Movement*" that found that the Service "has not proven that it can appropriately distinguish between legitimate dissent or lawful advocacy and activities that may on reasonable grounds be suspected of constitute threats to the security of Canada."[174] The complainant submits "that the attitude of CSIS witnesses towards Minister Oliver's letter reflects a surprising lack of awareness or sensitivity to legitimate concerns the public may have that there is a connection between comments by a federal Cabinet Minister and internal government documents that show CSIS is consulting or briefing on groups opposed to the Northern Gateway project.[175]

155. However, I note that since that 1989 review, the Committee has kept a watchful eye on the topic of lawful advocacy, protest or dissent, and has considered this topic in various reviews[176]. For example, in its Annual Report in 2002-2003, entitled "*Domestic Threats in Conjunction with Lawful Advocacy, Protest and Dissent*", the Committee found that the Service was "taking considerable care in implementing policy measures designed to prevent intrusion into legitimate and political activity."[177] In its 2012-2013 Annual Report, the Committee conducted a review of *"CSIS's Activities Related to Domestic Investigations and Emerging Issues"*[178] and found that any activities surrounding the Vancouver Olympics and the G8/G20 Summits that only related to legitimate protest and dissent were not investigated.

156. The totality of the evidence which I have reviewed and analyzed demonstrates that there was no direct link between CSIS and the "chilling effect" which the Complainant's witnesses mentioned in their testimonies. I agree with the Respondent's submission that the Complainant failed to differentiate the actions of the NEB and of the RCMP and those of CSIS.[179]

157. However, I can understand why the Complainant, not having access to all of the Service's evidence, might have felt that the groups it represents were being spied on, in view of certain media reports and certain government documents. I also appreciate the concerns of the witnesses appearing before me on behalf of the Complainant who referred to these articles.

158. I well appreciate that the letter of 9 January 2012 from the Honourable Joe Oliver, then Minister of Natural Resources, where he wrote that *"(u)nfortunately, there*

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[173] Complainant's Final Submissions, September 19, 2016, p. 59
[174] SIRC Report 89/90 -03, at p. 228.
[175] Complainant's Final Submissions, September 19, 2016, p. 62
[176] Reference to SIRC Annual Reports of 1999-2000, 2001-2002, 2006-2007, 2008-2009, and 2012-2013.
[177] SIRC Annual Report 2002-2003, p. 16.
[178] SIRC Annual Report 2012-2013, p. 24.
[179] Respondent's Final Submissions, October 17, 2016, p. 20.

are environmental and other radical groups that would seek to block this opportunity to diversify our trade. Their goal is to stop any major project no matter what the cost to Canadian families in lost jobs and economic growth" [180] is regrettable. It can only have increased the concerns of the members of these groups that the entities to which they belonged were being spied on by CSIS and the RCMP. It certainly explains their evidence before me which was clearly fuelled by the Minister and certain journalists.

159. However, the evidence I heard from CSIS' witnesses in both the *in camera* and *ex parte* hearing has convinced me that neither CSIS nor the Ministry of Public Safety responsible for CSIS, had anything to do with the drafting of the Honourable Joe Oliver's letter or indeed any media report submitted in evidence before me. The Service's policies and directions were not influenced in any way by these media articles.

Question 2:

160. I have found that the Service had information [redacted] In these circumstances, this collection falls squarely within the Service's mandate.

161. The Complainant contends that records obtained by Access to Information requests show that CSIS prepares reports and shares information regarding protest activities. BCCLA also maintains that "the Service's action in relation to citizens and groups engaging in peaceful and lawful expressive activities have gone beyond merely collecting intelligence information under section 12 of the Act, and instead sharing this information with the NEB and private companies regarded as stakeholders in the energy sector." [181]

162. The Complainant stated that "Parliament has placed very clear limits (on) the scope of the Service's intelligence-gathering activities, expressly providing that CSIS's mandate "does not include lawful advocacy, protest or dissent." [182]

163. I certainly agree with the Complainant's assessment of Parliament's intention not to allow the Service's mandate to include lawful, advocacy, protest or dissent ("LAPD"). However, I cannot find, on the basis of the evidence before me, that CSIS, in this case, expanded its mandate to include lawful advocacy, protest or dissent.

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[180] Complainant's Supplementary Book of Documents, Tab 7.
[181] Complainant's Final Submissions, September 19, 2016, pp. 65-66.
[182] Complainant's Book of Documents, Vol. I, Tab 3, and Letter from the Complainant to the Committee dated March 25, 2015 with attached documents (emphasis in original document).

164. I note that the Service's mandate under section 12 of the *CSIS Act* is to collect and retain information regarding threats to the security of Canada and is limited "to the extent that it is strictly necessary". I recall, in this context, the recent decision of Mr. Justice Simon Noël, wherein he wrote:[183]

> *"Section 12 (1) must be read logically: if collection of information is performed on a strictly necessary basis, it goes without saying that retaining the strictly filtered information is permitted because the point of entry of the information is the strict collection process. Therefore the retention function may only logically retain what has been collected in a "strictly necessary" manner. The same rational applies in regard to the analysis function: if information is validly collected, only that strictly collected information is analysed. In those scenarios, there are no issues of limits to retention or analysis of the information because it has been legitimately collected pursuant to section 12 (1) and section 2. "*

165. Section 12 of the *CSIS Act* clearly states that the Service "shall report to and advise the Government of Canada."

> *12 (1) The Service shall collect, by investigation or otherwise, to the extent that it is strictly necessary, and analyse and retain information and intelligence respecting activities that may on reasonable grounds be suspected of constituting threats to the security of Canada and, in relation thereto, shall report to and advise the Government of Canada. (my emphasis)*
>
> *(2) For greater certainty, the Service may perform its duties and functions under subsection (1) within or outside Canada.* [184]

166. Section 2 of the *CSIS Act* defines what those "threats to the security of Canada" entail, but clearly states that this:

> *"does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d)."*[185]

167. Thus, it is also clear that, if those LAPD activities are carried out in conjunction with any of the activities referred to in the enumerated threats in section 2, they may fall under the Service's mandate under section 12.

168. The Complainant argues that the activities of these environmental groups opposed to the Northern Gateway Pipeline Project could not possibly fall under the definition of "threats to the security of Canada" as set out in section 2 of the *Act*.

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[183] *In the Matter of an Application for warrants pursuant to sections 12 and 21 of the CSIS Act*, 2016 FC 1105 at paragraph 186.
[184] *CSIS Act*, section 12.
[185] *CSIS Act*, section 2

169. Insofar as the named groups' activities remain peaceful and lawful, I agree. In fact, the definition of "threats to the security of Canada" under section 2 very clearly states that this does not include "lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d)."[186]

170. By way of example, I note that when questioned what an illegitimate protest would be from the Service's perspective, CSIS witness Robert commented during the *in camera* hearing that "all protests are part of the democratic fabric of Canada, and part of our job in investigating threats to our security is to allow protest to take place."[187] Robert's testimony during the *in camera* hearing was clear that the Service was kept actively engaged dealing with terrorism and other threats to the security of Canada, and it did not have the mandate to investigate peaceful advocacy, protest or dissent. I find the Respondent's evidence credible.

171. The Complainant contends that documents such as a Memorandum to the Director of CSIS, from the Assistant Director, Policy and Strategic Partnership of CSIS, regarding a meeting of the Deputy Ministers' Committee on Resources and Energy, dated June 9, 2014, "confirms that the Service was indeed collecting information about opponents to the Northern Gateway pipeline project[188].

172. However, I note that in that same memorandum, the Assistant Director, Policy and Strategic Partnership of CSIS clearly states that "(t)he Service recognizes that many of these issues involve legitimate protest and dissent and as such, have no mandate nexus."[189]

173. In the context of that same memorandum and attached document from the Government Operations Centre, entitled "Government of Canada Risk Forecast 2014 Protests and Demonstrations Season", I also note and emphasize that the Government Operations Centre is not part of CSIS, but rather part of the Department of Public Safety.

174. The evidence of the Respondent's witnesses, as well as the documentary evidence presented by the Service during both the *in camera* hearing and the *ex parte* hearing is persuasive. I am convinced by that evidence that CSIS did not [redacted]

175. Accordingly, I find that the Service's collection of information [redacted] was lawful and within its mandate, and that the Service did not investigate activities involving lawful advocacy, protest or dissent.

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[186] *CSIS Act*, section 2.
[187] Transcript, Vol. 2, p. 312.
[188] Complainant's Final Submissions, September 19, 2016, p. 24.
[189] Complainant's Book of Documents, Vol. I, Tab 3 at p. 2 of 3, and Tab 5, p. 2 of 3.

Question 3:

176. I find that there was no sharing of information by the Service about these groups or individuals opposed to the Northern Gateway Pipeline Project with the NEB, or other non-governmental members of the petroleum industry. Rather, the evidence presented to me during the *ex parte* hearing has convinced me that CSIS did not disseminate information about the named groups or individuals, either with the NEB or with private members of the petroleum industry.

177. The Complainant contends that government documents prove that there was sharing of information and collecting of information. "These documents are not only emails between the NEB and the RCMP and CSIS, as well as internal NEB emails, but also Security Assessment Reports by the NEB itself where there is reference to CSIS and obtaining intelligence from CSIS at the national level and at the regional headquarters level."[190]

178. For example, the Complainant points to an NEB document entitled "Enbridge Northern Gateway Project Integrated Security, Logistics and communications Plan, Kelowna, dated January 24, 2013, under the heading "Threat Assessment", where certain sections have been redacted on the basis of the applicable exclusion under the *ATIP Act* in the right hand column. However, one can see references to the NEB consulting CSIS, both national headquarters and regional offices, as well as RCMP.

179. Some of the groups named in this complaint are identified in the NEB document, under the heading of "open source information reporting", such as Idle No More regarding a planned protest; LeadNow and Dogwood Initiative regarding a workshop and skills training, and EcoSociety regarding a plan to charter a bus to attend the Nelson hearing. [191] Also, an NEB document entitled "Enbridge Northern Gateway Project Security Plan, Prince Rupert", dated January 23, 2013, mentions that the NEB consulted CSIS, both national headquarters and regional offices.[192] Emails refer to consultation between the NEB Security team and CSIS at national and regional levels.[193]

180. I note that most of these documents were released as a result of the ATIP request and that they were NEB documents. While I have seen emails and documents which refer to consultation between NEB and CSIS, there is no evidence before me which demonstrates that CSIS provided information to the NEB about any one of these groups.

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[190] Transcript of *in camera* hearing, Vol. 1, p. 24.
[191] Complainant's Book of Documents, Vol. I, Tab 1, pp. 61-62.
[192] Complainant's Book of Documents, Vol. I, Tab 1, p. 68.
[193] Complainant's Book of Documents, Vol. I, Tab 4, p. 37.

181. Authority for the Service to disclose information it has obtained in the performance of its duties is found in section 19 of the *CSIS Act*. If CSIS discloses information, it must do so in conformity with its mandate under section 12 (see above) and the provisions of section 19 which reads as follows:

> *19 (1) Information obtained in the performance of the duties and functions of the Service under this Act shall not be disclosed by the Service except in accordance with this section.*
>
> *(2)) The Service may disclose information referred to in subsection (1) for the purposes of the performance of its duties and functions under this Act or the administration or enforcement of this Act or as required by any other law and may also disclose such information,*
>
> *(a) where the information may be used in the investigation or prosecution of an alleged contravention of any law of Canada or a province, to a peace officer having jurisdiction to investigate the alleged contravention and to the Attorney General of Canada and the Attorney General of the province in which proceedings in respect of the alleged contravention may be taken;*
> *(b) where the information relates to the conduct of the international affairs of Canada, to the Minister of Foreign Affairs or a person designated by the Minister of Foreign Affairs for the purpose;*
> *c) where the information is relevant to the defence of Canada, to the Minister of National Defence or a person designated by the Minister of National Defence for the purpose; or*
> *(d) where, in the opinion of the Minister, disclosure of the information to any minister of the Crown or person in the federal public administration is essential in the public interest and that interest clearly outweighs any invasion of privacy that could result from the disclosure, to that minister or person.*
>
> *(3) The Director shall, as soon as practicable after a disclosure referred to in paragraph (2)(d) is made, submit a report to the Review Committee with respect to the disclosure.* [194]

182. The *ex parte* evidence has revealed that the Service fulfills its mandate of "reporting and advising" with the production of various documents to domestic and foreign partners, including intelligence assessments, reports to foreign agencies and risk assessments to domestic partners. With respect to its mandate to provide such reports and advice to the "Government of Canada", this can include any department or agency of the federal government, including the RCMP and the NEB. The Service has the obligation to provide those reports and advice to the Government of Canada in accordance with the enabling legislation.

183. The evidence presented to me *ex parte* has persuaded me that CSIS does indeed provide advice to the NEB pursuant to section 12 and subsection 19 (2) of the

[194] *CSIS Act*, section 19.

CSIS Act. However, the *ex parte* evidence does not reveal any reference to or mention of anyone [redacted]

184. The Complainant also refers to an email from the RCMP which states that it will "continue to monitor all aspects of the anti-petroleum industry movement" and concludes that this information "will be shared with (their) intelligence partners", who the Complainant submits must include CSIS.

185. In this connection, I note that CSIS interacts with other law enforcement agencies whose mandate includes the investigation of criminal offences and the collection of evidence in aid of prosecutions in courts. CSIS' website mentions that "while CSIS is at the forefront of Canada's national security system, several Canadian government departments and agencies also provide services that, taken together, help to ensure the safety and protection of Canadians."[195] This, of course, includes the RCMP.

186. The Complainant also submits that the NRCan biannual classified briefings demonstrate that the Service shared information with non-government members of the petroleum industry. BCCLA submits that none of the provisions in the Act "permit sharing of information with private sector parties in the energy industry, as the Service acknowledges doing through NRCan classified briefings and other outreach events with energy stakeholders." [196]

187. In the words of the Complainant, "some of the documents indicate that Natural Resources Canada holds security briefings, with not only the RCMP and CSIS but also with members of the petroleum industry. Some of the documentation indicates that these meetings are held at CSIS Headquarters in Ottawa, and further, that some of the petroleum industry actors, including in particular Enbridge, which is the proponent of the Northern Gateway Pipeline, were not only participating but in fact were sponsoring certain aspects of the events. They were paying for meals and hospitality opportunities for both CSIS and the RCMP and these petroleum industry actors. Given the timing of these briefings and the reference to "sharing information about environmental groups" and given the participation of these various actors, it is our view that a reasonable inference to draw, and the inference that was drawn by B.C. Civil Liberties Association and the targeted groups mentioned, is that information about them had been shared."[197]

188. There is clear evidence that the Service participated in meetings or round tables with NRCan, and the private sector, including the petroleum industry, at CSIS headquarters. However, the *ex parte* evidence presented to me is also clear. These briefings involved national security matters, and were definitely not concerned with [redacted]

[195] CSIS Book of Documents, *in camera* hearing, Tab 3, pp.37-38.
[196] Complainant's Final Submissions, September 19, 2016, p. 67.
[197] Transcript, *in camera* hearing, Vol. 1, p. 25.

189. Under the heading of "sharing intelligence", I note that the CSIS website provides that "at the national level, CSIS provides hundreds of briefings each year to various communities including law enforcement and other security intelligence agencies; academia; Canadian government departments and agencies; provincial, territorial and municipal governments; and the public." These briefings include threat assessments, which, the website provides, are "evaluations about the scope and immediacy of a variety of threats posed by individuals and groups in Canada and abroad. Threat and Risk Assessments are conducted by government departments and agencies. CSIS provides assistance for their preparation when requested."[198]

190. I also heard testimony *ex parte* that information has been collected when certain CSIS targets that are planning to threaten specific private sector companies, CSIS will then meet with these companies and share with them information about these threats. I am satisfied that such liaison with the private sector is important in order to protect Canadians. [199]

191. Having reviewed carefully the totality of the evidence submitted to me during the *in camera* and *ex parte* hearings, I find that, at no time, did the Service share information with members of the petroleum industry concerning the "targeted groups" referred to by the Complainant.

192. Having so concluded, however, I must say that I well understand some of the Complainant's concern. The perception of the Service discussing the security of energy resources development with members of the petroleum industry can give rise to legitimate concern on the part of entities such as the Complainant and the "targeted groups".

193. In this connection, I recall that on May 23, 2013, Natural Resources Canada hosted a "Classified Briefing for Energy and Utilities Sector Stakeholders" in collaboration with CSIS and the RCMP. This briefing was held at the CSIS headquarters. National security and criminal risks to critical energy infrastructure were on the agenda whose theme was the "Security of energy resources development". A networking reception at the Château Laurier was sponsored by BrucePower and Brookfield, and breakfast, lunch and coffee were sponsored by Enbridge the next day. [200]

194. As I said earlier, the issue is one of public perception for the Service. This needs to be addressed. Public discussion about issues of national security should be encouraged in a democracy. Because of its remit, CSIS obviously has a significant role to play in these discussions. "Targeted groups" such as those

[198] Respondent's Book of Documents, *in camera* hearing, Tab 7, pp.45-46.
[199] Transcript of *ex parte* hearing vol. 3 A, p. 70.
[200] Complainant's Book of Documents, Vol. I, Tab 1, *Vancouver Observer* article.

involved in the present complaint may also have a role to play in the discussions regarding national security. I recommend that the Service prioritize such inclusive public discussions with the groups involved in the present complaint, where possible, having regard to the classified nature of certain topics.

Question 4:

195. Since I have found that the Service has not shared any information concerning the "targeted groups" represented by BCCLA with the NEB or other non-governmental members of the petroleum industry, the question of lawfulness has become moot.

196. The evidence presented to me in the *ex parte* hearings has convinced me that any collection and dissemination of information by CSIS was done lawfully and in accordance with its mandate. I am persuaded that there was no targeting of [redacted]

"Chilling Effect"

197. The Complainant argues in its final submission that its allegations against CSIS led to what it describes as a "chilling effect".

198. The Complainant submits that CSIS collected information about the named groups and individuals outside the authority of the *Act*, and this collection created a "chilling effect" that inhibited them from exercising fundamental freedoms protected by the *Canadian Charter of Rights and Freedoms*. [201]

199. I must now address this submission of the Complainant as it pertains to an alleged breach of the *Charter*.

200. The Complainant's submission on this important issue is well and clearly set out as follows:

> *"Since CSIS carries out its activities in secret, and CSIS has not commented publicly about its interest in groups opposed to the pipeline, there is a reasonable fear that CSIS' extraordinary powers could be used to target groups or individuals that were characterized as having a "radical ideological agenda" by a federal Cabinet minister. This has resulted in a very real chilling effect on the groups, making them more cautious about their activities and comments and how their staff and members communicated with each other. It has even deterred some from becoming involved or supporting the groups."*[202]
>
> ...
>
> *"BCCLA submits that the above evidence clearly establishes that there was in fact a chilling effect on groups and individuals that were engaged in lawful*

[201] Complainant's Final Submissions, September 19, 2016, p. 49.
[202] Complainant's Final Submissions, September 19, 2016, p. 62.

> *advocacy and protest activities, and who dissented from the preferred policies of the government of the day. This chilling effect was caused by the media reports about CSIS consultations and briefings on groups opposed to the Northern Gateway project, in combination with then-Minister Oliver's ill-considered rhetorical attacks on groups opposed to government policy. These lawful advocacy and protest activities engage the right to freedom of expression, among the most fundamental of rights possessed by Canadians. The Canadian Charter of Rights and Freedoms guarantees protection for freedom of expression under section 2 of the Charter along with historically powerful modes of collective expression, namely peaceful assembly and association."*[203]

201. In its final submissions, the Respondent submitted that:

> *"any collection and dissemination of information by CSIS was done lawfully in conformity with its mandate. Furthermore, the Complainant has failed to establish that CSIS has done the acts or things alleged in its complaint. Requests for information or advice from the NEB to CSIS do not demonstrate that CSIS collected information about the groups seeking to participate in the NEB's hearings. The Complainant has also failed to establish a causal connection between the acts or things done or allegedly done by the Service and the "chilling effect" on freedom of expression and association."* [204]

202. In its final rebuttal submissions, the Complainant argued as follows:

> *"(I)ndeed, the evidence presented by the Service in this hearing has supported these suspicions, confirming that CSIS is indeed engaged in routine sharing of classified intelligence information with energy sector stakeholders, including the National Energy Board, and has provided specific intelligence assessments to the NEB. In these circumstances it simply cannot be said that concerns about a chilling effect are rooted merely in a "patently incorrect understanding" of the law. Rather, the evidence is clear that concerns about a chilling effect are both reasonable in the circumstances and directly linked to the Service's conduct in this matter."* [205]

203. The Complainant also submits that the concerns of the targeted groups arise from reasonable inferences. The Complainant writes:

> *"Moreover, there is also a crucial distinction between a chilling effect arising from misapprehension of the law and a chilling effect arising from reasonable inferences drawn from available information. BCCLA again emphasizes that in the present case, members of the affected groups were keenly aware of Minister Oliver's public description of them as "radical groups" involved in "hijacking" the regulatory system to "undermine Canada's national economic interest". When the ATIA documents-which clearly show at least some CSIS involvement in intelligence gathering and sharing about groups opposed to the Northern*

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[203] Complainant's Final Submissions, September 19, 2016, p. 64.
[204] Respondent's Submissions, October 17, 2016, p. 2
[205] Complainant's Final Rebuttal Submissions, November 3, 2016, pp. 6-7.

> *Gateway project – were publicized, the resulting concerns were not due to a "patently incorrect understanding" of a statutory provision, but rather the only reasonable inference that could be drawn from the limited information available to them."* [206]

204. These concerns may be real, as I have said earlier at paragraph 157. However, I have seen in the context of the totality of the evidence which was provided to me during the *ex parte* hearings that these concerns were not justified. The conduct of the Service in the present case has been in conformity with its enabling legislation.

205. As I found earlier in my analysis of Question 1, the Complainant has failed to establish a "causal effect" or "direct link" between CSIS' conduct and the "chilling effect" which it invokes. Having found no "chilling effect", its allegations cannot form the basis of a *Charter* violation.[207]

206. In my view, this finding also disposes of the Complainant's allegation that section 2 of the *Charter*, which guarantees the protection for freedom of expression, was breached by CSIS' conduct in its investigation of the activities of the Northern Gateway Pipeline project.

207. After having carefully reviewed the evidence submitted to me in the *ex parte* hearings, and as I have said earlier in paragraph 156, I am satisfied that it does not support the Complainant's submission regarding a "direct link" between CSIS' conduct and the "chilling effect". Therefore, upon review of the evidence before me in this case, I am convinced that there was no *Charter* breach.

[206] Complainant's Final Rebuttal Submissions, November 3, 2016, p. 6.
[207] *R. v. Khawaja* 2012 SCC 69, paragraphs 79-80.

Additional procedural questions:

208. The following two procedural questions arose in the context of this investigation regarding evidence and testimony provided by the Complainant.

Can witnesses for the Complainant who appeared before the Committee on August 12-13, 2015 speak publicly about the evidence and testimony they provided during the in camera portion of the hearing?

AND

Can BCCLA publicly disclose those transcripts and its submissions in this matter without limitation due to security concerns under section 48 of the Act?

209. By way of background, I will review the history of these procedural questions.

210. At the beginning of the *in camera* hearing on August 12, 2015 in Vancouver, as is standard practice for all SIRC hearing, I reminded the parties of subsection 48 (1) of the *CSIS Act*, which provides as follows:

> *48 (1) Every investigation of a complaint under this Part by the Review Committee shall be conducted in private.*
>
> *48 (1) Les enquêtes sur le plaints présentées en vertu de la présente partie sont tenues en secret.* [208]

211. Again, as is standard practice, I also informed the parties that, for reasons of security and confidentiality, no electronic devices, including cellular phones, I-Pads, or recorders were allowed in the hearing room.[209]

212. I then heard submissions from the parties in respect of a preliminary/procedural matter regarding the privacy of proceedings under subsection 48 (1) of the *CSIS Act*.

213. I first heard submissions from counsel for CSIS, regarding her concern that the Complainant had made available on its website a pledge form for individuals to obtain recaps of the *in camera* proceedings. She stated, "As you mentioned in your opening remarks, these hearing are to be conducted in private. As such, it seems to us that offering such recaps to people outside the hearing room would not be in conformity with subsection 48 (1) of the *CSIS Act*, which states that these investigations are to be "conducted in private".[210]

214. Counsel for CSIS added:

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[208] *CSIS Act*, subsection 48 (1).
[209] Transcript, *in camera* hearing, Vol. 1, p. 3.
[210] Transcript, *in camera* hearing, Vol. 1, p. 6.

> *"To us, this entails that what occurs during these hearing remains "secret": secret or private. Again, I am not sure what the intentions of the Complainant are. But just speculating, would what is suggested go as far as providing the transcripts of the hearing to members of the public? There is some concern because, again, there is a fine line for the Service, as to classified/unclassified information. I understand these are in camera proceedings and generally there is no classified information that gets divulged. However, sometimes the line between classified and unclassified is a difficult one, requiring us to thread (sic) lightly."*[211]

215. I also heard in reply, submissions from counsel for BCCLA, who said that:

> *"the BCCLA's intention is to broadcast details about the hearing that are permissible. So that is an issue that we can canvass with the Member. At this point, what the client intends to do is to just advise the public about who will be testifying on particular days, and so forth, along with the anticipated testimony of those witnesses. So it would be prior to their appearing as a witness. I recognize that under section 48, the Act refers to this proceeding as a "private" hearing. It is my understanding that that is generally referring to an in camera hearing at which others can't be present in the room as the evidence is being called."* [212]

216. After having heard these submissions, I ruled that the Committee can decide upon procedural matters before it, and as such, I determined that the disclosure of witness names was alright, but that there should be no release of summaries of evidence to the media. I was mindful of subsection 48 (1), which is the guiding principle that "every investigation is to be conducted in private", and in the French-language version, the scope of the privacy is extended somewhat: "sont tenues en secret." I also reminded the parties that subsection 48 (2) provides that no one is entitled as of right to be present at the *in camera* hearing. However, I gave the Complainant's first witness, Mr. Paterson, permission to stay in the hearing room with BCCLA counsel. [213]

217. To summarize, the guiding principle set out by the Legislator is the"private" nature of the SIRC hearing. "Les enquêtes....sont tenues en secret." The integrity of the proceedings must be respected, and, to that end, the evidence of all witnesses, not only the evidence of the Service's witnesses, cannot be divulged.

218. The Complainant provided an undertaking not to divulge the testimony and evidence of any witness appearing before me during the *in camera* hearing.[214]The Complainant then asked whether this undertaking also

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[211] Transcript, *In camera* hearing, Vol. 1, p. 6.
[212] Transcript, *in camera* hearing, Vol. 1, p. 7 (my emphasis).
[213] Transcript, *In camera* hearing, Vol. 1, pp. 10-11.
[214] Transcript of *In camera* hearing, Vol. 1, p. 12.

encompassed statements by witnesses divulging the outline of their forthcoming testimony. [215]

219. In response, I reiterated that the overriding principle is the "private" nature of the hearing, and that the investigation of any complaint by SIRC should be held in private, "en secret". I added that "I have no trouble, no difficulty, with any of your witnesses in effect saying: What I intend to tell the representative of SIRC who is hearing this complaint is such and such. My order goes to the actual evidence, the actual testimony of the witnesses, which should not, in any form, either by way of a summary or by way of "this is what I have said" kind of statement be divulged."[216]

220. Counsel for the Complainant then said that he wanted to reserve the right to come back to this question at the conclusion of the *in camera* hearing. I note that counsel for the Complainant only raised this matter with me again in his final submissions in September 2016. I also invited submissions from the Respondent on this question.

221. In its final submissions, the Complainant submitted that:

> *"the statutory requirement that SIRC hearing be held in private should not prohibit witnesses or the complainant from publicly disclosing that information."*[217] *The Complainant requested a formal ruling regarding the scope of the private nature of SIRC's proceedings in the investigation of complaints. Specifically, the Complainant asked the "Committee to review and clarify its order regarding the scope and application of section 48 of the CSIS Act as it relates to the evidence of witnesses called on behalf of the BCCLA during the in camera portion of the hearing into this complaint."* [218]

222. Addressing this request of the Complainant, CSIS' counsel submitted that "in the present case, the hearing portion of the investigation has concluded and CSIS has been provided the opportunity to protect any national security information which may have been inadvertently disclosed at the hearing. For those reasons, the Respondent does not object to the Complainant's request set out at paragraph 207 of the Complainant's final submission."[219]

223. In its final Rebuttal Submissions, however, the Complainant in effect, amended its original request and asked that my order also include the release of transcripts. It is evident that this amended request goes much further than the Complainant's original request which CSIS' counsel had agreed to.

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[215] Transcript, *in camera* hearing, Vol. 1, p. 12.
[216] Transcript, *in camera* hearing, Vol. 1, pp. 14-15, and p. 125
[217] Complainant's Final Submissions, September 19, 2016, paragraph 145, p. 49.
[218] Complainant's Final Submissions, September 19, 2016, paragraph 207, p. 71.
[219] Respondent's Submissions, October 17, 2016, paragraph 71, p. 26

224. I note that, in its final Rebuttal Submissions, the Complainant avers:

> *"Given that the Service has now advised that it has no objection to BCCLA's submissions regarding the scope and application of section 48 of the CSIS Act, the Complainant requests the Committee to confirm that witnesses who appeared before the Committee on August 12-13, 2015 may speak publicly about the evidence and testimony they provided during the in camera portion of the hearing, and that BCCLA may publicly disclose those transcripts and its submissions in this matter, without further concern in relation to section 48 of the Act (my emphasis)."*[220]

225. The Respondent, in its final rebuttal submissions, submitted:

> *"the Complainant has now raised "two new issues that were not found in the Complainant's submissions of September 19, 2016, the Complainant is seeking to – make the transcripts publically available; –get a direction on an interim basis. With respect to making the transcripts publically available, we understand that paragraph 17 suggests that only the portions of the transcripts (those transcripts) of the testimonies of BCCLA witnesses would be made public by the Complainant. We request that the Committee's order specify that only the Complainant's submissions and evidence may be made publically available."* [221]

226. The Complainant asked me to issue a ruling prior to the issuance of my final report.[222] However, I decided that it would be more appropriate to provide my rulings in my final report on all questions submitted to me in the course of my investigation.

227. In my capacity as an independent decision-maker, I consider it paramount that the integrity of the SIRC proceedings, informed by the mandatory edict of the Legislator in section 48 of the *CSIS Act* be respected.

228. In order to respect the private nature of a SIRC *in camera* hearing, the Committee, to date, has never released to the public at large the transcripts of such hearing or even a summary of the evidence of witnesses. The Complainant, of course, is present during the *in camera* hearing, and the Committee has provided Mr. Champ with the transcripts in order to allow him to prepare his submissions, but not to disseminate them to the public.

229. Such wide and unfettered dissemination would be, in my opinion, a flagrant breach of section 48 of the *CSIS Act* for a number of reasons.

230. The Committee is master of its own proceedings. This is emphasized in subsection 39 (1) of the *CSIS Act*, which reads as follows:

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[220] Complainant's Final Rebuttal Submissions, November 3, 2016, par. 17, p. 7 (my emphasis).
[221] Respondent's letter to the Committee, December 1, 2016, p. 2.
[222] Complainant's Final Rebuttal Submissions, November 3, 2016, p. 7 and in its letter to the Committee, dated January 16, 2017.

> *39 (1) Subject to this Act, the Review Committee may determine the procedure to be followed in the performance of any of its duties or functions.*[223]

231. The Committee also has its own *Rules of Procedure*[224] which guide it in the conduct of its work. While the Committee's revised rules apply to complaints, reports and references received on or after May 1, 2014, they nevertheless assist me in ruling on this important issue in respect of the present complaint which was filed on February 6, 2014. Accordingly, I refer in particular to the following rules:

> ***Interpretation of Rules***
>
> *Rule 1.04 (1) These rules shall be liberally construed to advance the purposes set out in rule 1.02.*
> *(2) These rules are not exhaustive and the Committee retains the authority to decide any issue of procedure not provided for by these rules.*
>
> ***Deemed Undertaking***
>
> *Rule 14.01(1) This rule applies to information or evidence obtained by the parties in the course of an investigation before the Committee.*
> *(2) This rule does not apply to information or evidence obtained otherwise than under subrule (1).*
> *(3) All parties and their lawyers are deemed to undertake not to use information or evidence to which this rule applies for any purposes other than those of the investigation in which the evidence was obtained.*
> *(4) Subrule (3) does not prohibit a use to which the person who disclosed the information or evidence consents.*
> *(5) Subrule (3) does not prohibit a prosecution of a person for an offence under section 131 of the Criminal Code (perjury).*
> *14.02 If satisfied that the public interest outweighs any prejudice that would result to a party who disclosed information or evidence, a member may direct that subrule 14.01 (3) does not apply to information or evidence, and may impose such terms and give such directions as are just.*

232. In addition, the Committee is an independent quasi-judicial tribunal, and, as such, it has powers that are similar to those of a superior court of record. I note in this connection, section 50 of the *CSIS Act*, which provides:

> *50. The Review Committee has, in relation to the investigation of any complaint under this Part, power*
> *(a) to summon and enforce the appearance of persons before the Committee and to compel them to give oral or written evidence on oath and to produce such documents and things as the Committee deems requisite to the full investigation and consideration of the complaint in the same manner and to the same extent as a superior court of record;*

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[223] *CSIS Act*, s. 39.
[224] *Rules of Procedure of the Security Intelligence Review Committee.*

(b) to administer oaths; and
(c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the Committee sees fit, whether or not that evidence or information is or would be admissible in a court of law. [225]

233. I recall again that subsection 48 (1) of the *CSIS Act* imposes on me the obligation to conduct my investigation in private. As an independent quasi-judicial tribunal, the Committee has the power to decide that the proceedings must remain private.

> *48 (1) Every investigation of a complaint under this Part by the Review Committee shall be conducted in private.*[226]

234. Subsection 48 (2) of the *CSIS Act* is also relevant to my determination of the scope and application of subsection 48 (1). It reads as follows:

> *48 (2) In the course of an investigation of a complaint under this Part by the Review Committee, the complainant, deputy head concerned and the Director shall be given an opportunity to make representations to the Review Committee, to present evidence and to be heard personally or by counsel, but no one is entitled as of right to be present during, to have access to or to comment on representations made to the Review Committee by any other person.* (my emphasis) [227]

235. Rules 16.09 and 18.03 (8) of SIRC's current *Rules of Procedure* are also pertinent. They provide as follows:

> *16.09 No person shall take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or oral representations by electronic means or otherwise,*
> *(a) at a hearing,*
> *(b) of any person entering or leaving the room in which a hearing is to be or has been convened, or*
> *(c) of any person in the building in which a hearing is to be or has been convened where there is reasonable ground for believing that the person is there for the purpose of attending or leaving the hearing.* [228]
>
> *18.03 (8) A witness and his counsel are entitled to be present at the hearing only when that witness is giving evidence.* [229]

236. The Federal Court found in *Canada (AG) v. Al Telbani* that "SIRC is a specific statutory body with special attributes relating to national security. SIRC's

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[225] *CSIS Act*, s. 50.
[226] *CSIS Act*, subsection 48 (1).
[227] *CSIS Act*, subsection 48 (2).
[228] *Rules of Procedure of the Security Intelligence Review Committee, Rule 16.09.*
[229] *Rules of Procedure of the Security Intelligence Review Committee, Rule 18.03 (8).*

proceedings establish a balance between national security and the rights of individuals. SIRC has powers that are similar to those of a superior court of record..." [230]

237. The proceedings of the Committee were well summarized in that decision. The Federal Court wrote:

> *"SIRC investigations are conducted in private. However, the complainant, deputy head concerned and the Director are given an opportunity to make representations to the Committee, to present evidence and to be heard personally or by counsel. Nonetheless, no one is entitled as of right to be present during, to have access to or to comment on representations made to the Committee by any other person. In spite of this, the Committee's Rules of Procedure allow for statements summarizing information from private hearing to be provided, to the extent that no information related to national security is disclosed."*[231]
>
> .....
>
> *"As for SIRC's proceedings and as was previously noted, the Supreme Court had already given its approval. Justice Sopinka, while emphasizing that it was not for him to rule on the issue, concluded that SIRC's proceedings respected the principles of fundamental justice."*[232]

238. In short, the confidentiality of SIRC's proceedings is the cornerstone of its investigations. Access to the Committee by a Complainant must be done in private, in respect of the principles of fundamental justice. SIRC does not disclose the filing of a complaint and the anonymity of the Complainant is respected throughout the process. All documents created or obtained by the Committee in the course of an investigation are exempt from disclosure.

239. It is my opinion that I must give effect to the intention of the Legislator encapsulated in subsection 48 (1) of the *CSIS Act*. Accordingly, the Complainant may not disclose publicly the evidence and testimony which they proffered during the *in camera* hearing and BCCLA may not disclose publicly any part of the transcripts or the submissions of its counsel, and I so find.

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[230] *Canada (AG) v. Al Telbani*, 2012 FC 474, at paragraph 62.
[231] *Ibid.*at paragraph 42.
[232] *Ibid.*at paragraph 53.

F. FINDINGS AND RECOMMENDATIONS

240. For all these reasons, I find that the Complainant's allegations are not supported by the evidence, and the complaint is accordingly dismissed.

241. While I found that the Service did collect some ancillary information [redacted] I find that any information reported [redacted] was done incidentally, in respect of lawful targeting authorities in place at the time, [redacted] I also find that the Service did not investigate [redacted] recognized as being associated with lawful advocacy, protest or dissent.

242. I find that the Service did not share information regarding these groups or individuals with the NEB or other non-governmental members of the petroleum industry.

243. I recommend that the Service prioritize inclusive public discussions with the groups involved in the present complaint, where possible, having regard to the classified nature of certain topics.

FOR ALL THESE REASONS, ON BEHALF OF THE SECURITY INTELLIGENCE REVIEW COMMITTEE, THE COMPLAINT IS DISMISSED.

The Honourable Yves Fortier, ~~PC, CC,~~ OQ, QC

Ottawa, Ontario
This 30 day, of May 2017.

TOP SECRET

File No. 1500-481

SECURITY INTELLIGENCE REVIEW COMMITTEE

IN THE MATTER of a complaint filed pursuant to section 41 of the *Canadian Security Intelligence Service Act*, R.S.C., 1985, c. C-23.

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Complainant

- and -

CANADIAN SECURITY INTELLIGENCE SERVICE

Respondent

REPORT BY

The Honourable Yves Fortier, P.C., C.C., O.Q., Q.C.
Security Intelligence Review Committee, Presiding

Security Intelligence Review Committee
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Phone: (613) 990-8441
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Dates of Hearing: -Case management Conference (via teleconference), Friday, July 24, 2015 in Ottawa
-Case Management Conference (via teleconference), May 20, 2015 in Ottawa
-*In camera* hearing, August 12 - 13, 2015 in Vancouver
-*In camera/ ex parte* hearing January 28, 2016 in Ottawa
-*In camera/ ex parte* hearing March 22, 2016 in Ottawa

Place of Hearing: -Case Management Conferences in Ottawa, Ontario
-*In camera* hearing in Vancouver
-*In camera/ ex parte* hearing in Ottawa

Before: The Honourable Yves Fortier, P.C., C.C., O.Q., Q.C.
Member, Security Intelligence Review Committee ("Committee")

Counsel: P. Champ and B. Roy, for the Complainant, BCCLA
S. Dion, for the Respondent, the Canadian Security Intelligence Service ("Service")
C. Bowers, for the Committee

Witnesses:

***In camera* hearing on August 12, 2015 in Vancouver**
J. Paterson for BCCLA

***In camera* hearing on August 13, 2015 in Vancouver**
C. Trojand, for BCCLA
T. Dance-Bennink, for BCCLA
J. Biggar, for BCCLA
C. Vernon, for BCCLA
N. Skuce, for BCCLA
Robert, for CSIS
Professor Reg Whitaker, *by way of affidavit*

***In camera, ex parte* hearing on January 28, 2016 in Ottawa**
CSIS Witness 1 [redacted]
CSIS Witness 2
CSIS Witness 3

***In camera, ex parte* hearing on March 22, 2016 in Ottawa**
CSIS Witness 4, [redacted]

Also In Attendance: S. Stawicki, Hearing Registrar
Noel C. Keeley, C.S.R, Court Stenographer
CSIS ER&L Staff (1)

TABLE OF CONTENTS

A. INTRODUCTION

1. This report is made pursuant to subsection 52(1) of the *Canadian Security Intelligence Service Act*, R.S.C., 1985, c. C-23 ("*CSIS Act*"), after the completion of an investigation in relation to a complaint made pursuant to section 41 of the *CSIS Act* by the British Columbia Civil Liberties Association ("BCCLA" or "Complainant").

2. This report is made to the Minister of Public Safety and to the Director of the Canadian Security Intelligence Service ("CSIS" or "Service"). It contains the findings and recommendations of the Security Intelligence Review Committee ("Committee" or "SIRC") based on all the documentation, oral evidence and representations available to it during its investigation. This report, subject to the limitations of the *CSIS Act*, will be forwarded to the Complainant.[1]

B. THE COMPLAINT AND THE COMMITTEE'S JURISDICTION

3. Section 41 of the *CSIS Act* entitles a person to complain to the Committee with respect to "any act or thing" done by the Service. The Committee shall investigate the complaint if the Committee is satisfied that:

   - the Complainant has first made a complaint to the Director with respect to that "*act or thing*";
   - the Complainant has not received a response within such period of time as the Committee considers reasonable, or the Complainant is dissatisfied with the response given; and,
   - the complaint is not trivial, frivolous, vexatious or made in bad faith.

4. In a letter dated February 6, 2014, the Complainant wrote to the Committee to make a complaint pursuant to section 41 of the *CSIS Act* "regarding improper and unlawful actions of CSIS 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."[2]

5. The Complainant alleges that media reports indicate that the National Energy Board ("NEB") has engaged in systematic information and intelligence gathering about organizations seeking to participate in the NEB's Northern Gateway Project hearing. The Complainant also contends that "records obtained under the Access to Information Act confirm that this information and intelligence gathering was undertaken with the co-operation and involvement of CSIS and other law

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[1] See subs.48(2), 52(1) and paragraph 55(b) of the *CSIS Act*, Rule 13 of the *Rules of Procedure of The Security Intelligence Review Committee in relation to its Function under Paragraph 38(c) of the Canadian Security Intelligence Service Act* ("Rules of Procedure")

[2] Complainant's letter to the Committee dated February 6, 2014, re: Surveillance of Canadian Citizens and Information sharing with the National Energy Board.

enforcement agencies, and that CSIS participates in sharing intelligence information with the Board's security personnel, the Royal Canadian Mounted Police ("RCMP"), and private petroleum industry security firms." [3]

6. In that same letter, the Complainant sets out the following questions that formed the basis of the complaint to the Committee:

> -Why is CSIS (and other branches of Canadian law enforcement and security apparatus) monitoring public interest, environmental and advocacy groups, in particular Leadnow, ForestEthics Advocacy Association, Council of Canadians, the Dogwood Initiative, EcoSociety, the Sierra Club of British Columbia, and Idle No More, despite an absence of any basis for believing that these groups have engaged in criminal wrongdoing?
> -For how long has CSIS been involved in surveillance of these, and other, groups?
> -Under what law, regulation or other authority is CSIS acting when it monitors these groups?
> -Why is CSIS hearing information about public interest, environmental and advocacy groups with members of the petroleum industry?
> -What information has been conveyed by CSIS to members of the petroleum industry?

7. The Complainant also copied its complaint letter of February 6, 2014 to Michel Coulombe, Interim Director of the Canadian Security Intelligence Service ("CSIS"), pursuant to section 41 of the *CSIS Act*.

8. In a letter dated March 14, 2014, the Assistant Director, Policy and Strategic Partnerships, Tom Venner, replied to the Complainant that he could find no evidence that the Service acted inappropriately. He commented that the information and observations are largely speculative and based on third-party information. He added however, that the Service conducts itself according to the law, policy, and Ministerial Direction. He stated: "I understand your concerns that Canadians engaged in peaceful advocacy and protest would be targeted illegitimately by a Government agency. In fact, the employees of CSIS are devoted to protecting Canada's national security and ensuring that the very rights of privacy and free speech which you refer to are indeed protected from individuals and groups who would reject peaceful democratic processes to attain their goals."[4]

9. By letter dated March 20, 2014, the Complainant wrote to the Committee, explaining its position that CSIS has failed to provide any substantive response to

[3] Complainant's letter to the Committee dated February 6, 2014, re: Surveillance of Canadian Citizens and Information sharing with the National Energy Board.
[4] Letter of reply from CSIS to the Complainant, dated March 14, 2014.

BCCLA's complaint, and requesting the Committee to commence its investigation regarding the Service's actions.[5]

10. By letter dated March 28, 2014, the Committee wrote to both the Complainant and the Service, providing them with the opportunity to make representations regarding the Committee's jurisdiction to investigate the complaint of BCCLA. [6]

11. The Complainant responded by letter dated April 4, 2014 with its representations regarding the Committee's jurisdiction to investigate the complaint under section 41, highlighting that the jurisdiction includes the investigation and determination of all legal issues raised by the complaint, including the Service's compliance with the *CSIS Act* and the *Charter*. [7]

12. On April 7, 2014, counsel for CSIS responded that its client did not wish to make representations on the Committee's jurisdiction at that time. [8]

13. On May 27, 2014, the Committee determined that it had the jurisdiction to investigate the complaint, and this was conveyed to the Complainant and the Service by letter dated June 2, 2014. [9]

C. BACKGROUND

14. In accordance with the *Rules of Procedure of the Security Intelligence Review Committee in relation to its function under paragraph 38(c) of the CSIS Act*, I was appointed by the Chair of the Committee to conduct an investigation into this complaint. The parties were advised of the Committee's determination by letters dated September 8, 2014.[10]

15. On September 22, 2014, CSIS wrote to the Committee, with a copy to the Complainant, requesting a management conference call for the purpose of identifying the issues that will be investigated as part of the complaint. CSIS asked that the BCCLA's complaint be better defined and articulated into a complaint of a discrete act or thing done by the Service that the Committee is capable of investigating. CSIS proposed to focus its document collection to documents dated after December 31, 2011, which was the latest period reviewed by the Committee in its review on the topic of lawful advocacy, protest or dissent. The letter from CSIS stated, "Based on the Complainant's letter and the scope of

[5] Complainant's letter to the Committee dated March 20, 2014 requesting it commence its investigation.
[6] Letter from the Committee to CSIS, dated March 28, 2014 regarding representations on jurisdiction and Letter from the Committee to the Complainant, dated March 28, 2014 regarding the same.
[7] Letter from the Complainant to the Committee, dated April 4, 2014, regarding jurisdiction.
[8] Letter from CSIS to the Committee dated April 7, 2014, regarding jurisdiction.
[9] Letter from the Committee to the Complainant and the Service, dated May 27, 2014.
[10] Letter from the Committee to the Complainant and CSIS dated September 8, 2014, regarding the assignment of Committee member.

section 41 of the *CSIS Act*, the Service proposes that the following issues be investigated as part of this complaint:

1) Did the Service investigate groups or individuals for their engagement in lawful advocacy, protest or dissent activities in relation to the Northern Gateway Pipeline Project?
2) If yes, was the investigation lawful?
3) Did the Service provide information relating to individuals or groups involved in lawful advocacy, protest or dissent in relation to the Northern Gateway Pipeline Project with the National Energy Board or non-government members of the petroleum industry?
4) If yes, was it lawful to provide this information? "[11]

16. On September 25, 2014 the Complainant wrote to the Committee, with a copy to CSIS, regarding my assignment as presiding member over the complaint. The letter stated that "while BCCLA recognizes Mr. Fortier's exemplary reputation, and does not question his personal or professional integrity, the organization must nevertheless object to his appointment as the presiding SIRC member in the present complaint, given that BCCLA maintains that the involvement of any SIRC members with significant ties to the petroleum industry in this complaint gives rise to a reasonable apprehension of bias". In BCCLA's February 6, 2014 complaint letter, it referred to the "highly publicized ties between several SIRC members and the petroleum industry, including Mr. Fortier's former position on the board of Trans-Canada Pipelines, the company behind the controversial Keystone XL pipeline project."[12]

17. On October 8, 2014, the Committee wrote to counsel for the Complainant regarding the matters raised in their letter mentioned above. As the presiding member investigating the complaint, I responded to the Complainant stating:

> *"On the issue of the potential conflict of interest allegations, the proper course of action to deal with such matters is for a party to formally raise the matter with the presiding member through a motion asking that the member recuse himself from the file and that a ruling on the matter be made thereafter considering the relevant jurisprudence on the issue."*

I noted that the conflict of interest issue was raised in the Complainant's letter dated September 25, 2014, but I asked them to confirm whether they intended to bring a formal motion with supporting documentation and argument, or whether I should proceed on the basis of their letter alone. [13]

18. On October 28, 2014, the Complainant wrote to the Committee, advising: "Having reviewed the matter, we must advise that, at this time, we do not have sufficient

[11] Letter from the Respondent, CSIS, to the Committee, dated September 22, 2014.
[12] Letter from the Complainant to the Committee, dated September 25, 2014.
[13] Letter from the Committee to the Complainant, dated October 8, 2014.

information regarding Mr. Fortier's ties to the companies involved in the complaint. We initially raised our concern in the original complaint dated February 6, 2014, citing a news story that Mr. Fortier had previously sat on the board of directors of TransCanada, a company implicated in this complaint." The Complainant indicated that they did not know further details, and posed several questions regarding my involvement with that board of directors. [14]

19. On November 25, 2014, the Committee wrote the following to the Complainant:

> *"It is a matter of public record that Mr. Fortier was a non-executive member of the TransCanada Board of Directors from April 1992 to July 1998. Since he resigned from the Board in July 1998, Mr. Fortier has never occupied any position with TransCanada. Mr. Fortier has never occupied any position with Enbridge."*[15]

20. On December 9, 2014, the Complainant wrote to the Committee indicating that BCCLA is prepared to proceed with its complaint before me as the presiding member.[16]

21. On March 25, 2015, the Complainant wrote to the Committee, calling attention to additional records which had been disclosed to the Canadian Press, under the *Access to Information Act*. The Complainant contends that this provides further evidence of CSIS' ongoing involvement in gathering and sharing information and intelligence about protests concerning the petroleum industry, including the Northern Gateway Project.[17]

22. On April 7, 2015, CSIS wrote to the Committee, with a copy to the Complainant, in response to the Committee's inquiry on its availability for a pre-hearing conference. The Service asked that its request dated September 22, 2014 for a management conference be held for the purpose of identifying the issues that will be investigated, and the timeframe for document collection, and that the issues to be investigated be limited to the four points it outlined in its letter. The Service also indicated that it has "been made aware through media reports of further allegations made by the Complainant and asked to be informed of the allegations as a matter of procedural fairness and in order to proceed with the document collection and respond to the allegations that are being made."[18]

23. On April 9, 2015, the Complainant wrote to the Committee in response to the April 7, 2015 letter from the Service. The Complainant suggested that the issues raised by counsel for CSIS are the kind of matters that can and would be discussed in a pre-hearing conference call. The Complainant generally agreed with the broad issues defined by CSIS with a few revisions to the four questions. The

[14] Letter from the Complainant to the Committee dated October 28, 2014.
[15] Letter from the Committee to the Complainant, dated November 25, 2014.
[16] Letter from the Complainant to the Committee, dated December 9, 2014.
[17] Letter from the Complainant to the Committee, dated March 25, 2015.
[18] Letter from CSIS to the Committee dated April 7, 2015.

Complainant stated that their "concern is that CSIS is choosing to frame the issues in a way that would allow CSIS to screen or filter out documents or information that are encompassed by the complaint. It is the BCCLA's position that the first step should be to identify any CSIS investigations of individual or groups that are opposed to the Northern Gateway Project." The Complainant also suggested that the cut off for document collections should be December 31, 2009, not 2011. [19]

24. On April 15, 2015, CSIS acknowledged receipt of and responded to the Complainant's letter of April 9, 2015. The Service agreed with the document collection date as of December 31, 2009. There was also general agreement with the issues as re-formulated by the Complainant with one other minor change. [20]

25. On May 15, 2015, the Committee wrote to both parties in preparation of a pre-hearing conference to be conducted on May 20, 2015, and I invited the parties to consider and address the following questions: [21]

    1) Given the wording of section 12 of the *CSIS Act* which provides that the Service "shall collect, by investigation or otherwise" and the allegations in the letter of complaint to the effect that the Service is "gathering information" and "monitoring and surveillance", what meaning shall be attributed to the words "investigate" and "investigation" in the April 15th 2015 letter (from CSIS)?
    2) Whether the "groups or individuals" referred to in questions 1 and 3 of the April 15th letter are those set out on pages 2 and 6 of the letter of complaint?
    3) Whether the expression "non-government members of the petroleum industry" is limited to the private-sector industry?
    4) While the issues to be examined in the April 15th letter only refer to the Northern Gateway Project, the March 25th 2015 letter (from the Complainant) refers to "protests concerning the petroleum industry, including the Northern Gateway Project" and the attachment to the letter refers to hydraulic fracturing protests in New Brunswick. What is the intended purpose of the references to the protests in New Brunswick?

26. A pre-hearing conference call was held in Ottawa on May 20, 2015. The parties agreed to the issues to be examined and that the document collection shall only include information after December 31, 2009. [22] The parties also agreed that an oral *in camera* hearing be conducted in Vancouver, which is where the Complainant is based. The Committee sent to both parties a copy of the transcript of the pre-hearing conference call, which had been reviewed for national security concerns pursuant to section 37 of the *CSIS Act*. [23]

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[19] Letter from the Complainant to the Committee dated April 9, 2015.
[20] Letter from CSIS to the Committee dated April 15, 2015.
[21] Letter from the Committee to the Complainant and to CSIS, dated May 15, 2015.
[22] Transcript of the pre-hearing conference call, Ottawa, May 20, 2015.
[23] Letter from the Committee to the Complainant and CSIS, dated June 25, 2015.

27. In response to my first question set out for the pre-hearing conference call, the parties confirmed the inclusion of the word "investigation" in the context of "collect, by investigation or otherwise." With respect to my second question, the parties confirmed that the term "groups or individuals" refer to the individuals or members of the groups that are specifically named in BCCLA's February 2014 complaint.

28. They answered my third question that the expression "non-government members of the petroleum industry" is limited to the private-sector industry, but agreed that the information sharing is broad enough to include any kind of information that is shared with either the private sector or the NEB about groups or individuals, or members of those groups, participating in the NEB proceedings or speaking out about the Northern Gateway Pipeline, and not simply the intelligence or security briefings. It was also agreed that Section 13 security assessments which empower the Service to conduct security assessments, would be excluded from the information sharing.

29. Regarding my last question, the parties agreed that references to the New Brunswick protests were background information only, and that the complaint is focused on the Northern Gateway Project protests, including those in the proceedings before the NEB. [24]

30. A case management conference call was held in Ottawa on July 24, 2015 in preparation for the *in camera* hearing.[25] On August 7, 2015, the Committee provided a copy of the transcript of that case management teleconference call, the transcript having been reviewed for national security concerns pursuant to section 37 of the *CSIS Act*. [26] The parties reiterated their agreement from the pre-hearing conference call on the four questions or issues forming this complaint,[27] as set out later in my report under the section entitled "Analysis".

[24] Transcript from the pre-hearing conference call, Ottawa, May 20, 2015, pages 9 – 22.
[25] Transcript of the case management conference call, Ottawa, July 24, 2015.
[26] Letter from the Committee to the Complainant and to CSIS, dated August 7, 2015.
[27] Transcript from the case management conference call, Ottawa, July 24, 2015, pages 8-9.

D. THE COMMITTEE'S INVESTIGATION

31. I conducted the Committee's investigation of the complaint and presided over an *in camera* hearing (private but in the presence of the Complainant) in Vancouver, British Columbia on August 12 and 13, 2015. [28] On September 30, 2015, the Committee provided a copy of the transcripts from the *in camera* hearing to the Complainant, which had been reviewed for national security concerns pursuant to section 37 of the *CSIS Act* and certain redactions had been made. [29]

32. At the outset of the *in camera* hearing on August 12, 2015, I heard opening statements from both parties. I also heard submissions in terms of a preliminary, procedural matter regarding the privacy of proceedings under section 48 (1) of the *CSIS Act*. As will be seen, I have addressed this matter in greater detail at the end of the analysis section of this report.

Testimonies from the Complainant during the in camera hearing:

33. I heard testimony from Mr. Josh Paterson, the first witness for the Complainant. Mr. Paterson is the Executive Director of the BCCLA and a lawyer employed with the BCCLA in Vancouver. He testified that the BCCLA is a non-partisan, non-profit charitable organization established in 1962, incorporated in 1963, whose mandate is to promote, defend and extend human rights and freedoms within Canada.[30] He testified that the BCCLA was one of the parties involved in the McDonald Inquiry and has participated in other commissions of inquiry, and that national security issues have been a key preoccupation for BCCLA during its existence.[31]

34. Mr. Paterson testified as to the impact of a news article from the *Vancouver Observer*, entitled "Harper government's extensive spying on anti-oil sands groups revealed in FOIs – Independent federal agency, National Energy Board, directly coordinated effort between CSIS, the RCMP and private oil companies". [32] Mr. Paterson testified that he had been in contact with the journalist after the story had been filed and the journalist had provided him with the documents that had formed the basis of his story. [33] Both parties agreed that there was no dispute that the Access to information documents provided by the Complainant are in fact access to information documents from the NEB and CSIS. [34]

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[28] Transcript of *in camera* hearing, August 12 – 13, 2015 at Vancouver British Columbia, volumes 1 & 2. (hereafter cited as Transcript, *in camera* hearing, Vol. 1 or 2).
[29] Letter from the Committee to the Complainant, dated September 30, 2015.
[30] Complainant's Book of Documents from the *in camera* hearing, August 12, 2015, Vancouver, British Columbia, Volume I, Tab 14.
[31] Transcript, *in camera* hearing, Vol. 1, p. 73.
[32] Complainant's Book of Documents, Volume I, Tab 9.
[33] Transcript, *in camera* hearing, Vol. 1, p. 74.
[34] Transcript, *in camera* hearing, Vol. 2, p. 108.

35. Mr. Paterson explained that he had contacted representatives of ForestEthics, Sierra Club, LeadNow and the Dogwood Initiative about this complaint, and that the staff members of those organizations were also concerned about the news story "that they personally and their organizations, and people associated with their organizations, may have been spied on."[35]

36. When asked by counsel for the Complainant whether he had any prior involvement with the NEB, Mr. Paterson explained that he was invited by the NEB to sit on the steering committee of their stakeholder advisory group through his previous job as a lawyer with West Coast Environmental Law, a non-profit organization in Vancouver. Mr. Paterson explained that he left his voluntary position with the NEB's Committee when he assumed his role with BCCLA. He also explained that he had testified in his own right, as a private individual, at the public hearing in relation to the Enbridge Northern Gateway Pipeline.[36] He testified that BCCLA takes no position concerning the Northern Gateway Pipeline Project, and the extent of its involvement in the NEB proceedings was a letter to the NEB stating that, according to the open courts principle, (they) questioned why those hearing ought to be closed off to the public."[37]

37. The witness testified that BCCLA's interest is as "a watchdog in relation to people's right to protest and to be engaged in public processes, both here in B.C. and across the country...our interest in this, then, is solely in relation to the fact that we were concerned, and remain concerned, about the possibility that security services of the Government of Canada were gathering information or participating somehow in the collection of information on the activities of people engaged in lawful, democratic and peaceful political activities."[38]

38. Mr. Paterson explained the inferences that he drew about communications between the NEB and CSIS from emails that were released from the NEB to the journalist, and then to Mr. Paterson. Specifically, an email from Mr. Rick Garber, Group Leader of Security at NEB dated January 31, 2013, regarding Prince Rupert security assessment. [39] Mr. Paterson testified that the BCCLA drew an inference from that email that the NEB had asked for, and received, information from both CSIS and the RCMP, and that he understood reference to "the security team, together with our police and intelligence partners, will continue to monitor all sources of information and intelligence" referred to the NEB working with CSIS. [40]

39. Mr. Paterson also testified that BCCLA drew an inference that the NEB had received information from CSIS as part of their threat assessment[41], based on a

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[35] Transcript, *in camera* hearing, Vol. 1, p. 76.
[36] Transcript, *in camera* hearing, Vol. 1, pp. 79- 80.
[37] Transcript, *in camera* hearing, Vol. 1, p. 82.
[38] Transcript, *in camera* hearing, Vol. 1, pp. 83 – 84.
[39] Complainant's Book of Documents, Vo. I, Tab 4, p. 37.
[40] Transcript, *in camera* hearing, Vol. 1, pp. 86-87.
[41] Transcript, *in camera* hearing, Vol. 1, p.88.

released document entitled "Enbridge Northern Gateway Project Security Plan, Prince Rupert".[42] In that same document, the witness explained his interpretation of the section under the heading "Security Information- Background", which refers to planned protests, and lists Idle No More, People's Summit and LeadNow and Dogwood Initiative.[43] The inference drawn from Mr. Paterson was that CSIS, at both National Headquarters and Regional offices, had provided the reference information to the NEB. When counsel for the Complainant questioned the witness as to whether he had direct knowledge about who provided this information about Dogwood Initiative, LeadNow and Idle No More to the NEB, he confirmed that he had no direct knowledge about who provided it.[44]

40. The witness provided BCCLA's position regarding a released document following a request for information by the Government Operations Centre entitled "Government of Canada Risk Forecast 2014 Protests & Demonstrations Season" dated May 1, 2014.[45] He commented: "We have publicly expressed concerns about the Government Operations Centre's work in this regard. While, of course, it is completely appropriate for Government to take note of protests – indeed, part of the purpose of most protests is to catch the attention of Government – it seems to us, from what we understand of the GOC, that its purpose is not to provide policy input to, say, Fisheries and Oceans Canada or other Ministries about what people are concerned about; rather, it is more gathering this kind of information in order to make these kinds of assessments of threat and provide that information to Government agencies.....Our concerns around what the GOC has been doing is that it at least tends to a suggestion that the government, or at least portions of the Government, are viewing protests in a spirit other than democratic engagement; that it is viewing protest, rather, as something to be concerned about, monitored and reported upon." [46]

41. Mr. Paterson's testimony was that, to the best of his knowledge, the organizations in question, such as Idle No More, LeadNow and Dogwood Initiative, have never been involved in violent activities.[47] For example, reference was made to the publicly-stated commitment from the Council of Canadians against violent activities.[48]

42. When cross-examined by counsel for CSIS, Mr. Paterson understood the NEB to fall under the Government of Canada and to be part of the Crown.[49] When cross-examined by CSIS counsel regarding the email from Rick Garber of the NEB

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[42] Complainant's Book of Documents, Vol. 1, Tab 4, p. 68.
[43] Complainant's Book of Documents, Vol. I, Tab 4, p. 80.
[44] Transcript, *in camera* hearing, Vol. 1, p. 92.
[45] Complainant's Book of Documents, Vol. I, Tab 5, pp.1-8.
[46] Transcript, *in camera* hearing, Vol. 1, pp. 98-99.
[47] Transcript, *in camera* hearing, Vol. 1, p.90.
[48] Transcript, *in camera* hearing, Vol. 1, p. 104 and reference to the Complainant's Book of Documents, Vol. II, Tab 50, p. 1.
[49] Transcript, *in camera* hearing, Vol. 1, p. 108.

Security team, the witness read aloud the statement "Based on the intelligence received, we have no indication of threats to the panel at this time".[50] Mr. Paterson confirmed his understanding from this sentence that CSIS actually did provide information to the NEB.[51]

43. Counsel for CSIS asked the witness to refer to the NEB document entitled "Enbridge Northern Gateway Project Security Plan" and the section which reads: "NEB Security and the RCMP have been in regular communications since an initial meeting on October 24, and have discussed the hearing, associated venues and threat intelligence". When asked whether there was any indication in this document to suggest that any of this information about the planned protests referred to was information that was actually provided by the Service, Mr. Paterson agreed that there was nothing that hadn't been redacted that states that the information had been provided by CSIS. [52]

44. The following day of the *in camera* hearing on August 13, 2015 in Vancouver, I heard testimony from five other witnesses for the Complainant, as well as from one witness for the Service.

45. Ms. Celine Trojand testified regarding her position since 2009 as Director of organizing for the Dogwood Initiative, which is based in Victoria. She explained that Dogwood Initiative is a non-partisan pro-democracy group, with 315, 000 supporters in their database, 2, 200 active volunteers and 28 staff.[53] She testified as to some of the activities that Dogwood encourages and promotes, and provides training and promotion for its supporters surrounding political organizing, and involvement in community events.[54] The witness explained Dogwood Initiative's Policy on civil disobedience[55] and confirmed that it would not include vandalism to property or violence of any kind.[56]

46. With respect to Dogwood Initiative's involvement regarding the Northern Gateway Pipeline, Ms. Trojand explained that "after the National Energy Board recommended approval and it was clear that the federal government was poised to approve the project, our group and other groups were considering the options around our work....Dogwood very strongly felt that our work should be about legitimate political organizing and pressure. So we launched the "Let B.C. Vote" campaign, which is utilizing our provincial legislation in B.C. to trigger and launch a

[50] Complainant's Book of Documents, Vol. I, Tab 4, p. 37
[51] Transcript, *in camera* hearing, Vol. 1, p. 109.
Complainant's Book of Documents, Vol. I, Tab 4, p. 77 and Transcript, Vol. 1, p.113
[53] Transcript of *in camera* hearing, August 13, 2015, Vancouver, British Columbia, Vol. 2, pp. 9- 10, and pp. 15-16.
[54] Transcript, *in camera* hearing, Vol. 2, p. 18
[55] Complainant's Supplementary Book of Documents Tab 5, and Complainant's Book of Documents, Vol. 1, Tab 24.
[56] Transcript, *in camera* hearing, Vol. 2, p. 23.

citizen's initiative that could lead to British Columbians having a province-wide democratic vote on whether or not these projects should go through."[57]

47. Ms. Trojand also testified about the workshops around the NEB hearing, which Dogwood Initiative had assisted in organizing, and the door to door campaign around "Knock the Vote". [58] Upon cross-examination by CSIS counsel, the witness agreed that there was no explicit mention of CSIS monitoring open source information in the NBEB document entitled "Enbridge Northern Gateway Project Integrated Security, Logistics and Communications Plan, Kelowna".[59] Rather, the document reads "The Kelowna RCMP as well as NEB Communications and Security continue to monitor open source information." [60]

48. I next heard from Ms. Dance-Bennink, who testified as to her role as a retired volunteer with Dogwood Initiative, and regional organizer for the South Island, responsible for two federal ridings, Victoria and Esquimalt Saanich Sooke. The witness works with approximately 100 volunteers.[61] The witness gave evidence as to how she became involved with Dogwood Initiative and its campaigns around oil pipelines and oil tankers, and her blogs regarding her pilgrimage to the tar sands in Alberta.[62]

49. Counsel for the Complainant asked the witness what, if any, impact the newspaper stories that were published suggesting that the RCMP and CSIS might be monitoring Dogwood activities related to the NEB hearing, had on the other volunteers that she works with. Ms. Dance-Bennick testified that Dogwood Initiative volunteers were finding it sometimes more difficult to encourage people to sign the petitions due to concerns that "their name may end up on a government security list." She also testified that "the same concern has sometimes been raised by donors, and sometimes in terms of potential volunteers being concerned about how Dogwood is viewed, and whether, if they become a volunteer means that they are viewed as a radical extremist. My answer, always is: We are the exact opposite of that. We are committed to peaceful, non-violent, following the democratic process, particularly electoral processes."[63]

50. When cross-examined by counsel for CSIS with respect to the concerns raised by some of the volunteers that "they may end up on "Canada's security list", Ms. Dance Bennick agreed that she was aware that the Service is precluded from investigating unless there is a "threat to the security of Canada", but that there is a strong suspicion, based on the Access to information material that came out, that in fact they (the Service) have been engaged in gathering intelligence on very

[57] Transcript, Vol. 2, pp. 27-28.
[58] Transcript, Vol. 2, p. 36 and Complainant's Supplementary Book of Documents, Tab 4.
[59] Transcript, Vol. 2, p. 53.
[60] Complainant's Book of Documents, Tab 4, p. 62.
[61] Transcript, Vol. 2, p. 62.
[62] Transcript, Vol. 2, p. 64, and Complainant's Book of Documents, Vol. II, Tab 27.
[63] Transcript, Vol. 2, pp. 78-79.

lawful, peaceful, democratic processes."[64] When asked by counsel for CSIS who was the sender of an email dated April 19, 2013 entitled "Security Concerns – National Energy Board"[65], the witness agreed that CSIS was mentioned in the email, but that the email itself came from the RCMP. [66] Counsel for CSIS referred the witness to emails which referred to the NEB consulting with CSIS[67], and asked the witness where it refers to "sharing of information…where does it say that CSIS has provided information?" The witness answered that she had assumed that information had been shared.[68]

51. The next witness for the Complainant was Mr. Jamie Biggar who testified regarding his employment as the Campaigns Director of LeadNow in Vancouver, and described it as a non-profit corporation registered in Canada, with a membership of 450,000 Canadians who subscribed to its email communications. He stated that "it has three major priorities, including working for a strong democracy, working for a fair economy and working for a clean environment. LeadNow organizes campaigns that help people speak to government, and particularly the federal government – around particular policy issues and changes that we would like to see, reflective of the community's values…" [69]

52. The witness gave detailed evidence of LeadNow's views on the news stories and articles. He stressed their particular concern with the open letter from the Honourable Joe Oliver, Minister of Natural Resources on "Canada's commitment to diversify our energy markets and the need to further streamline the regulatory process in order to advance Canada's national economic interest" dated January 9, 2012. That open letter provides, *inter alia*:

> *"Unfortunately, there are environmental and other radical groups that would seek to block this opportunity to diversify our trade. Their goal is to stop any major project no matter what the cost to Canadian families in lost jobs and economic growth. No forestry. No mining. No oil. No gas. No more hydro-electric dams. These groups threaten to hijack our regulatory system to achieve their radical ideological agenda. They seek to exploit any loophole they can find, stacking public hearing with bodies to ensure that delays kill good projects…"* [70]

53. Mr. Biggar commented that: "there was a perception amongst our staff team and amongst volunteers and folks in our community who we were speaking with that we were part of a community of people that was being targeted. There was a feeling of being targeted and kind of put on an "enemy list." [71] In relation to the news story on the Vancouver Observer website, Mr. Biggar added that "in terms of

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[64] Transcript, *in camera* hearing, Vol. 2, pp.85-86.
[65] Complainant's Book of Documents, Vol. I, Tab 4, p. 14.
[66] Transcript, *in camera* hearing, Vol. 2, pp. 88-89.
[67] Complainant's Book of Documents, Vol. I, Tab 4, p. 37
[68] Transcript, *in camera* hearing, Vol. 2, p. 92.
[69] Transcript, *in camera* hearing, Vol.2, pp. 115-117.
[70] Complainant's Supplementary Book of Documents, Tab 7.
[71] Transcript, *in camera* hearing, Vol. 2, p.133.

the revelation about this spying, part of the concern that it raised for us is the fact that we really have no way of knowing the breadth or depth or scope of the surveillance of our organization and so we have come to simply assume that any device that could be monitored or any way in which data could be recorded in relationship to our organization should be treated as thought it would be public to a spy agency or to government, or potentially to the oil industry." [72] He also states that the stories have scared LeadNow's membership and made them concerned that if they participate in normal peaceful democratic channels, particularly through us, they may end up on a list and that their information may be used improperly or in some way used against them.[73]

54. Ms. Caitlyn Vernon next testified before me, on behalf of the Complainant. She testified regarding her work in Victoria at the Sierra Club of British Columbia as the Campaigns Director. She explained that Sierra Club BC is a registered charity, founded in 1969, whose mandate is to protect, conserve and educate the public about B.C.'s wilderness, ecosystems, in light of the urgency of climate change. Sierra Club B.C. has approximately 15,000 people on its email list, 10 full time employees, and a 1 million dollar budget. She also explained that Sierra Club BC is a separate entity from both Sierra Club Canada and Sierra Club U.S.[74] In terms of the methods or techniques Sierra Club uses to promote its goals and objectives, she explained that its primary goal is to raise public awareness. It also produces science-based reports and maps.[75]

55. I then heard from Ms. Nikki Skuce, from Smithers, British Columbia, who testified regarding her work with ForestEthics, a non-profit organization where she had worked for almost six years as Senior Energy Campaigner. [76] She explained that the goal of ForestEthics has been to improve conservation, and the way that it operates is by looking at the markets, such as who was buying the forest and wood products. The organization also addressed climate and energy issues, but still kept its name as ForestEthics. [77]

56. Ms. Skuce testified as to the activities that ForestEthics engages in and the nature of its work in Canada. She explained that much of its work surrounding a campaign involves education and outreach. She provided examples such as "tabling at events; having postcards and information booths. In the case of Enbridge Northern Gateway, it was having, also, speakers' tours across the northwest talking about the issue. Often, we would come up with a few different strategies of how we think we can win a campaign. In the case of Enbridge, one of the first ones that we spent a lot of time on was trying to get a federally-legislated

[72] Transcript, *in camera* hearing, Vol. 2, p. 136.
[73] Transcript, *in camera* hearing, Vol. 2, p. 138.
[74] Transcript, *in camera* hearing, Vol. 2, pp. 144-148.
[75] Transcript, *in camera* hearing, Vol. 2, p. 152.
[76] Transcript, *in camera* hearing, Vol. 2, pp. 186-187.
[77] Transcript, *in camera* hearing, Vol. 2, pp. 190-195.

tanker ban." She also explained that ForestEthics was involved with one of its partners in the United States regarding the tar sands campaign.[78]

57. The witness also provided details regarding ForestEthics involvement in the NEB hearing as a formal legal party in the proceedings, represented by the law firm EcoJustice. She provided an overview of her own testimony before the NEB hearing concerning an Enbridge oil spill. [79] She also explained that, in addition to participating as an intervenor in the hearing, ForestEthics thought it important to have a public process and they "encouraged people to sign up for the community hearing where they could speak for ten minutes to the panel in various communities around British Columbia, as well as to encourage people to submit written comments."[80] Ms. Skuce also provided details regarding her blog entries that she, and/or others with ForestEthics prepared regarding the Enbridge Pipeline Project. [81]

58. When asked by counsel for BCCLA what was ForestEthics view regarding statements made in the open letter from the then Minister of Natural Resources Canada, the witness testified that they felt targeted and commented that "it was shocking to get this from a Canadian government official and our head of Ministry of Natural Resources. It came out the day before the joint review panel hearing began...it created a lot of anxiety and created quite a chill that passed through everyone."[82] She explained that as an organization and individually, there were concerns that they were being labelled and spied on.

59. Ms. Skuce also testified regarding her concerns, and those of her colleagues, regarding the news article from the Vancouver Observer on November 19, 2015, and the fact that the RCMP had known about a community meeting between the first nations and community members that had not even been advertised, which showed how much they felt that they were being watched and monitored. [83] She concluded her testimony indicating that ForestEthics has not been involved in any vandalism or violence, or other kinds of direct actions of that nature. [84]

60. The Complainant's final witness, Professor Reg Whitaker, was unable to be present at the *in camera* hearing. With the agreement of both parties, I accepted the testimony of Professor Whitaker by way of a written affidavit, which I received after the *in camera* hearing.[85] I note that the affidavit of Professor Whitaker, while of general interest to me by way of background, does not deal in any way with the specific allegations of the Complainant.

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[78] Transcript, *in camera* hearing, Vol. 2, p. 197-198.
[79] Transcript, *in camera* hearing, Vol. 2, p. 200.
[80] Transcript, *in camera* hearing, Vol. 2, p. 204.
[81] Transcript, *in camera* hearing, Vol. 2, p.213.
[82] Transcript, *in camera* hearing, Vol. 2, pp. 215-218.
[83] Transcript, *in camera* hearing, Vol. 2, pp.223-224.
[84] Transcript, *in camera* hearing, Vol. 2, pp.229.
[85] Affidavit of Professor Reg Whitaker, received by SIRC on September 18, 2015.

61. Professor Whitaker is a distinguished Research Professor Emeritus in the Department of Political Science at York University and an adjunct professor of Political Science at the University of Victoria. He completed his PhD in Political Economy at the University of Toronto in 1976 and has been a university professor since that time.

62. One of his primary areas of study has been the security and intelligence activities of the RCMP and CSIS and he has published numerous scholarly articles and books over the years. Professor Whitaker provided an overview of the RCMP/CSISS selection of targets for intelligence investigations in Canada, and suggested that for much of Canada's history, there had been no clear demarcation between legitimate and illegitimate targets for investigation. He argued that "beyond protecting the country from espionage, sabotage, terrorism, political violence and covert foreign interference – threats generally recognized as reasonable targets for intelligence investigations – RCMP and CSIS have also targeted groups and individuals said to be "subversive", a vague and elusive term that can take many forms in the minds of those hunting it...operating under a statutory mandate that imposes restraints on its reach and methods, CSIS has shed some, but not all, of the ideological baggage of the RCMP." [86]

Testimony from the Service during the in camera hearing:

63. The last witness I heard from during the *in camera* hearing was from CSIS' witness Robert, who provided his background with the Service and his role with the Vancouver local office. The witness testified that he joined the Service in 1986 and began his career as an intelligence officer, and worked as an analyst in Ottawa, and an investigator in regional offices. Since January 2015, he has been the Regional Director General for British Columbia and the Yukon for CSIS. He explained that his responsibilities include the overall management of the B.C. regional office, including human resources, finances, administration and the conduct of investigations pursuant to the *CSIS Act*. [87]

64. Robert provided an overview of CSIS' mandate to collect information under section 12 of the *CSIS Act* in terms of its obligation to investigate threats to the security of Canada. He explained that "section 2 a) comprises "espionage or sabotage"; 2 (b) "foreign influenced activities"; 2 (c) would be terrorism or any activity that is done with "serious violence...for the purpose of achieving a political, religious or ideological objective"; and 2 (d) would broadly be defined as "subversion activities or threats."[88] When asked what "subversion" meant, the witness referred to the legislation, citing: "activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by

[86] Affidavit of Professor Reg Whitaker, received by SIRC on September 18, 2015, p.2.
[87] Transcript, *in camera* hearing, Vol. 2, p. 238.
[88] Transcript, *in camera* hearing, Vol. 2, pp. 240-241.

violence of the constitutionally established system of government in Canada. The witness indicated that, to his knowledge, the Service had not conducted a subversion investigation for the last 20 – 25 years. [89]

65. When asked by counsel for CSIS whether "threats to the security of Canada" could include lawful advocacy, protest or dissent, Robert responded that it could, but that because of the statutory prohibition, the Service did not investigate lawful advocacy, protest or dissent unless it was done in conjunction with 2 (a), (b), (c), or (d) of the *CSIS Act*.

66. Robert then explained how the Service's priorities are established every year, commencing with an articulation from the Minister of Public Safety as to what are the security priorities of the federal government. He stated: "this letter is sent from the Minister to the Director of the Service and these priorities are then further articulated into intelligence requirements by a branch in our headquarters in Ottawa, the Intelligence Assessment Branch. These intelligence requirements are then sent out to the regional offices, which are the collectors of intelligence and information is then collected and sent back to headquarters, with analysis then done at headquarters, followed by dissemination to our domestic and foreign partners." [90] He also explained that in addition to Ministerial directives, the Service has other tools to guide it regarding the conduct of its operations and activities.

67. He referred to CSIS' Operating Principles, "which include the respect for the rule of law; the principle of using lesser investigative techniques before making use of more intrusive techniques; dozens of policies which guide virtually every aspect of Service life, especially when it comes to investigative activities; procedures. Every few months, as an adjustment on current policies, will be Directional Statements that come out from Headquarters to the regional offices to bare left or right of a certain activity; plus ongoing training and just the management's approach to guide and contextualize the conduct of investigations."[91]

68. Robert also testified as to how CSIS' policies, procedures, directional statements provide guidelines on how to deal with a situation that may have a "lawful, advocacy, protest or dissent" component. He added that this is also dealt with through training, "in that it is a statutory prohibition to get involved in that type of activity. It is very much front and foremost in how we conduct our investigations. There is great sensitivity around that."[92]

69. He explained the distribution of resources within the Service in terms of the different type of investigations, with the emphasis being on counter-terrorism and the focus on foreign fighters. The remaining third or quarter of the Service's efforts

[89] Transcript, *in camera* hearing, Vol. 2, pp. 241.
[90] Transcript, *in camera* hearing, Vol. 2, p. 242.
[91] Transcript, *in camera* hearing, Vol. 2, pp. 244
[92] Transcript, *in camera* hearing, Vol. 2, p. 245.

are focused on counter-intelligence activities, relating to the intentions or activities of foreign government activities within Canada. [93]

70. Robert provided an overview of how the Service obtains categories of information in the context of the Service's requirement to use lesser invasive investigation techniques before using more invasive ones. He explained that the Service would first seek open information from domestic partners, voluntary interviews and other techniques or surveillance. He added that "what sets the Service apart from other law enforcement agencies is our focus on the development/recruitment of human sources. But it would be a composite generic-type picture, to get as rich as possible an assessment on a current threat. Once these techniques are used, and if it is deemed necessary and appropriate, consideration would then be given, in exceptional circumstances, to apply through the Federal Court for a warrant." [94]

71. Counsel for CSIS asked Robert for his opinion regarding the concerns raised by witnesses for the Complainant that there is a feeling that emails may be being intercepted or read by the Service, or that their communications may somehow be listened to by the Service. Robert responded with an explanation of the "arduous process that is involved in applying for section 21 powers, requiring weeks and months of preparation, Department of Justice consultation, independent counsel from Justice looking at Service affidavits; management chain right up to our Director, who would have to approve the application; and then seeking the approval of the Minister of Public Safety; and then needing to convince a Federal Court judge that the powers sought are justified." [95]

72. With respect to surveillance by the Service, Robert explained that before such a technique could be deployed, there would have to be a targeting authority approved by the Regional Director General. Once a targeting approval is in place, a separate approval would be required from the Regional Director General, to move ahead with the surveillance. He also explained that it is an invasive and costly technique. Robert was of the view that the concerns raised by members of the public that participation in lawful advocacy, dissent or protest may have an impact on job opportunities, on security clearance applications, on mobility rights, or on any fundamental rights that individuals have here in Canada are without foundation.[96]

73. Aside from section 12 of the *CSIS Act*, regarding the Service's mandate to report and advise the Government of Canada, Robert also made reference to the various sections that enable the Service to share information beyond the Government of Canada, including sections 19 and section 17. He acknowledged that in order to meet its mandate, the Service is often times required to share information with

[93] Transcript, *in camera* hearing, Vol. 2, p. 243.
[94] Transcript, *in camera* hearing, Vol. 2, p.p. 245-246.
[95] Transcript, *in camera* hearing, Vol. 2, pp. 246-247.
[96] Transcript, *in camera* hearing, Vol. 2, p. 248.

other entities.[97] The Service also has an interest in sharing information with members of the public or private-sector entities. He mentioned that "we have shared with various domestic entities, again when it fulfills our section 12 statutory need. Above and beyond that, one of the federal government's security priorities is to protect critical infrastructure, and as part of that broad-based mandate, the Service has a niche role if there is a threat-related information that impacts critical infrastructure".[98]

74. The witness spoke of the Service's public outreach initiatives, including speaking to various communities, security representatives of banking institutions, critical infrastructure and various associations. He also explained the bi-annual meetings with Natural Resources Canada (NRCan), which "given its convenient venue, were hosted at CSIS Headquarters and attended by a variety of federal, provincial, municipal, private sector associations, critical infrastructure, to discuss threat-related activities of mutual interest."[99]

75. Upon cross-examination by counsel for BCCLA, Robert agreed that the wording in section 2 b) of the *CSIS Act* of "foreign influenced activities", is not restricted to foreign states, and that the Service could conceivably look at foreign corporations.[100]

76. When asked whether the "interests of Canada" outlined in Ministerial Directives could include environmental objectives, Robert responded that he did not recall ever having seen such a reference in any Ministerial Directive.[101]

77. Counsel for the Complainant questioned Robert as to whether he was familiar with the new definition of "threats to the security of Canada" found in the new Security of Canada Information Sharing Act, which counsel suggested was "broader than what we see in section 2 here of the *CSIS Act* and it includes threats to the economic interests of Canada." The witness answered that he was not sufficiently familiar with that definition to provide a useful comment on that.[102]

78. When asked by counsel for the Complainant for his interpretation of the open letter from the Honourable Joe Oliver dated January 9, 2012, with respect to the words, "radical group", Robert answered that it would "depend on the group being referred to, for instance a foreign threat, a C.T. threat.".[103] In terms of the sentence that "they use funding from foreign special interest groups to undermine Canada's national economic interest", counsel for BCCLA queried whether that could not fall under the definition of "foreign influenced activities detrimental to Canada's

[97] Transcript, *in camera* hearing, Vol. 2, p. 251.
[98] Transcript, *in camera* hearing, Vol. 2, p. 252.
[99] Transcript, *in camera* hearing, Vol. 2, p. 254.
[100] Transcript, *in camera* hearing, Vol. 2, p. 256.
[101] Transcript, *in camera* hearing, Vol. 2. p. 257.
[102] Transcript, *in camera* hearing, Vol. 2. p. 259.
[103] Transcript, *in camera* hearing, Vol. 2. p. 266

interests?" Robert responded that it could, conceivably, but that it "would be a stretch" and reiterated the fact that most of the Service's resources are focused on counter-terrorism. He stated: "Just in terms of priority, this falls way beyond the pale, below the pale. In terms of actually triggering our mandate, a real stretch for the Service to have any interest. [104]

79. Robert was also questioned about how the Service interprets section 12 in terms of the collection of information, and specifically how it does this, if not by investigation. For instance, in some circumstances, the Service may be "receiving" and not "investigating. Robert responded that "it's one thing to accept. It's totally another issue to actually report and put into a system. ...nothing should be reported that is not germane to the mandate. [105]

80. Robert also answered questions regarding the Service's warrants under section 21 and indicated that information that is publicly available does not require a warrant, but that the interception of an email would require a warrant. [106] The witness also agreed that he was connecting the "report and advise" duty and function under section 12 with the authorization to disclose information under subsection 19 (2). He agreed with counsel for BCCLA's statement that: "for example the National Energy Board would be authorized by subsection 19 (2) if you were looking into a threat assessment. You could report and advise the National Energy Board." He also agreed that "with the report and advise function- or duty under section 12, you don't even have to get into this a), b) c) or d) under subsection 19 (2); just reporting and advising on what you collected in section 12 is sufficient to trigger the authorization."[107]

81. With respect to the questions regarding section 17 of the Act regarding cooperation agreements under subsection 2 (a), he explained that "whether it's formalized or not in terms of an instrument, each agreement has to be approved by the Minister", and "sometimes it is not formalized into a written instrument."[108] Robert was also questioned on the agreements that the Service has with other government departments, for example the one with the RCMP. He also stated that he was not aware of whether CSIS had an agreement with the NEB.[109]

82. Counsel for BCCLA questioned Robert regarding the agreement with the RCMP in the context of the RCMP doing an investigation and sharing the results with CSIS, and whether that would be considered collection, Robert referred to the Service's procedures and policies and explained that: "it would be one thing, again to accept; but we would need a managerially approved targeting authority in which to put information. If there is no place to park it, if a regional director hasn't signed off

[104] Transcript, *in camera* hearing, Vol. 2, p. 268.
[105] Transcript, *in camera* hearing, Vol. 2, pp. 273-274.
[106] Transcript, *in camera* hearing, Vol. 2, pp. 283-284.
[107] Transcript, *in camera* hearing, Vol. 2, pp.276-277.
[108] Transcript, *in camera* hearing, Vol. 2, p. 279.
[109] Transcript, *in camera* hearing, Vol. 2, pp. 280-281.

on any particular investigation, that information would not be retained. There are exceptions to that....if there is a certain relevance to national security, writ large, it may be reported without going under any specific targeting authority. But it will sit there before we are authorized to further pursue an investigative level or direction on an individual, it would just sit there."[110]

83. When asked about whether he had knowledge of the groups named in the complaint, Robert commented that the Service's position for the last thirty years or so, in litigation and SIRC hearing, has been not to confirm or deny the existence of an investigation." [111] However, Robert commented that he is a proponent of "dialoguing with representatives of various groups and community groups".[112]

84. Robert responded that the only thing he knew about the consultation between the NEB with CSIS was what he had read in the NEB documents. He stated: "I have only read the redacted exchanges on that point, so I am not sure what the context was, what triggered the request for the consultation. But surely if the Service had information that there was a foreign influenced activity, done covertly, that would have some impact on the National Energy Board, or "serious threat against the proceedings, against the members, or against those attending, we would reach out to the RCMP, or alternatively to the National Energy Board, saying: we have intelligence to indicate that there is a threat against your premises." [113]

85. When asked by counsel for the Complainant about his interpretation of the term "risk", Robert categorized it in the "context of a risk of serious violence under 2 c). So presumably – I am speculating here – if the Service had information about an individual or others who might be participating in an otherwise democratic lawful protest, there might be a potential or a risk for violence, as has been known to happen in Canada and in many other countries. We have no interest in the group or the protest, or the objective. It's one or two, three individuals who might use that as a venue, as a pretext, for violence, for serious violence.....But if there is some linkage between that protest and our mandate -if their purpose in going to that group, that protest, is to wreak havoc, then, yes, it hits our mandate." He also added that he thinks the vast majority of protests in Canada are peaceable.[114]

86. When asked if he appreciated the concerns of the people who are involved in protests and demonstrations that they might be watched by either the RCMP or CSIS, notwithstanding the fact that they are engaging in completely peaceful activities, Robert responded that he is "keenly empathetic to that. As I mentioned before, in trying to dissuade, dispel stereotypes or misguided views, erroneous views, we engage in Outreach. We talk to a whole variety of groups and individuals. At the end of the day, I can only control what I can control. The best I

[110] Transcript, *in camera* hearing, Vol. 2, pp. 286-287.
[111] Transcript, *in camera* hearing, Vol. 2, p. 291.
[112] Transcript, *in camera* hearing, Vol. 2, p. 293
[113] Transcript, *in camera* hearing, Vol. 2, p. 302.
[114] Transcript, *in camera* hearing, Vol. 2, pp. 309-310.

can do is just to testify to the fact that how we investigate is tightly controlled and that we are statutorily precluded from looking at LAPD." [115]

87. When asked by counsel for the Complainant regarding the agenda for the classified NRCan briefing meeting that it "sounds like CSIS might possibly be sharing information about environmental groups with these oil companies that are sponsoring and attending it," Robert testified that he did not see the connection.[116]

Testimony from the Service during the ex parte hearing:

88. At the request of the Service, I also presided over ex parte hearing (private and in the absence of the Complainant) that were held in Ottawa, Ontario on January 28,[117] and March 22, 2016.[118]

89. During these ex parte hearing, I heard testimony from four CSIS Witnesses. A summary of this evidence was prepared pursuant to sections 37 and 48 of the *CSIS Act* and provided to the Complainant. The summary had been vetted for national security concerns to ensure compliance with sections 37 and 55 of the *CSIS Act*.[119]

90. In support of their testimony in the ex parte hearing, the CSIS witnesses relied on several books of documents. CSIS Book of Documents (*ex parte* hearing), Volumes 1 A, 1B, and 1C, contain all of the BRS Reporting [redacted] for the period of December 31, 2009 through to July 20, 2015. The Service indicated that it had provided these documents for the Committee's ease of reference in the conduct of its investigation, but that it did not rely on them for the purpose of the hearing. [120] CSIS Book of documents (*ex parte* hearing), Volume 2 contains Ministerial Direction on intelligence priorities, directional statements [redacted] targeting information [redacted] operational reporting [redacted] as well as CSIS policy information.[121] CSIS Book of Documents (*ex parte* hearing), Volume 3 contains documentation in relation to exchanges with the National Energy Board and the private sector; information from the Intelligence Assessments Branch, including a sampling of products, briefings and information relating to the NRCan classified briefings mentioned in the complaint letter. [122] CSIS Book of Documents (*ex parte* hearing), Volume 4 contains [redacted] information, [redacted]

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[115] Transcript, *in camera* hearing, Vol. 2, p. 313.
[116] Transcript, *in camera* hearing, Vol. 2, p. 323.
[117] Transcript of *ex parte/ in camera* hearing, January 28, 2016 at Ottawa, Ontario.
[118] Transcript of *ex parte/ in camera* hearing March 22, 2016.
[119] Summary of evidence presented at the *in camera/ ex parte* hearing on January 28, and March 22, 2016, provided to the Complainant by the Committee, July 21, 2016.
[120] CSIS Book of Documents, (*ex parte* hearing), volumes 1 A, 1 B, and 1 C.
[121] CSIS Book of Documents, (*ex parte* hearing), volume 2.
[122] CSIS Book of Documents (*ex parte* hearing), volume 3.

[redacted] and is stored at the CSIS premises.[123] Lastly, CSIS Book of Documents (*ex parte* hearing), Volume 5 contains information regarding the domestic threat environment in Canada, and additional notes from the Intelligence Assessments Branch.[124]

91. CSIS Witness 1, [redacted] provided testimony concerning her work experience with the Service from 2001, and her role as Chief of the unit responsible for the Service's domestic extremism investigation between November 2013 and January 2015. She testified regarding the Service's collection priorities and the Ministerial Directions provided to the Director of CSIS from the Minister of Public Safety.[125]

92. [redacted] explained that once the Service gets the Ministerial Directives setting out the priorities, they are applied to their operations through intelligence requirements that are set out by the Intelligence Assessments Branch. This sets the basis for what the Service collects based on those intelligence requirements ("IRD"). She explained that information is only collected if it falls into one of the IRDs. The priorities of the government of Canada are tiered into three main categories, with tier 1 being fully resourced, and tier 3 allowing for the collection of information only if resources permitted. She further explained that there is a fourth category, known as a "watch brief" which means that the Service is monitoring the situation and if there is an actionable piece of intelligence, then it will deploy resources.[126] In terms of the term "actionable piece of intelligence", [redacted] provided an example of intelligence requirements in relation to [redacted] in the context of possible violence in connection with the Vancouver Olympics.[127]

93. She oversees the three Heads of the desks below her, and some of her responsibilities include approving messages to be put into the Service's systems and databases, as well as managing human sources in general terms. She also explained that Headquarters Branch is responsible for sending out "Directional Statements" to the regions so that they are able to prioritize and put their resources towards what is important and what is deemed a higher priority for the Service.[128]

94. [redacted] explained the nature of targeting authorities and how they are obtained by CSIS to investigate any threat to the security of Canada. She also identified particular targeting files which her unit was investigating during the time period

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[123] CSIS Book of Documents (*ex parte* hearing), volume 4.
[124] CSIS Book of Documents (*ex parte* hearing), vol. 5.
[125] Summary of evidence presented at the *in camera/ ex parte* hearing on January 28, and March 22, 2016, pp. 2-3
[126] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, p. 26.
[127] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, p. 28.
[128] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, at pp. 22-29.

related to this complaint. She described CSIS' practices in relation to investigating threats to the security of Canada by groups involved in domestic extremism.

95. She testified in respect of the certificates pursuant to which domestic threats were being investigated as well as having reviewed the list of targets under the domestic threat certificates that have been the subject of an investigation within her unit since December 31, 2009. She provided information on the individuals, groups, organizations or events that were, and are, targeted under these certificates, and in particular the

96. She explained that, with a certificate, the Service must make the case that this issue is actually a threat to the security of Canada, and once that is established, there is a validity date that has to be renewed approximately every 2 years. When the Service targets an individual, that person falls under one of the certificates. She explained that She also explained that each individual would have his or her own targeting authority.[130] The targeting authorities against individuals, and the renewals of those authorities, were also provided in the ex parte evidence.[131] For example, a certificate is renewed

97. testified that have proven that the intent of the Service's "Domestic Extremism" file is

98. In the context of the Northern Gateway Pipeline Development project, testified that She clarified that when the Service refers

[129] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, at pp. 47-55.
[130] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, at pp. 38-39.
[131] CSIS Book of Documents, *ex parte* hearing, Vol. 2, at Tab 4.
[132] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, at p. 35.
[133] CSIS Book of Documents, *ex parte* hearing, Vol.2, Tab 2, at p. 112.
[134] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, p.44

to extremism, it is specifically interested in issues that go from peaceful demonstrations to acts of serious violence.[135]

99. She testified that when conducting investigations, CSIS officers are governed by the *CSIS Act* and CSIS policies stipulate that they do not look at legitimate protest and dissent, unless it is associated with serious acts of violence. She provided testimony about the tasking provided to the regions related to politically-motivated violence and/or sabotage.[136] The *ex parte* evidence showed that the Directional Statement from Headquarters [redacted] However, Headquarters reminded the regions that the focus is not on legitimate protest or dissent but rather on serious violence [redacted]

100. [redacted] explained the targeting levels and warrants for certain targets within the Service. She testified that [redacted] were never the target of a Service investigation. However, she explained that there were some instances [redacted] opposition to the Northern Gateway Pipeline project.

101. CSIS Witness 2, [redacted] testified regarding his work experience with the Service as an analyst with the Intelligence Assessments Branch (IAB) and his specialization in domestic extremism. He outlined the main responsibilities of the IAB, which is to provide timely and relevant intelligence which meets the Government of Canada' s stated requirements and priorities. He provided an overview of the Intelligence Assessment Branch's responsibilities, which includes actively engaging with the Government of Canada to identify its intelligence needs and deliver briefings, assessments and reports, providing background information on operational and managerial programs and preparing Threat and Risk Assessments, and providing outreach and education to the federal government.

102. [redacted] testified that he had prepared several intelligence products and briefings on the issue of domestic extremism, and more specifically [redacted] He provided a sample of briefings that he has delivered to various stakeholders (private and public sector) on the issues of domestic [redacted] extremism. He testified that, during the timeframe related to the complaint, CSIS

[135] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, p. 56.
[136] Summary of evidence presented at the *in camera / ex parte* hearing on January 28, and March 22, 2016, pp. 2-3.
[137] CSIS Book of Documents, ex parte hearing, Vol.2, Tab 2 at pp. 68- 74.

was mainly focused on issues related to the Winter Olympics and the G-8/G-20 meetings and any potential threats from domestic extremist for either event.[138]

103. The witness also provided an overview of the Service's work conducted in the area of domain awareness. Domain awareness is done in part to ascertain potential triggers and flashpoints, and in part to ensure that the Service is aware of what is happening should a threat arise. Reference is made to SIRC's study entitled "CSIS Activities Related to Domestic Investigations and Emerging Threats".

104. [redacted] testified regarding the biannual classified briefings held by the NRCan and the fact that this forum is used by the Service to share classified information with energy sector stakeholders, such as the NEB. He provided the Committee with concrete examples of serious acts of ideologically-motivated violence which were discussed at some of the NRCan briefings that related to energy and utilities sector stakeholders. He spoke of specific intelligence assessments that were given to the NEB by the IAB of the Service involving domestic extremism issues.

105. The witness described how the Service engages in outreach with energy stakeholders and also identified means, other than the classified briefings, through which the Service communicates severe emerging domestic threats to certain industries. He described the policies and requirements for any meeting between the Service and any outside organization, emphasizing the importance of fostering collaboration between CSIS and any organization to prevent terrorism, whether it be within the government of Canada, with law enforcement partners or private industries. On the issue of the delivery of briefings to the private sector, he referred me to a review conducted by the Committee in 2011 entitled Review of CSIS' Private Sector Relationships. He testified that the Service does not attend nor interfere with any events that involve legal and legitimate protest and/or dissent as it falls outside of its mandate.[139]

106. CSIS Witness 3, [redacted] provided testimony regarding his education and background. He has a degree in [redacted] a J.D. degree [redacted] and a Masters in [redacted] as well as a Certificate in [redacted] following which, he joined the federal public service. He also testified regarding his work experience with the Service as an analyst within the IAB and his specialization in the energy sector.[140]

107. He explained that his primary responsibility was to provide intelligence assessments related to threats to Canada's energy and mineral activities. He

[138] Summary of evidence presented at the *in camera / ex parte* hearing on January 28, and March 22, 2016, pp. 2-3, pp. 3-4.
[139] Summary of evidence presented at the *in camera/ ex parte* hearing on January 28, and March 22, 2016, pp. 4-5.
[140] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, at p. 287

highlighted that the interests of his portfolio were restricted to threats to energy and primarily to critical energy infrastructure mostly from domestic extremism, terrorism, or possibly from foreign states. He testified that a secondary responsibility of his branch was to provide assessments relating to economic threats or threats to Canada's economic interests related to energy in the field of proprietary information. [141] He commented that the threats to Canada's economic interests could arise from a variety of sources. "In the primary case, in the first case of infrastructure, primarily from domestic extremism, terrorism, or possibly foreign States. In the case of Canada's economic interests, largely from foreign States and espionage, and threats of that nature." [142]

108. [redacted] testified that he had been a coordinator for the NRCan biannual classified briefings since 2010 and described the origin and purpose of these briefings as well as the Service's role. [143] He explained that the lead agency for these classified briefings is NRCan, and that CSIS cooperates with NRCan and with the RCMP in this regard: "(t)he subject matter of what is discussed is in the hands of NRCan, as is the list of invitees, who attends on the basis of their need to know and on having the requisite security clearance."[144]

109. He provided details of his own role in terms of the arrangements for such meetings, including ensuring that the briefing room they have, which is a secure facility, is available to NRCan as a convenience, so that they can bring in members of the private sector, largely individuals responsible for security at their respective companies, and other participants, occasionally from the Government. During the actual briefings, the Service will occasionally provide speakers. While he does not speak at these briefings, the witness explained that he prepares speaking notes for his Director General. For example, he had written notes regarding domestic extremism threats, based on open source material regarding events that had actually happened and had been reported in the newspapers.[145]

110. He testified that while he is responsible for writing a memo to management regarding the briefings, there is no formal Memorandum of Understanding. The witness testified that he has not seen any information collected at these briefings by the Service, and that, should members of the private sector wish to provide information to the Service, he explains to them that the proper channel is to notify the regional office. In terms of participants at the NRCan meetings, the witness provided some examples from the private sector including the [redacted]

[141] Summary of evidence presented at the *in camera/ ex parte* hearing on January 28, and March 22, 2016, pp. 5-6

[142] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, at p. 289.

[143] Summary of evidence presented at the *in camera/ ex parte* hearing on January 28, and March 22, 2016, pp. 5-6

[144] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, at p. 291.

[145] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, at p. 291 and pp. 293-296.

[redacted]

111. The witness also gave examples of some briefings or liaisons with government or private sectors in which CSIS participates other than the NRCan briefings. He explained that the Service contributes to the Government of Canada's strategy, through Public Safety on the "National strategy and action plan on the protection of critical infrastructure". The term "infrastructure" is not just the energy infrastructure, but includes the infrastructure of the financial, transportation, water, agriculture and health sectors."[147]

112. [redacted] also testified of his participation in other briefings or liaison with the government or private sector. He provided the example of "other than the classified briefings, there is an unclassified briefing for what is called the International Pipeline Security Forum, which alternates between Canada and the United States, but explained that "as threats to that sector [redacted]

113. [redacted] also spoke about the context and content of the April 19, 2013 email from Mr. Tim O'Neil referred to in the complaint's exhibit book, which mentions security concerns regarding the Northern Gateway Project. He explained that [redacted] the email from Tim O'Neil, [redacted] by way of information only, as there was no action required on the part of the Service. The email discusses the possible threats to National Energy Board hearing and concludes that there is nothing specific that he is aware of. [redacted] testified that [redacted]

114. CSIS Witness 4, [redacted] testified, following the Committee's request to hear testimony from an investigator in the British Columbia region during the years relevant to this complaint. He provided testimony regarding his work experience with the Service from 1995 onwards, including his various positions in the British Columbia Region from 1998 to the present. He also described his roles and responsibilities as the supervisor for the unit responsible for the Service's domestic extremism investigation in Vancouver from 2010-2013. [150]

115. [redacted] testified that he was responsible for overseeing the investigations that fell under his remit. This included providing input as to an intelligence officer's plan to debrief a source; approving the interview and its objectives; approving

[146] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, at p. 291.
[147] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, p. 298.
[148] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, p. 304.
[149] Transcript of *in camera/ ex parte* hearing held on Thursday, January 28, 2016 at Ottawa, p. 309.
[150] Summary of evidence presented at the *in camera/ ex parte* hearing on January 28, and March 22, 2016, p. 6

operational reports, and initiating the dialogue with his Chief to put into place warrant powers against a target, if it were necessary. [151]

116. He discussed the mandatory process and requirements for an intelligence officer to make a request to conduct a community interview related to the Service's domestic extremism investigations. He explained that he was the head of the [redacted] He also provided details regarding [redacted] by Headquarters as a sensitive investigation because it might have some kind of impact on the civil liberties of individuals. He explained that they were extremely careful when they actually made the decision to go out and conduct an interview. He testified that [redacted]

117. [redacted] testified that the Service is "not in the business of investigating environmentalists because they are advocating for an environmental cause, period."[153] For example, he explained that [redacted] because that is not what we are about. We are only interested in our targets."[154]

118. The witness said that he had not heard of most of the groups prior to this complaint. The witness testified that it was not surprising that there were protests related to the Northern Gateway Pipeline Project but underscored that Service employees are mandated and limited by the *CSIS Act* which does not permit CSIS to investigate groups or individuals for their activities related to lawful advocacy, protest or dissent, unless it is tied directly to a threat. [155]

119. When asked what the term [redacted] brings to his mind at the time of the protests related to the Northern Gateway Pipeline Project, [redacted] explained that his consideration went to [redacted] He also explained that the Service had no remit vis-à-vis the protests

[151] Transcript of *in camera/ ex parte* hearing held on Tuesday, March 22, 2016 at Ottawa, at p. 13
[152] Transcript of *in camera/ ex parte* hearing held on Tuesday, March 22, 2016 at Ottawa, at pp. 15-18.
[153] Transcript of *in camera/ ex parte* hearing held on Tuesday, March 22, 2016 at Ottawa, at p. 19.
[154] Transcript of *in camera/ ex parte* hearing held on Tuesday, March 22, 2016 at Ottawa, at p. 23.
[155] Summary of evidence presented at the *in camera/ ex parte* hearing on January 28, and March 22, 2016, p. 6.
[156] Transcript of *in camera/ ex parte* hearing held on Tuesday, March 22, 2016 at Ottawa, at p. 25.

against the building of the Northern Gateway Pipeline [redacted]

120. [redacted] also testified that [redacted] He clarified that the "Service [redacted] through the course of our investigations, incidentally, some reporting on [redacted] might come up [redacted]

121. He further testified that the information flow between CSIS and private or other public stakeholders was generally a one-way process in which CSIS received the information. He did not recall having seen the article written by the Honourable Joe Oliver prior to the hearing.[159]

Final submissions:

122. With the completion of the *ex parte* hearing, the parties were subsequently invited to provide their final submissions in writing to the Committee.

123. The Committee received the Complainant's final submissions on September 19, 2016, in which BCCLA submits:

> *"that the evidence demonstrates that CSIS was collecting information about these groups, at least passively, and perhaps actively, and in the absence of evidence that these groups constituted a threat to the security of Canada, this collection was not authorized by section 12 of the CSIS Act. The Complainant also argues that CSIS' collection activities, combined with intemperate language by a federal Cabinet minister criticizing environmental groups opposed to the pipeline policy as pushing a "radical ideological agenda" created a real chilling effect for groups and individuals that wished to organize and collectively express their opinions on the proposed pipeline. The sharing of this information in confidential briefings with private sector actors in the petroleum industry served to heighten the perception that CSIS was exercising its powers in support of the political or economic status quo."*[160]

124. The Committee received the Service's final reply submissions on October 17, 2016, in which it submits that the evidence has shown that CSIS' actions were lawful and in accordance with its mandate pursuant to the *CSIS Act*, stating that:

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[157] Transcript of *in camera/ ex parte* hearing held on Tuesday, March 22, 2016 at Ottawa, at p. 48.
[158] Transcript of *in camera/ ex parte* hearing held on Tuesday, March 22, 2016 at Ottawa, at p. 30
[159] Summary of evidence presented at the *in camera/ ex parte* hearing on January 28, and March 22, 2016, p. 6.
[160] Complainant's Final Submissions, dated September 19, 2016, p. 72.

"any collection and dissemination of information by CSIS was done lawfully in conformity with its mandate. Furthermore, the Complainant has failed to establish that CSIS has done the acts or things alleged in its complaint. Requests for information or advice from the NEB to CSIS do not demonstrate that CSIS collected information about the groups seeking to participate in the NEB hearing. The Complainant has also failed to establish a causal connection between the acts or things done or allegedly done by the Service and the "chilling effect" on freedom of expression and association." [161]

125. The Committee received the Complainant's rebuttal submissions on November 3, 2016.[162] Following receipt of the Complainant's rebuttal submissions, the Committee inquired on November 24, 2016, whether the Service had any national security concerns with the Complainant's request that BCCLA may publicly disclose the transcripts from the *in camera* hearing.

126. On December 1, 2016, the Committee received the Service's written submissions in regards to the Complainant's request.

127. On December 23, 2016, the Committee provided the Complainant with a copy of the Service's submissions and the Complainant was given an opportunity to reply.

128. On January 16, 2017, the Committee received the Complainant's comments, in response to the Service's letter of December 1, 2016. The Complainant reiterated its request that "the Committee confirm, prior to the issuance of its final report and at its earliest convenience on an interim basis, that witnesses who appeared before the Committee on August 12-13, 2015 may speak publicly about the evidence and testimony they provided during the *in camera* portion of the hearing and that BCCLA may publicly disclose those transcripts and its submissions in this matter, without limitation due to security concerns under section 48 of the Act."[163]

129. I have decided that it would be in the best interests of justice for me to address this matter in the context of my final report.

130. In preparing this final report, in addition to reading the submissions of the parties, I have considered the evidence given by witnesses, the documentation submitted by the parties and the Committee's counsel for the *in camera* and the ex parte hearing, as well as other relevant material made available to me in the course of my investigation of this complaint.

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[161] Respondent's Final Submissions, dated October 17, 2016, p. 2.
[162] Complainant's Rebuttal Submissions, paragraph 17, dated November 3, 2016.
[163] Letter from the Complainant to the Committee, dated January 16, 2017.

E. ANALYSIS

131. This complaint is filed by the Complainant under section 41 of the *CSIS Act*, concerning the conduct of CSIS.

132. The Complainant's complaint is set out in its letter of February 6, 2014, and was summarized by counsel for the Complainant at the in camera hearing as follows: "Firstly, that the BCCLA believes that the Service was gathering information – or, in accordance with the language of section 12 of the Statute, "collecting" information about Canadian citizens and groups engaging in peaceful and lawful expressive activities"; and then the second part of the complaint is that it then shared this information with government bodies and private sector factors."[164]

133. The Complainant is relying, first, upon information that initially came out in the press in November of 2013 that suggested that the RCMP and CSIS were collecting intelligence or information on groups and individuals opposed to the Northern Gateway Pipeline and then secondly, that they were sharing that information with the National Energy Board and members of the petroleum industry. [165]

134. Some of the groups named in those documents include LeadNow, ForestEthics, the Council of Canadians, the Dogwood Initiative, EcoSociety, the Sierra Club of British Columbia and Idle No More. The Complainant provided testimonial evidence from most of those groups and provided me with background about their organizations and about their activities in relation to the Northern Gateway Pipeline Project. The Complainant has stressed that none of these groups are criminal organizations, nor do they have any history of advocating, encouraging or participating in violent or other criminal activity.[166] The evidence before me has confirmed this, and it is not in issue.

135. As agreed by the parties during the preliminary conference calls in this matter,[167] the complaint requires me to answer the following four questions in relation to the groups listed in the Complaint letter of February 2014, namely Leadnow, ForestEthics Advocacy Association, the Council of Canadians, the Dogwood Initiative, EcoSociety, the Sierra Club of British Columbia and Idle No More.[168]

Question 1:
Did the Service collect information about groups or individuals for their activities in relation to the Northern Gateway Pipeline Project?

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[164] Complainant's Complaint Letter, dated February 6, 2014 and Transcript of *in camera* hearing, Vol. 1, p.20.
[165] Complainant's Complaint Letter, dated February 6, 2014 and Transcript of *in camera* hearing, Vol. 1, pp.21-22.
[166] Transcript of *in camera* hearing, Vol. 1, p. 22.
[167] Respondent's Letter of April 15, 2015, and Transcript of Pre-hearing conference of May 20, 2015.
[168] Exhibit SIRC-1, Tab 1, Complaint letter of February 2014, p. 6.

Question 2:

If so, was it lawful?

Question 3:

Did the Service provide information relating to individuals or groups opposed to the Northern Gateway Pipeline Project to the National Energy Board or non-governmental members of the petroleum industry?

Question 4:

If so, was it lawful?

136. I have addressed each of these questions separately below in my report.

Question 1:

137. Through the *ex parte* evidence and hearing, I heard that the Service has some information [redacted] which thereby constitutes collection. However, I have seen no evidence that the Service was collecting information or investigating [redacted] as a result of [redacted] peaceful advocacy or dissent.

138. [redacted] the collection of information [redacted] conducted in an ancillary manner, in the context of other lawful investigations.

139. Through the evidence presented to me in the *ex parte* hearing, I am aware of the collection of information in accordance with section 12 and the provision of information as it pertains to certain individuals for whom the appropriate targeting authorities were in place.

140. The groups and/or individuals named in this complaint [redacted]

141. The *ex parte* evidence has convinced me that [redacted] was done as ancillary information in respect of lawful targeting authorities against targets in place at the time, unrelated to groups or individuals engaged in legitimate protest and dissent.[169]

[169] CSIS Book of Documents, *ex parte* hearing, See Vol. 1 A [redacted]

142. For example, I note that in the BRS reporting regarding [redacted], the Service indicates in its analysis sections that "the information had been collected and reported to assist the Service in assessing the threat environment and the potential for threat-related violence stemming from [redacted] protests/demonstrations."[170] However, the Service clearly acknowledged that the [redacted] no threat to the security of Canada. [171]

143. In the *ex parte* hearing, [redacted] and [redacted] testified that these groups were [redacted] I have considered these instances carefully.

144. The Respondent's evidence with respect to the collection of information [redacted] is twofold: 1) the Service presented evidence on the subjects of investigation under a targeting authority and 2) the Service provided all the operational reporting [redacted] after December 31, 2009.

145. The Service provided me with the list of groups and individuals that were CSIS targets at the time, [redacted]

146. In terms of operational reports [redacted] I note that there are [redacted] CSIS operational reports issued during the review period which reference [redacted] This prompted the Service to conduct an open-source search on what [redacted] was. In another instance, [redacted] provided information to CSIS [redacted] was also mentioned in a report related to the activities of another subject of investigation.

147. There are [redacted] CSIS operational reports which reference [redacted] In one case, it was named [redacted] that was shared with the Service. In another instance, [redacted] is mentioned because a

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Tab 1; [redacted] at Tab 2, [redacted] at Tab 3, [redacted] at Tab 4, [redacted] at Tab 5.

[170] CSIS Book of documents, *ex parte* hearing, Vol. 1 C, p. 1411.

[171] CSIS Book of Documents, *ex parte* hearing, See Vol. 1 B at p. 1395 and also Vol 1 C which includes the BRS messages wherein [redacted] is mentioned.

[redacted] which prompted the Service to conduct a google search to learn information about [redacted]

148. [redacted] mentioned in [redacted] operational reports issued during the review period, largely because [redacted]

149. [redacted] is mentioned in [redacted] operational reports. Some of these reports refer to [redacted] It was also the subject of operational reports regarding [redacted]

150. [redacted] is referenced in [redacted] operational reports because [redacted] and because [redacted]

151. [redacted] is mentioned in [redacted] operational report [redacted]

152. [redacted] is mentioned in [redacted] operational reports, mostly with reference [redacted] is also mentioned in [redacted] CSIS Directional Statement where it stated clearly that [redacted]

153. I fully expect that the Service will review the information collected in its holdings [redacted] in accordance with the recent decision of the Honourable Simon Noël of the Federal Court.[172], to ensure that the only information retained is that which meets the "strictly necessary" retention threshold.

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[172] *In the Matter of an Application for warrants pursuant to sections 12 and 21 of the CSIS Act*, 2016 FC 1105.

154. The Complainant's final submissions[173] refer to a SIRC Review conducted in 1989 entitled *"Report on CSIS Activities regarding the Canadian Peace Movement"* that found that the Service "has not proven that it can appropriately distinguish between legitimate dissent or lawful advocacy and activities that may on reasonable grounds be suspected of constitute threats to the security of Canada."[174] The complainant submits "that the attitude of CSIS witnesses towards Minister Oliver's letter reflects a surprising lack of awareness or sensitivity to legitimate concerns the public may have that there is a connection between comments by a federal Cabinet Minister and internal government documents that show CSIS is consulting or briefing on groups opposed to the Northern Gateway project.[175]

155. However, I note that since that 1989 review, the Committee has kept a watchful eye on the topic of lawful advocacy, protest or dissent, and has considered this topic in various reviews[176]. For example, in its Annual Report in 2002-2003, entitled *"Domestic Threats in Conjunction with Lawful Advocacy, Protest and Dissent"*, the Committee found that the Service was "taking considerable care in implementing policy measures designed to prevent intrusion into legitimate and political activity."[177] In its 2012-2013 Annual Report, the Committee conducted a review of *"CSIS's Activities Related to Domestic Investigations and Emerging Issues"* [178] and found that any activities surrounding the Vancouver Olympics and the G8/G20 Summits that only related to legitimate protest and dissent were not investigated.

156. The totality of the evidence which I have reviewed and analyzed demonstrates that there was no direct link between CSIS and the "chilling effect" which the Complainant's witnesses mentioned in their testimonies. I agree with the Respondent's submission that the Complainant failed to differentiate the actions of the NEB and of the RCMP and those of CSIS.[179]

157. However, I can understand why the Complainant, not having access to all of the Service's evidence, might have felt that the groups it represents were being spied on, in view of certain media reports and certain government documents. I also appreciate the concerns of the witnesses appearing before me on behalf of the Complainant who referred to these articles.

158. I well appreciate that the letter of 9 January 2012 from the Honourable Joe Oliver, then Minister of Natural Resources, where he wrote that *"(u)nfortunately, there*

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[173] Complainant's Final Submissions, September 19, 2016, p. 59
[174] SIRC Report 89/90 -03, at p. 228.
[175] Complainant's Final Submissions, September 19, 2016, p. 62
[176] Reference to SIRC Annual Reports of 1999-2000, 2001-2002, 2006-2007, 2008-2009, and 2012-2013.
[177] SIRC Annual Report 2002-2003, p. 16.
[178] SIRC Annual Report 2012-2013, p. 24.
[179] Respondent's Final Submissions, October 17, 2016, p. 20.

are environmental and other radical groups that would seek to block this opportunity to diversify our trade. Their goal is to stop any major project no matter what the cost to Canadian families in lost jobs and economic growth" [180] is regrettable. It can only have increased the concerns of the members of these groups that the entities to which they belonged were being spied on by CSIS and the RCMP. It certainly explains their evidence before me which was clearly fuelled by the Minister and certain journalists.

159. However, the evidence I heard from CSIS' witnesses in both the *in camera* and *ex parte* hearing has convinced me that neither CSIS nor the Ministry of Public Safety responsible for CSIS, had anything to do with the drafting of the Honourable Joe Oliver's letter or indeed any media report submitted in evidence before me. The Service's policies and directions were not influenced in any way by these media articles.

Question 2:

160. I have found that the Service had information [redacted] and therefore this constitutes collection. However, I also find that the information [redacted] when it was reporting on targets of the Service. In these circumstances, this collection falls squarely within the Service's mandate.

161. The Complainant contends that records obtained by Access to Information requests show that CSIS prepares reports and shares information regarding protest activities. BCCLA also maintains that "the Service's action in relation to citizens and groups engaging in peaceful and lawful expressive activities have gone beyond merely collecting intelligence information under section 12 of the Act, and instead sharing this information with the NEB and private companies regarded as stakeholders in the energy sector." [181]

162. The Complainant stated that "Parliament has placed very clear limits (on) the scope of the Service's intelligence-gathering activities, expressly providing that CSIS's mandate "does not include lawful advocacy, protest or dissent." [182]

163. I certainly agree with the Complainant's assessment of Parliament's intention not to allow the Service's mandate to include lawful, advocacy, protest or dissent ("LAPD"). However, I cannot find, on the basis of the evidence before me, that CSIS, in this case, expanded its mandate to include lawful advocacy, protest or dissent.

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[180] Complainant's Supplementary Book of Documents, Tab 7.
[181] Complainant's Final Submissions, September 19, 2016, pp. 65-66.
[182] Complainant's Book of Documents, Vol. I, Tab 3, and Letter from the Complainant to the Committee dated March 25, 2015 with attached documents (emphasis in original document).

164. I note that the Service's mandate under section 12 of the *CSIS Act* is to collect and retain information regarding threats to the security of Canada and is limited "to the extent that it is strictly necessary". I recall, in this context, the recent decision of Mr. Justice Simon Noël, wherein he wrote:[183]

> *"Section 12 (1) must be read logically: if collection of information is performed on a strictly necessary basis, it goes without saying that retaining the strictly filtered information is permitted because the point of entry of the information is the strict collection process. Therefore the retention function may only logically retain what has been collected in a "strictly necessary" manner. The same rational applies in regard to the analysis function: if information is validly collected, only that strictly collected information is analysed. In those scenarios, there are no issues of limits to retention or analysis of the information because it has been legitimately collected pursuant to section 12 (1) and section 2. "*

165. Section 12 of the *CSIS Act* clearly states that the Service "shall report to and advise the Government of Canada."

> *12 (1) The Service shall collect, by investigation or otherwise, to the extent that it is strictly necessary, and analyse and retain information and intelligence respecting activities that may on reasonable grounds be suspected of constituting threats to the security of Canada and, in relation thereto, shall report to and advise the Government of Canada. (my emphasis)*
>
> *(2) For greater certainty, the Service may perform its duties and functions under subsection (1) within or outside Canada.* [184]

166. Section 2 of the *CSIS Act* defines what those "threats to the security of Canada" entail, but clearly states that this:

> *"does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d)."*[185]

167. Thus, it is also clear that, if those LAPD activities are carried out in conjunction with any of the activities referred to in the enumerated threats in section 2, they may fall under the Service's mandate under section 12.

168. The Complainant argues that the activities of these environmental groups opposed to the Northern Gateway Pipeline Project could not possibly fall under the definition of "threats to the security of Canada" as set out in section 2 of the *Act*.

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[183] *In the Matter of an Application for warrants pursuant to sections 12 and 21 of the CSIS Act*, 2016 FC 1105 at paragraph 185.
[184] *CSIS Act*, section 12.
[185] *CSIS Act*, section 2

169. Insofar as the named groups' activities remain peaceful and lawful, I agree. In fact, the definition of "threats to the security of Canada" under section 2 very clearly states that this does not include "lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d)."[186]

170. By way of example, I note that when questioned what an illegitimate protest would be from the Service's perspective, CSIS witness Robert commented during the *in camera* hearing that "all protests are part of the democratic fabric of Canada, and part of our job in investigating threats to our security is to allow protest to take place."[187] Robert's testimony during the *in camera* hearing was clear that the Service was kept actively engaged dealing with terrorism and other threats to the security of Canada, and it did not have the mandate to investigate peaceful advocacy, protest or dissent. I find the Respondent's evidence credible.

171. The Complainant contends that documents such as a Memorandum to the Director of CSIS, from the Assistant Director, Policy and Strategic Partnership of CSIS, regarding a meeting of the Deputy Ministers' Committee on Resources and Energy, dated June 9, 2014, "confirms that the Service was indeed collecting information about opponents to the Northern Gateway pipeline project[188].

172. However, I note that in that same memorandum, the Assistant Director, Policy and Strategic Partnership of CSIS clearly states that "(t)he Service recognizes that many of these issues involve legitimate protest and dissent and as such, have no mandate nexus."[189]

173. In the context of that same memorandum and attached document from the Government Operations Centre, entitled "Government of Canada Risk Forecast 2014 Protests and Demonstrations Season", I also note and emphasize that the Government Operations Centre is not part of CSIS, but rather part of the Department of Public Safety.

174. The evidence of the Respondent's witnesses, as well as the documentary evidence presented by the Service during both the *in camera* hearing and the *ex parte* hearing is persuasive. I am convinced by that evidence that CSIS did not [redacted]

175. Accordingly, I find that the Service's collection of information [redacted] was lawful and within its mandate, and that the Service did not investigate activities involving lawful advocacy, protest or dissent.

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[186] *CSIS Act*, section 2.
[187] Transcript, Vol. 2, p. 312.
[188] Complainant's Final Submissions, September 19, 2016, p. 24.
[189] Complainant's Book of Documents, Vol. I, Tab 3 at p. 2 of 3, and Tab 5, p. 2 of 3.

Question 3:

176. I find that there was no sharing of information by the Service about these groups or individuals opposed to the Northern Gateway Pipeline Project with the NEB, or other non-governmental members of the petroleum industry. Rather, the evidence presented to me during the *ex parte* hearing has convinced me that CSIS did not disseminate information about the named groups or individuals, either with the NEB or with private members of the petroleum industry.

177. The Complainant contends that government documents prove that there was sharing of information and collecting of information. "These documents are not only emails between the NEB and the RCMP and CSIS, as well as internal NEB emails, but also Security Assessment Reports by the NEB itself where there is reference to CSIS and obtaining intelligence from CSIS at the national level and at the regional headquarters level."[190]

178. For example, the Complainant points to an NEB document entitled "Enbridge Northern Gateway Project Integrated Security, Logistics and communications Plan, Kelowna, dated January 24, 2013, under the heading "Threat Assessment", where certain sections have been redacted on the basis of the applicable exclusion under the *ATIP Act* in the right hand column. However, one can see references to the NEB consulting CSIS, both national headquarters and regional offices, as well as RCMP.

179. Some of the groups named in this complaint are identified in the NEB document, under the heading of "open source information reporting", such as Idle No More regarding a planned protest; LeadNow and Dogwood Initiative regarding a workshop and skills training, and EcoSociety regarding a plan to charter a bus to attend the Nelson hearing. [191] Also, an NEB document entitled "Enbridge Northern Gateway Project Security Plan, Prince Rupert", dated January 23, 2013, mentions that the NEB consulted CSIS, both national headquarters and regional offices.[192] Emails refer to consultation between the NEB Security team and CSIS at national and regional levels.[193]

180. I note that most of these documents were released as a result of the ATIP request and that they were NEB documents. While I have seen emails and documents which refer to consultation between NEB and CSIS, there is no evidence before me which demonstrates that CSIS provided information to the NEB about any one of these groups.

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[190] Transcript of *in camera* hearing, Vol. 1, p. 24.
[191] Complainant's Book of Documents, Vol. I, Tab 1, pp. 61-62.
[192] Complainant's Book of Documents, Vol. I, Tab 1, p. 68.
[193] Complainant's Book of Documents, Vol. I, Tab 4, p. 37.

181. Authority for the Service to disclose information it has obtained in the performance of its duties is found in section 19 of the *CSIS Act*. If CSIS discloses information, it must do so in conformity with its mandate under section 12 (see above) and the provisions of section 19 which reads as follows:

> *19 (1) Information obtained in the performance of the duties and functions of the Service under this Act shall not be disclosed by the Service except in accordance with this section.*
>
> *(2)) The Service may disclose information referred to in subsection (1) for the purposes of the performance of its duties and functions under this Act or the administration or enforcement of this Act or as required by any other law and may also disclose such information,*
>
> *(a) where the information may be used in the investigation or prosecution of an alleged contravention of any law of Canada or a province, to a peace officer having jurisdiction to investigate the alleged contravention and to the Attorney General of Canada and the Attorney General of the province in which proceedings in respect of the alleged contravention may be taken;*
> *(b) where the information relates to the conduct of the international affairs of Canada, to the Minister of Foreign Affairs or a person designated by the Minister of Foreign Affairs for the purpose;*
> *c) where the information is relevant to the defence of Canada, to the Minister of National Defence or a person designated by the Minister of National Defence for the purpose; or*
> *(d) where, in the opinion of the Minister, disclosure of the information to any minister of the Crown or person in the federal public administration is essential in the public interest and that interest clearly outweighs any invasion of privacy that could result from the disclosure, to that minister or person.*
>
> *(3) The Director shall, as soon as practicable after a disclosure referred to in paragraph (2)(d) is made, submit a report to the Review Committee with respect to the disclosure.* [194]

182. The *ex parte* evidence has revealed that the Service fulfills its mandate of "reporting and advising" with the production of various documents to domestic and foreign partners, including intelligence assessments, reports to foreign agencies and risk assessments to domestic partners. With respect to its mandate to provide such reports and advice to the "Government of Canada", this can include any department or agency of the federal government, including the RCMP and the NEB. The Service has the obligation to provide those reports and advice to the Government of Canada in accordance with the enabling legislation.

183. The evidence presented to me *ex parte* has persuaded me that CSIS does indeed provide advice to the NEB pursuant to section 12 and subsection 19 (2) of the

[194] *CSIS Act*, section 19.

CSIS Act. However, the *ex parte* evidence does not reveal any reference to or mention of anyone [redacted]

184. The Complainant also refers to an email from the RCMP which states that it will "continue to monitor all aspects of the anti-petroleum industry movement" and concludes that this information "will be shared with (their) intelligence partners", who the Complainant submits must include CSIS.

185. In this connection, I note that CSIS interacts with other law enforcement agencies whose mandate includes the investigation of criminal offences and the collection of evidence in aid of prosecutions in courts. CSIS' website mentions that "while CSIS is at the forefront of Canada's national security system, several Canadian government departments and agencies also provide services that, taken together, help to ensure the safety and protection of Canadians."[195] This, of course, includes the RCMP.

186. The Complainant also submits that the NRCan biannual classified briefings demonstrate that the Service shared information with non-government members of the petroleum industry. BCCLA submits that none of the provisions in the Act "permit sharing of information with private sector parties in the energy industry, as the Service acknowledges doing through NRCan classified briefings and other outreach events with energy stakeholders." [196]

187. In the words of the Complainant, "some of the documents indicate that Natural Resources Canada holds security briefings, with not only the RCMP and CSIS but also with members of the petroleum industry. Some of the documentation indicates that these meetings are held at CSIS Headquarters in Ottawa, and further, that some of the petroleum industry actors, including in particular Enbridge, which is the proponent of the Northern Gateway Pipeline, were not only participating but in fact were sponsoring certain aspects of the events. They were paying for meals and hospitality opportunities for both CSIS and the RCMP and these petroleum industry actors. Given the timing of these briefings and the reference to "sharing information about environmental groups" and given the participation of these various actors, it is our view that a reasonable inference to draw, and the inference that was drawn by B.C. Civil Liberties Association and the targeted groups mentioned, is that information about them had been shared."[197]

188. There is clear evidence that the Service participated in meetings or round tables with NRCan, and the private sector, including the petroleum industry, at CSIS headquarters. However, the *ex parte* evidence presented to me is also clear. These briefings involved national security matters, and were definitely not concerned with [redacted]

[195] CSIS Book of Documents, *in camera* hearing, Tab 3, pp.37-38.
[196] Complainant's Final Submissions, September 19, 2016, p. 67.
[197] Transcript, *in camera* hearing, Vol. 1, p. 25.

189. Under the heading of "sharing intelligence", I note that the CSIS website provides that "at the national level, CSIS provides hundreds of briefings each year to various communities including law enforcement and other security intelligence agencies; academia; Canadian government departments and agencies; provincial, territorial and municipal governments; and the public." These briefings include threat assessments, which, the website provides, are "evaluations about the scope and immediacy of a variety of threats posed by individuals and groups in Canada and abroad. Threat and Risk Assessments are conducted by government departments and agencies. CSIS provides assistance for their preparation when requested."[198]

190. I also heard testimony *ex parte* that information has been collected when certain CSIS targets that are planning to threaten specific private sector companies, CSIS will then meet with these companies and share with them information about these threats. I am satisfied that such liaison with the private sector is important in order to protect Canadians. [199]

191. Having reviewed carefully the totality of the evidence submitted to me during the *in camera* and *ex parte* hearings, I find that, at no time, did the Service share information with members of the petroleum industry concerning the "targeted groups" referred to by the Complainant.

192. Having so concluded, however, I must say that I well understand some of the Complainant's concern. The perception of the Service discussing the security of energy resources development with members of the petroleum industry can give rise to legitimate concern on the part of entities such as the Complainant and the "targeted groups".

193. In this connection, I recall that on May 23, 2013, Natural Resources Canada hosted a "Classified Briefing for Energy and Utilities Sector Stakeholders" in collaboration with CSIS and the RCMP. This briefing was held at the CSIS headquarters. National security and criminal risks to critical energy infrastructure were on the agenda whose theme was the "Security of energy resources development". A networking reception at the Château Laurier was sponsored by BrucePower and Brookfield, and breakfast, lunch and coffee were sponsored by Enbridge the next day. [200]

194. As I said earlier, the issue is one of public perception for the Service. This needs to be addressed. Public discussion about issues of national security should be encouraged in a democracy. Because of its remit, CSIS obviously has a significant role to play in these discussions. "Targeted groups" such as those

[198] Respondent's Book of Documents, *in camera* hearing, Tab 7, pp.45-46.
[199] Transcript of *ex parte* hearing vol. 3 A, p. 70.
[200] Complainant's Book of Documents, Vol. I, Tab 1, *Vancouver Observer* article.

involved in the present complaint may also have a role to play in the discussions regarding national security. I recommend that the Service prioritize such inclusive public discussions with the groups involved in the present complaint, where possible, having regard to the classified nature of certain topics.

Question 4:

195. Since I have found that the Service has not shared any information concerning the "targeted groups" represented by BCCLA with the NEB or other non-governmental members of the petroleum industry, the question of lawfulness has become moot.

196. The evidence presented to me in the *ex parte* hearings has convinced me that any collection and dissemination of information by CSIS was done lawfully and in accordance with its mandate. I am persuaded that there was no targeting of [redacted]

"Chilling Effect"

197. The Complainant argues in its final submission that its allegations against CSIS led to what it describes as a "chilling effect".

198. The Complainant submits that CSIS collected information about the named groups and individuals outside the authority of the *Act*, and this collection created a "chilling effect" that inhibited them from exercising fundamental freedoms protected by the *Canadian Charter of Rights and Freedoms*. [201]

199. I must now address this submission of the Complainant as it pertains to an alleged breach of the *Charter*.

200. The Complainant's submission on this important issue is well and clearly set out as follows:

> *"Since CSIS carries out its activities in secret, and CSIS has not commented publicly about its interest in groups opposed to the pipeline, there is a reasonable fear that CSIS' extraordinary powers could be used to target groups or individuals that were characterized as having a "radical ideological agenda" by a federal Cabinet minister. This has resulted in a very real chilling effect on the groups, making them more cautious about their activities and comments and how their staff and members communicated with each other. It has even deterred some from becoming involved or supporting the groups."*[202]
>
> ...
>
> *"BCCLA submits that the above evidence clearly establishes that there was in fact a chilling effect on groups and individuals that were engaged in lawful*

[201] Complainant's Final Submissions, September 19, 2016, p. 49.
[202] Complainant's Final Submissions, September 19, 2016, p. 62.

> *advocacy and protest activities, and who dissented from the preferred policies of the government of the day. This chilling effect was caused by the media reports about CSIS consultations and briefings on groups opposed to the Northern Gateway project, in combination with then-Minister Oliver's ill-considered rhetorical attacks on groups opposed to government policy. These lawful advocacy and protest activities engage the right to freedom of expression, among the most fundamental of rights possessed by Canadians. The Canadian Charter of Rights and Freedoms guarantees protection for freedom of expression under section 2 of the Charter along with historically powerful modes of collective expression, namely peaceful assembly and association."*[203]

201. In its final submissions, the Respondent submitted that:

> *"any collection and dissemination of information by CSIS was done lawfully in conformity with its mandate. Furthermore, the Complainant has failed to establish that CSIS has done the acts or things alleged in its complaint. Requests for information or advice from the NEB to CSIS do not demonstrate that CSIS collected information about the groups seeking to participate in the NEB's hearings. The Complainant has also failed to establish a causal connection between the acts or things done or allegedly done by the Service and the "chilling effect" on freedom of expression and association."* [204]

202. In its final rebuttal submissions, the Complainant argued as follows:

> *"(i)ndeed, the evidence presented by the Service in this hearing has supported these suspicions, confirming that CSIS is indeed engaged in routine sharing of classified intelligence information with energy sector stakeholders, including the National Energy Board, and has provided specific intelligence assessments to the NEB. In these circumstances it simply cannot be said that concerns about a chilling effect are rooted merely in a "patently incorrect understanding" of the law. Rather, the evidence is clear that concerns about a chilling effect are both reasonable in the circumstances and directly linked to the Service's conduct in this matter."* [205]

203. The Complainant also submits that the concerns of the targeted groups arise from reasonable inferences. The Complainant writes:

> *"Moreover, there is also a crucial distinction between a chilling effect arising from misapprehension of the law and a chilling effect arising from reasonable inferences drawn from available information. BCCLA again emphasizes that in the present case, members of the affected groups were keenly aware of Minister Oliver's public description of them as "radical groups" involved in "hijacking" the regulatory system to "undermine Canada's national economic interest". When the ATIA documents-which clearly show at least some CSIS involvement in intelligence gathering and sharing about groups opposed to the Northern*

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[203] Complainant's Final Submissions, September 19, 2016, p. 64.
[204] Respondent's Submissions, October 17, 2016, p. 2
[205] Complainant's Final Rebuttal Submissions, November 3, 2016, pp. 6-7.

> *Gateway project – were publicized, the resulting concerns were not due to a "patently incorrect understanding" of a statutory provision, but rather the only reasonable inference that could be drawn from the limited information available to them."* [206]

204. These concerns may be real, as I have said earlier at paragraph 157. However, I have seen in the context of the totality of the evidence which was provided to me during the *ex parte* hearings that these concerns were not justified. The conduct of the Service in the present case has been in conformity with its enabling legislation.

205. As I found earlier in my analysis of Question 1, the Complainant has failed to establish a "causal effect" or "direct link" between CSIS' conduct and the "chilling effect" which it invokes. Having found no "chilling effect", its allegations cannot form the basis of a *Charter* violation.[207]

206. In my view, this finding also disposes of the Complainant's allegation that section 2 of the *Charter*, which guarantees the protection for freedom of expression, was breached by CSIS' conduct in its investigation of the activities of the Northern Gateway Pipeline project.

207. After having carefully reviewed the evidence submitted to me in the *ex parte* hearings, and as I have said earlier in paragraph 156, I am satisfied that it does not support the Complainant's submission regarding a "direct link" between CSIS' conduct and the "chilling effect". Therefore, upon review of the evidence before me in this case, I am convinced that there was no *Charter* breach.

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[206] Complainant's Final Rebuttal Submissions, November 3, 2016, p. 6.

[207] *R. v. Khawaja* 2012 SCC 69, paragraphs 79-80.

Additional procedural questions:

208. The following two procedural questions arose in the context of this investigation regarding evidence and testimony provided by the Complainant.

Can witnesses for the Complainant who appeared before the Committee on August 12-13, 2015 speak publicly about the evidence and testimony they provided during the in camera portion of the hearing?

AND

Can BCCLA publicly disclose those transcripts and its submissions in this matter without limitation due to security concerns under section 48 of the Act?

209. By way of background, I will review the history of these procedural questions.

210. At the beginning of the *in camera* hearing on August 12, 2015 in Vancouver, as is standard practice for all SIRC hearing, I reminded the parties of subsection 48 (1) of the *CSIS Act*, which provides as follows:

> *48 (1) Every investigation of a complaint under this Part by the Review Committee shall be conducted in private.*
>
> *48 (1) Les enquêtes sur le plaints présentées en vertu de la présente partie sont tenues en secret.* [208]

211. Again, as is standard practice, I also informed the parties that, for reasons of security and confidentiality, no electronic devices, including cellular phones, I-Pads, or recorders were allowed in the hearing room.[209]

212. I then heard submissions from the parties in respect of a preliminary/procedural matter regarding the privacy of proceedings under subsection 48 (1) of the *CSIS Act*.

213. I first heard submissions from counsel for CSIS, regarding her concern that the Complainant had made available on its website a pledge form for individuals to obtain recaps of the *in camera* proceedings. She stated, "As you mentioned in your opening remarks, these hearing are to be conducted in private. As such, it seems to us that offering such recaps to people outside the hearing room would not be in conformity with subsection 48 (1) of the *CSIS Act*, which states that these investigations are to be "conducted in private".[210]

214. Counsel for CSIS added:

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[208] *CSIS Act*, subsection 48 (1).
[209] Transcript, *in camera* hearing, Vol. 1, p. 3.
[210] Transcript, *in camera* hearing, Vol. 1, p. 6.

> *"To us, this entails that what occurs during these hearing remains "secret": secret or private. Again, I am not sure what the intentions of the Complainant are. But just speculating, would what is suggested go as far as providing the transcripts of the hearing to members of the public? There is some concern because, again, there is a fine line for the Service, as to classified/unclassified information. I understand these are in camera proceedings and generally there is no classified information that gets divulged. However, sometimes the line between classified and unclassified is a difficult one, requiring us to thread (sic) lightly."*[211]

215. I also heard in reply, submissions from counsel for BCCLA, who said that:

> *"the BCCLA's intention is to broadcast details about the hearing that are permissible. So that is an issue that we can canvass with the Member. At this point, what the client intends to do is to just advise the public about who will be testifying on particular days, and so forth, along with the anticipated testimony of those witnesses. So it would be prior to their appearing as a witness. I recognize that under section 48, the Act refers to this proceeding as a "private" hearing. It is my understanding that that is generally referring to an in camera hearing at which others can't be present in the room as the evidence is being called."* [212]

216. After having heard these submissions, I ruled that the Committee can decide upon procedural matters before it, and as such, I determined that the disclosure of witness names was alright, but that there should be no release of summaries of evidence to the media. I was mindful of subsection 48 (1), which is the guiding principle that "every investigation is to be conducted in private", and in the French-language version, the scope of the privacy is extended somewhat: "sont tenues en secret." I also reminded the parties that subsection 48 (2) provides that no one is entitled as of right to be present at the *in camera* hearing. However, I gave the Complainant's first witness, Mr. Paterson, permission to stay in the hearing room with BCCLA counsel. [213]

217. To summarize, the guiding principle set out by the Legislator is the"private" nature of the SIRC hearing. "Les enquêtes....sont tenues en secret." The integrity of the proceedings must be respected, and, to that end, the evidence of all witnesses, not only the evidence of the Service's witnesses, cannot be divulged.

218. The Complainant provided an undertaking not to divulge the testimony and evidence of any witness appearing before me during the *in camera* hearing.[214]The Complainant then asked whether this undertaking also

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[211] Transcript, *in camera* hearing, Vol. 1, p. 6.
[212] Transcript, *in camera* hearing, Vol. 1, p. 7 (my emphasis).
[213] Transcript, *in camera* hearing, Vol. 1, pp. 10-11.
[214] Transcript of *in camera* hearing, Vol. 1, p. 12.

encompassed statements by witnesses divulging the outline of their forthcoming testimony. [215]

219. In response, I reiterated that the overriding principle is the "private" nature of the hearing, and that the investigation of any complaint by SIRC should be held in private, "en secret". I added that "I have no trouble, no difficulty, with any of your witnesses in effect saying: What I intend to tell the representative of SIRC who is hearing this complaint is such and such. My order goes to the actual evidence, the actual testimony of the witnesses, which should not, in any form, either by way of a summary or by way of "this is what I have said" kind of statement be divulged."[216]

220. Counsel for the Complainant then said that he wanted to reserve the right to come back to this question at the conclusion of the *in camera* hearing. I note that counsel for the Complainant only raised this matter with me again in his final submissions in September 2016. I also invited submissions from the Respondent on this question.

221. In its final submissions, the Complainant submitted that:

> *"the statutory requirement that SIRC hearing be held in private should not prohibit witnesses or the complainant from publicly disclosing that information."*[217] *The Complainant requested a formal ruling regarding the scope of the private nature of SIRC's proceedings in the investigation of complaints. Specifically, the Complainant asked the "Committee to review and clarify its order regarding the scope and application of section 48 of the CSIS Act as it relates to the evidence of witnesses called on behalf of the BCCLA during the in camera portion of the hearing into this complaint."* [218]

222. Addressing this request of the Complainant, CSIS' counsel submitted that "in the present case, the hearing portion of the investigation has concluded and CSIS has been provided the opportunity to protect any national security information which may have been inadvertently disclosed at the hearing. For those reasons, the Respondent does not object to the Complainant's request set out at paragraph 207 of the Complainant's final submission."[219]

223. In its final Rebuttal Submissions, however, the Complainant in effect, amended its original request and asked that my order also include the release of transcripts. It is evident that this amended request goes much further than the Complainant's original request which CSIS' counsel had agreed to.

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[215] Transcript, *in camera* hearing, Vol. 1, p. 12.
[216] Transcript, *in camera* hearing, Vol. 1, pp. 14-15, and p. 125
[217] Complainant's Final Submissions, September 19, 2016, paragraph 145, p. 49.
[218] Complainant's Final Submissions, September 19, 2016, paragraph 207, p. 71.
[219] Respondent's Submissions, October 17, 2016, paragraph 71, p. 26

224. I note that, in its final Rebuttal Submissions, the Complainant avers:

> *"Given that the Service has now advised that it has no objection to BCCLA's submissions regarding the scope and application of section 48 of the CSIS Act, the Complainant requests the Committee to confirm that witnesses who appeared before the Committee on August 12-13, 2015 may speak publicly about the evidence and testimony they provided during the in camera portion of the hearing, and that BCCLA may publicly disclose those transcripts and its submissions in this matter, without further concern in relation to section 48 of the Act (my emphasis)."*[220]

225. The Respondent, in its final rebuttal submissions, submitted:

> *"the Complainant has now raised "two new issues that were not found in the Complainant's submissions of September 19, 2016, the Complainant is seeking to – make the transcripts publically available; –get a direction on an interim basis. With respect to making the transcripts publically available, we understand that paragraph 17 suggests that only the portions of the transcripts (those transcripts) of the testimonies of BCCLA witnesses would be made public by the Complainant. We request that the Committee's order specify that only the Complainant's submissions and evidence may be made publically available."* [221]

226. The Complainant asked me to issue a ruling prior to the issuance of my final report.[222] However, I decided that it would be more appropriate to provide my rulings in my final report on all questions submitted to me in the course of my investigation.

227. In my capacity as an independent decision-maker, I consider it paramount that the integrity of the SIRC proceedings, informed by the mandatory edict of the Legislator in section 48 of the *CSIS Act* be respected.

228. In order to respect the private nature of a SIRC *in camera* hearing, the Committee, to date, has never released to the public at large the transcripts of such hearing or even a summary of the evidence of witnesses. The Complainant, of course, is present during the *in camera* hearing, and the Committee has provided Mr. Champ with the transcripts in order to allow him to prepare his submissions, but not to disseminate them to the public.

229. Such wide and unfettered dissemination would be, in my opinion, a flagrant breach of section 48 of the *CSIS Act* for a number of reasons.

230. The Committee is master of its own proceedings. This is emphasized in subsection 39 (1) of the *CSIS Act*, which reads as follows:

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[220] Complainant's Final Rebuttal Submissions, November 3, 2016, par. 17, p. 7 (my emphasis).
[221] Respondent's letter to the Committee, December 1, 2016, p. 2.
[222] Complainant's Final Rebuttal Submissions, November 3, 2016, p. 7 and in its letter to the Committee, dated January 16, 2017.

> *39 (1) Subject to this Act, the Review Committee may determine the procedure to be followed in the performance of any of its duties or functions.*[223]

231. The Committee also has its own *Rules of Procedure*[224] which guide it in the conduct of its work. While the Committee's revised rules apply to complaints, reports and references received on or after May 1, 2014, they nevertheless assist me in ruling on this important issue in respect of the present complaint which was filed on February 6, 2014. Accordingly, I refer in particular to the following rules:

> ***Interpretation of Rules***
>
> *Rule 1.04 (1) These rules shall be liberally construed to advance the purposes set out in rule 1.02.*
> *(2) These rules are not exhaustive and the Committee retains the authority to decide any issue of procedure not provided for by these rules.*
>
> ***Deemed Undertaking***
>
> *Rule 14.01(1) This rule applies to information or evidence obtained by the parties in the course of an investigation before the Committee.*
> *(2) This rule does not apply to information or evidence obtained otherwise than under subrule (1).*
> *(3) All parties and their lawyers are deemed to undertake not to use information or evidence to which this rule applies for any purposes other than those of the investigation in which the evidence was obtained.*
> *(4) Subrule (3) does not prohibit a use to which the person who disclosed the information or evidence consents.*
> *(5) Subrule (3) does not prohibit a prosecution of a person for an offence under section 131 of the Criminal Code (perjury).*
> *14.02 If satisfied that the public interest outweighs any prejudice that would result to a party who disclosed information or evidence, a member may direct that subrule 14.01 (3) does not apply to information or evidence, and may impose such terms and give such directions as are just.*

232. In addition, the Committee is an independent quasi-judicial tribunal, and, as such, it has powers that are similar to those of a superior court of record. I note in this connection, section 50 of the *CSIS Act*, which provides:

> *50. The Review Committee has, in relation to the investigation of any complaint under this Part, power*
> *(a) to summon and enforce the appearance of persons before the Committee and to compel them to give oral or written evidence on oath and to produce such documents and things as the Committee deems requisite to the full investigation and consideration of the complaint in the same manner and to the same extent as a superior court of record;*

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[223] *CSIS Act*, s. 39.
[224] *Rules of Procedure of the Security Intelligence Review Committee.*

(b) to administer oaths; and
(c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the Committee sees fit, whether or not that evidence or information is or would be admissible in a court of law. [225]

233. I recall again that subsection 48 (1) of the *CSIS Act* imposes on me the obligation to conduct my investigation in private. As an independent quasi-judicial tribunal, the Committee has the power to decide that the proceedings must remain private.

> *48 (1) Every investigation of a complaint under this Part by the Review Committee shall be conducted in private.*[226]

234. Subsection 48 (2) of the *CSIS Act* is also relevant to my determination of the scope and application of subsection 48 (1). It reads as follows:

> *48 (2) In the course of an investigation of a complaint under this Part by the Review Committee, the complainant, deputy head concerned and the Director shall be given an opportunity to make representations to the Review Committee, to present evidence and to be heard personally or by counsel, but no one is entitled as of right to be present during, to have access to or to comment on representations made to the Review Committee by any other person.* (my emphasis) [227]

235. Rules 16.09 and 18.03 (8) of SIRC's current *Rules of Procedure* are also pertinent. They provide as follows:

> *16.09 No person shall take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or oral representations by electronic means or otherwise,*
> *(a) at a hearing,*
> *(b) of any person entering or leaving the room in which a hearing is to be or has been convened, or*
> *(c) of any person in the building in which a hearing is to be or has been convened where there is reasonable ground for believing that the person is there for the purpose of attending or leaving the hearing.* [228]
>
> *18.03 (8) A witness and his counsel are entitled to be present at the hearing only when that witness is giving evidence.* [229]

236. The Federal Court found in *Canada (AG) v. Al Telbani* that "SIRC is a specific statutory body with special attributes relating to national security. SIRC's

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[225] *CSIS Act*, s. 50.
[226] *CSIS Act*, subsection 48 (1).
[227] *CSIS Act*, subsection 48 (2).
[228] *Rules of Procedure of the Security Intelligence Review Committee, Rule 16.09.*
[229] *Rules of Procedure of the Security Intelligence Review Committee, Rule 18.03 (8).*

proceedings establish a balance between national security and the rights of individuals. SIRC has powers that are similar to those of a superior court of record..." [230]

237. The proceedings of the Committee were well summarized in that decision. The Federal Court wrote:

> *"SIRC investigations are conducted in private. However, the complainant, deputy head concerned and the Director are given an opportunity to make representations to the Committee, to present evidence and to be heard personally or by counsel. Nonetheless, no one is entitled as of right to be present during, to have access to or to comment on representations made to the Committee by any other person. In spite of this, the Committee's Rules of Procedure allow for statements summarizing information from private hearing to be provided, to the extent that no information related to national security is disclosed."*[231]
>
> ...
>
> *"As for SIRC's proceedings and as was previously noted, the Supreme Court had already given its approval. Justice Sopinka, while emphasizing that it was not for him to rule on the issue, concluded that SIRC's proceedings respected the principles of fundamental justice."*[232]

238. In short, the confidentiality of SIRC's proceedings is the cornerstone of its investigations. Access to the Committee by a Complainant must be done in private, in respect of the principles of fundamental justice. SIRC does not disclose the filing of a complaint and the anonymity of the Complainant is respected throughout the process. All documents created or obtained by the Committee in the course of an investigation are exempt from disclosure.

239. It is my opinion that I must give effect to the intention of the Legislator encapsulated in subsection 48 (1) of the *CSIS Act*. Accordingly, the Complainant may not disclose publicly the evidence and testimony which they proffered during the *in camera* hearing and BCCLA may not disclose publicly any part of the transcripts or the submissions of its counsel, and I so find.

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[230] *Canada (AG) v. Al Telbani*, 2012 FC 474, at paragraph 62.
[231] *Ibid.*at paragraph 42.
[232] *Ibid.*at paragraph 53.

F. FINDINGS AND RECOMMENDATIONS

240. For all these reasons, I find that the Complainant's allegations are not supported by the evidence, and the complaint is accordingly dismissed.

241. While I found that the Service did collect some ancillary information [redacted] I find that any information reported [redacted] was done incidentally, in respect of lawful targeting authorities in place at the time, [redacted] I also find that the Service did not investigate [redacted] recognized as being associated with lawful advocacy, protest or dissent.

242. I find that the Service did not share information regarding these groups or individuals with the NEB or other non-governmental members of the petroleum industry.

243. I recommend that the Service prioritize inclusive public discussions with the groups involved in the present complaint, where possible, having regard to the classified nature of certain topics.

FOR ALL THESE REASONS, ON BEHALF OF THE SECURITY INTELLIGENCE REVIEW COMMITTEE, THE COMPLAINT IS DISMISSED.

The Honourable Yves Fortier, ~~PC, CC,~~ OQ, QC

Ottawa, Ontario
This 30 day, of May 2017.

Security Intelligence Review Committee

Comité de surveillance des activités de renseignement de sécurité

SECRET (with attach.)

File No.: 1500-481

July 13, 2016

Ms. Stéphanie Dion
Counsel
National Security Litigation & Advisory Group
Department of Justice Canada
PO Box 8127, Station T
Ottawa, ON K1G 3H6

Dear Counsel:

RE: BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION - COMPLAINT PURSUANT TO SECTION 41 OF THE *CANADIAN SECURITY INTELLIGENCE SERVICE ACT (CSIS ACT)*

Pursuant to our meeting of July 4, 2016 and your letter to the Security Intelligence Review Committee's (Committee) dated July 5, 2016, please find enclosed the modified version of the Committee's summary of the evidence presented *in camera/ ex parte* with respect to the aforementioned file. Should any further redactions be recommended, the Committee asks for detailed explanations of all of the factual considerations relevant to the harm to national security motivating said recommendations by no later than July 20, 2016.

If you have any questions pursuant to this matter, please do not hesitate to contact me at (613) 990-6319.

Yours sincerely,

Shayna Stawicki
Registrar

Encl.: (1)
c.c.: ER&L (encl. 1)

P.O. Box / C.P. 2430, Station / Succursale "D"
Ottawa, Canada K1P 5W5
Tel: *613* 990-8441 Fax: *613* 990-5230

SECRET

File No.: 1500-481

SECURITY INTELLIGENCE REVIEW COMMITTEE

IN THE MATTER of a complaint filed pursuant to section 41 of the *Canadian Security Intelligence Service Act*, R.S. 1985, c. C-23.

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Complainant

- and -

CANADIAN SECURITY INTELLIGENCE SERVICE

Respondent

Summary of the evidence presented *in camera / ex parte* on January 28, 2016 and March 22, 2016 Before the The Hon. Yves Fortier, P.C., C.C., O.Q., Q.C., Presiding Member

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Security Intelligence Review Committee
P.O. Box 2430
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THIS DOCUMENT DOES NOT REPRESENT, IN ANY WAY, THE VIEWS OF THE SECURITY INTELLIGENCE REVIEW COMMITTEE (COMMITTEE) ON THE MERITS OF THE COMPLAINT OR THE POSITIONS OF THE PARTIES THERETO.

THIS SUMMARY OF EVIDENCE PRESENTED *EX PARTE* THE COMPLAINANT HAS BEEN PREPARED IN ACCORDANCE WITH SECTIONS 37 AND 48 OF THE *CANADIAN SECURITY INTELLIGENCE SERVICE ACT (CSIS ACT)*, AND IN CONSULTATION WITH THE PRESIDING MEMBER OF THE COMMITTEE, IN ACCORDANCE WITH RULE 48 OF THE *RULES OF PROCEDURE OF THE SECURITY INTELLIGENCE REVIEW COMMITTEE IN RELATION TO ITS FUNCTION UNDER PARAGRAPH 38(C) OF THE CANADIAN SECURITY INTELLIGENCE SERVICE ACT*.

Evidence Presented *In Camera / Ex Parte*

The Committee heard evidence from four (4) witnesses from the Canadian Security Intelligence Service (CSIS or Service) on January 28, 2016 and on March 22, 2016.

Counsel for the Committee and the Presiding Member had the opportunity to cross-examine all of the witnesses.

Evidence of "Witness 1", CSIS

1. The witness provided detailed testimony regarding her work experience with the Service from 2001 onwards. She also specifically described her role as Chief of the unit responsible for the Service's domestic extremism investigation between November 2013 and January 2015.

2. The witness testified on government intelligence collection priorities and testified in regards to Ministerial Directions provided by the Minister of Public Safety to the Director of CSIS.

3. The witness explained the nature of targeting authorities and how they are obtained by CSIS to investigate any threat to the security of Canada. She also identified particular targeting files under which her unit was investigating during the time period related to this complaint.

4. The witness described CSIS's practices in relation to investigating threats to the security of Canada emanating from groups involved in domestic extremism. She testified that when conducting mandated investigations, CSIS employees are governed by the *CSIS Act* and that CSIS policies further stipulate that they do not look at legitimate protest and dissent, unless it is associated with serious acts of violence.

5. The witness provided testimony about the tasking provided to the regions related to politically-motivated violence and/or sabotage.

6. The witness explained the targeting levels and warrants for certain targets within the Service.

7. The witness testified that as head of her unit at that time, she had an overall knowledge of the Service investigations that were ongoing and that that prior to BCCLA's complaint wherein one of the allegations is that the Service investigated or collected information on seven groups, those groups being Dogwood Initiative, Sierra Club, EcoSociety, LeadNow, Council of Canadians, Forest Ethics, and Idle No More, she had only heard of two of the seven.

8. The witness discussed what she knew of each of the seven abovementioned groups and her knowledge of the public's opposition to the development of the Northern Gateway Pipeline project. The witness also testified as to whether any of the seven groups were ever themselves CSIS targets, considered a threat by CSIS or flagged as such to any department.

9. When asked for her opinion regarding the testimony of the complainant's witnesses during the *in camera* hearing in which they stated that they "felt targeted" and "were being spied on", the witness conjectured that it is possible, that if one were associated with a target and interviewed as a result of that association, it could make that person feel like they were being targeted.

10. The witness provided her perspective on the content of a published article dated January 9, 2012, entitled "An Open Letter from The Honourable Joe Oliver", which includes statements from then Minister of Natural Resources about environmental groups in Canada, in which he comments that "there are environmental and other radical groups that would seek to block this opportunity to diversify our trade", in reference to the pipeline project.

Evidence of "Witness 2", CSIS

11. The witness provided detailed testimony regarding his work experience with the Service as an analyst within the Intelligence Assessments Branch (IAB) and indicated that he primarily specializes in domestic extremism.

12. The witness testified on IAB's mandate and deliverables to the government of Canada. He outlined IAB's main responsibilities which include preparing and delivering briefings, assessments and reports, providing background information on operational and managerial programs and preparing Threat and Risk Assessments (TRAs).

13. He provided examples of IAB's high government priorities and emerging threats during the timeframe related to the complaint. He testified that CSIS was mainly

focused on issues related to the the Winter Olympics and the G-8/G-20 at that time and they were occupied with trying to identify any potential threats from domestic extremists for either of those events.

14. The witness testified on the evolution of the domestic extremism threat over the past years.

15. The witness described "domain awareness" and provided specific examples of files which fell under IAB's work involving domain awareness during the timeframe of the complaint.

16. The witness provided detailed testimony on the biannual classified briefings held by the Department of National Resources (NRCan). He testified that this forum is used by the Service to share classified information with energy sector stakeholders, such as the National Energy Board (NEB).

17. The witness testified about his involvement at these classified briefings and indicated that his role there in the past has been mainly to offer the Service's view on domestic extremism and identify potential triggers for violence. He gave the Committee concrete examples of serious acts of ideologically-motivated violence from a Service perspective which were discussed at some of the NRCan briefings that related to energy and utilities sector stakeholders.

18. The witness spoke to specific intelligence assessments that were given to the NEB by the IAB involving domestic extremism issues and whether or not the aforementioned groups were mentioned in those assessments.

19. The witness described how the Service engages in outreach with energy stakeholders and also identified means, other than the classified briefings, through which the Service communicates severe emerging domestic threats to certain industries.

20. The witness described the policies and requirements for any meeting between the Service and any outside organization. He emphasized the importance of fostering collaboration between CSIS and any organization to prevent terrorism, whether it be within the government of Canada, with law enforcement partners or private industries.

21. The witness testified that IAB sometimes visits the regions and meets with their liaison team to assist in their collection mandate by presenting to them information that they may not know, be it classified or not, on topics that they may have an interest in. He indicated that this is standard collaboration protocol and part of that relationship-building with CSIS's client base, which in turn encourages these industries to share any threat-related information they may have with the Service.

22. The witness testified that the Service does not attend, nor interfere with, any events that involve legal and legitimate protests and/or dissent, as it falls outside of its mandate.

23. The witness provided contextual and classified information on certain documentation that had been redacted and provided to the complainant pursuant to an Access to Information request. Amongst other documents, he specifically gave detailed evidence in respect of a memorandum entitled "Meeting of the Deputy Ministers' Committee on Resources and Energy".

24. The witness stated that he has never briefed Minister Joe Oliver on domestic extremism, and that as far as he was concerned, the Service was unaware as to who briefed the Minister on the information related to his public statement in 2012.

Evidence of "Witness 3", CSIS

25. The witness provided detailed testimony regarding his work experience with the Service as an analyst within the IAB and indicated that his specialty lies in the Energy Sector.

26. The witness testified that his primary responsibility was to provide intelligence assessments related to threats to Canada's energy and mineral security. He summarized the energy sector file, for which he is responsible, and highlited that the interests of his portfolio were restricted to threats to energy and primarily to critical energy infrastructure mostly from domestic extremism, terrorism, or possibly from foreign states. He testified that a secondary responsibility of his branch was to provide assessments relating to economic threats or threats to Canada's economic interests related to energy in the area of proprietary information.

27. The witness testified that he has been a coordinator for the NRCan biannual classified briefings since 2010 and described the origin and purpose of these briefings as well as the Service's role. He further testified that, although he is responsible for writing a memo to management regarding the briefings, there is no formal Memorandum of Understanding.

28. The witness testified that he has never personally seen any information collected at these briefings by the Service and that, should members of the private sector wish to provide information to the Service, he explains to them that the proper format for them to do so is to notify someone at the regional offices.

29. The witness provided testimony on certain topics that have been discussed at past NRCan briefings.

30. The witness gave examples of some briefings or liaisons with government or

private sectors in which CSIS participates other than the NRCan briefings.

31. The witness spoke about the context and content of the information that was redacted in the complainant's version of an email, dated April 19, 2013, referred to in the complainant's exhibit book, which mentions security concerns regarding the Northern Gateway Pipeline project.

Evidence of "Witness 4", CSIS

32. The witness provided detailed testimony regarding his work experience with the Service from 1995 onwards. He indicated he occupied various positions with the British Columbia Region between 1998 to present. He also described his roles and responsibilities as the supervisor for the unit responsible for the Service's domestic extremism investigations in Vancouver from 2010 to 2013 and that, as a supervisor of the unit, he was aware of all actions taken under his remit at the time.

33. The witness discussed the mandatory process and requirements for an intelligence officer to make a request to conduct a community interview related to the Service's domestic extremism investigations. The witness testified as to the frequency of those interviews.

34. The witness provided testimony as to whether or not any of the seven groups mentioned in this complaint, namely Dogwood Initiative, Sierra Club, EcoSociety, LeadNow, Council of Canadians, Forest Ethics, and Idle No More, were ever a target of a Service investigation.

35. The witness testified that he had not heard of most of the aforementioned groups prior to this complaint. He specified that the few groups that he had known at that time was known to him through open-source means.

36. The witness testified that it was not surprising that there were protests related to the Northern Gateway Pipeline Project but underscored that Service employees are mandated and limited by the *CSIS Act* which does not permit CSIS to investigate groups or individuals for their activities related to lawful advocacy, protest or dissent, unless it is tied directly to a threat.

37. The witness testified that the information flow between CSIS and private or other public stakeholders was generally a one-way transaction in which CSIS received the information.

38. The witness testified that he did not recall having seen the article written by the Honourable Joe Oliver mentioned above prior to the hearing.

July 5, 2016

Department of Justice Canada
Ministère de la Justice Canada

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Groupe litiges et conseils en sécurité nationale
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July 5, 2016 **SECRET**

BY HAND

Ms. Shayna Stawicki
Registrar
Security Intelligence Review Committee
Jackson Building
122 Bank Street, 4th Floor
Ottawa, Ontario
K1P 5N6

Dear Ms. Stawicki:

RE: ***BCCLA – Complaint against CSIS Pursuant to Section 41 of the CSIS Act***
Your File 1500-481

This is further to your correspondence of June 8, 2016 and our meeting of July 4th, with respect to the summary of the evidence presented *in camera / ex parte*. As discussed, please find below the Service's comments with regard to damage to national security with respect to paragraphs 7 and 8 of the proposed summary.

Paragraph 8 of the summary contains information to the effect that the groups identified in the BCCLA complaint [redacted]

The Service protects information which would identify or tend to identify the Service's interest in individuals, groups or issues, including the existence or non-existence of past or present files or investigations, the intensity of investigations, or the degree or lack of success of investigations. A security agency cannot operate effectively if the subjects of its investigations are able to ascertain the state of the security agency's operational knowledge at a particular point in time, the specific operational assessment made by the security agency, or the fact that a security agency is in a position to draw certain conclusions on a subject. The disclosure of this type of information would indicate the level of interest, or lack of it, in an

individual at various points in time and the fact that a security agency has enough information to make an assessment or draw a conclusion.

In forming an opinion on the likelihood of damage to national security resulting from disclosure of the information, the Service takes into account the "mosaic effect". Assessing the damage caused by disclosure of information cannot be done in the abstract or in isolation. It must be assumed that information will reach the hands of persons with knowledge of Service targets and the activities of this and other investigations. In the hands of an informed reader, seemingly unrelated pieces of information, which may not in and of themselves be or appear to be particularly sensitive, can be used to develop a more comprehensive picture when juxtaposed, compared or added to information already known by the recipient or available from another source.

For these reasons, the Service has suggested a number of changes discussed at our July 4, 2016, meeting. Upon concluding the meeting, counsel undertook to provide suggested wording for paragraphs 7 and 8 of the proposed summary of evidence based on the damage to national security outlined above.

With respect to paragraph 7, upon review and in light of testimony of Robert Young in the *in camera* proceedings and the summary of evidence presented at paragraph 35, the Service has determined that paragraph 7 proposed by the Committee is not likely to damage to national security.

The Service suggests the following wording for paragraph 8:

SIRC Wording	Proposed wording
The witness discussed what she knew of each of the seven abovementioned groups [redacted] considered a threat by CSIS or flagged as such to any department.	The witness discussed what she knew of each of the seven abovementioned groups. The witness also testified as to whether any of the seven groups were ever themselves CSIS targets, considered a threat by CSIS or flagged as such to any department.

Should you require further information, please contact the undersigned at (613) 842-1356.

Sincerely,

Stéphanie Dion
Counsel

cc: ER&L

[redacted] 51000-677

Department of Justice Canada
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March 14, 2016 **SECRET**

BY HAND

Ms. Shayna Stawicki
Registrar
Security Intelligence Review Committee
Jackson Building
122 Bank Street, 4th Floor
Ottawa, Ontario
K1P 5N6

Dear Ms. Stawicki:

RE: ***BCCLA – Complaint against CSIS Pursuant to Section 41 of the CSIS Act***
Your File 1500-481

This is further to your correspondence of March 2nd, 2016, setting out the timelines for the above-mentioned matter.

Please find enclosed the summary of anticipated evidence of [redacted]

Should you require further information, please contact the undersigned at (613) 842-1356.

Sincerely,

Stephanie Dion
Counsel

Encl.

cc: ER&L

cj/ 51000-677

Canada

File No. 1500-481

SECURITY INTELLIGENCE REVIEW COMMITTEE

BETWEEN:

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION
Complainant

- and -

CANADIAN SECURITY INTELLIGENCE SERVICE
Respondent

SUMMARY OF ANTICIPATED EVIDENCE OF [redacted]

---

1. [redacted] will be testifying upon the Committee's request to hear testimony from an investigator in the the British Columbia Region (BCR) for the years relevant to this complaint.

2. [redacted] began his career at the Canadian Security Intelligence Service (CSIS or the Service) as an Intelligence Officer (IO) in [redacted] He currently holds the position of Head of the [redacted] for [redacted] in BCR. The unit is responsible for conducting interviews, [redacted] occupied various positions within the BCR between 1998-2004 and 2008 to present. More specifically, between 2010 and 2013, [redacted] was the supervisor for the Unit responsible for [redacted]

3. [redacted] will testify that [redacted]

SECRET

4. [redacted] will provide such further and additional testimony and documentary evidence as may respond to the allegations set out in this complaint or as may be requested by the Committee.

5. In giving his evidence to the Committee, [redacted] will refer to documents included in the Service's classified books of documents, as well as any additional relevant documents which may come to his attention before or during the hearing of this complaint.

Per: Stéphanie Dion
Department of Justice Canada
National Security Litigation & Advisory Group
P.O. Box 8127, Station T
Ottawa, Ontario, K1G 3H6

Tel: 613-842-1356
Fax: 613-842-1345

Counsel for the Respondent

SECRET

1500-481:03

Department of Justice Canada
Ministère de la Justice Canada

National Security Litigation & Advisory Group
PO Box 8127, Station T
Ottawa, Ontario
K1G 3H6

Groupe litiges et conseils en sécurité nationale
CP 8127, Succursale T
Ottawa (Ontario)
K1G 3H6

February 1, 2016

TOP SECRET

BY HAND

Ms. Shayna Stawicki
Registrar
Security Intelligence Review Committee
Jackson Building
122 Bank Street, 4th Floor
Ottawa, Ontario
K1P 5N6

Dear Ms. Stawicki:

RE: ***BCCLA – Complaint against CSIS Pursuant to Section 41 of the CSIS Act***
Your File 1500-481

As per our undertaking of the January 28, 2016 *ex parte* hearing in the above-mentioned complaint, please find enclosed [redacted]

Should you require further information, please contact the undersigned at (613) 842-1356.

Sincerely,

Stéphanie Dion
Counsel

Encl.

cc: ER&L

[redacted] 51000-677

Canada

R-3

TOP SECRET

File No. 1500-481

SECURITY INTELLIGENCE REVIEW COMMITTEE

BETWEEN:

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Complainant

- and -

CANADIAN SECURITY INTELLIGENCE SERVICE

Respondent

CSIS' BOOK OF DOCUMENTS VOL. 1C
(DRS [redacted] Reporting)

EX PARTE HEARING

Per: Stéphanie Dion
Department of Justice Canada
National Security Litigation &
Advisory Group
P.O. Box 8127, Station T
Ottawa, Ontario, K1G 3H6

Tel: 613-842-1356
Fax: 613-842-1345

Counsel for the Respondent

SIRC / CSARS
SIRC Case # 146
Exhibit # CSIS 4A
Date January 28-2016
Entered by CSIS (Dion)
Registrar Shayna Stawicki

1 of 5
2315/15

AGC0008

Document ID	Main Date	Title	First page
TAB 6: [redacted]			
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	12/21/2012		771
	12/21/2012		774

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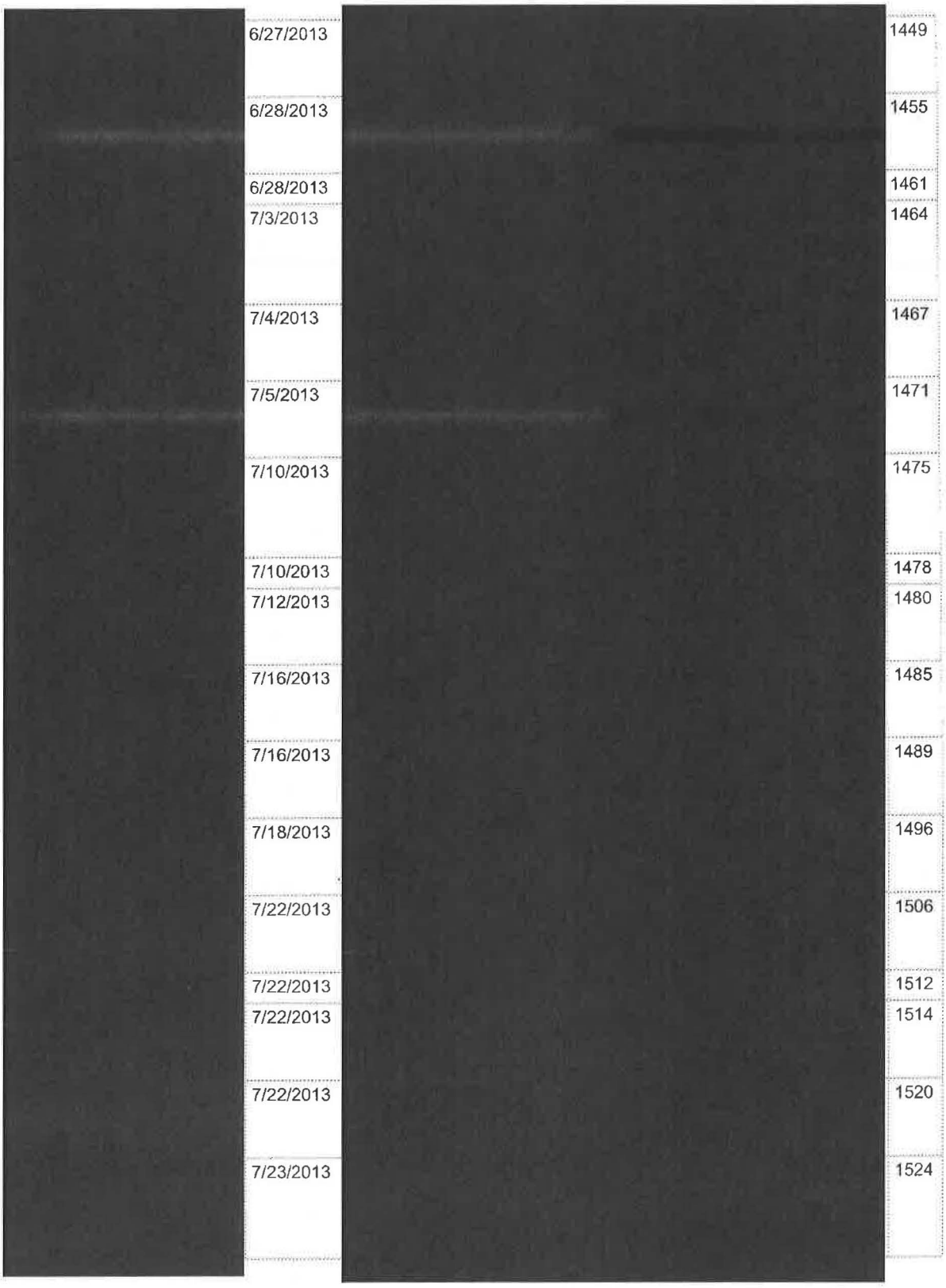
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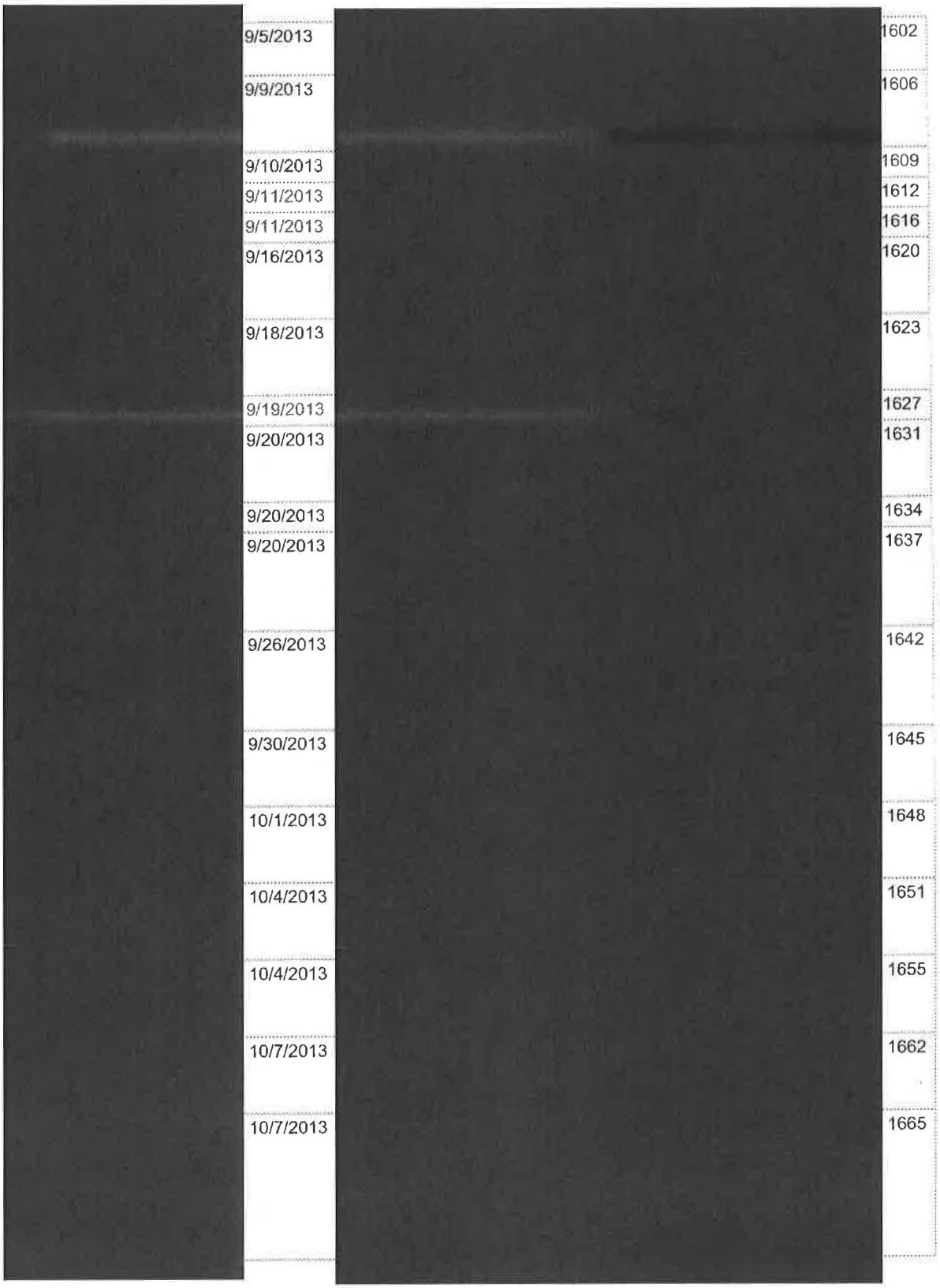
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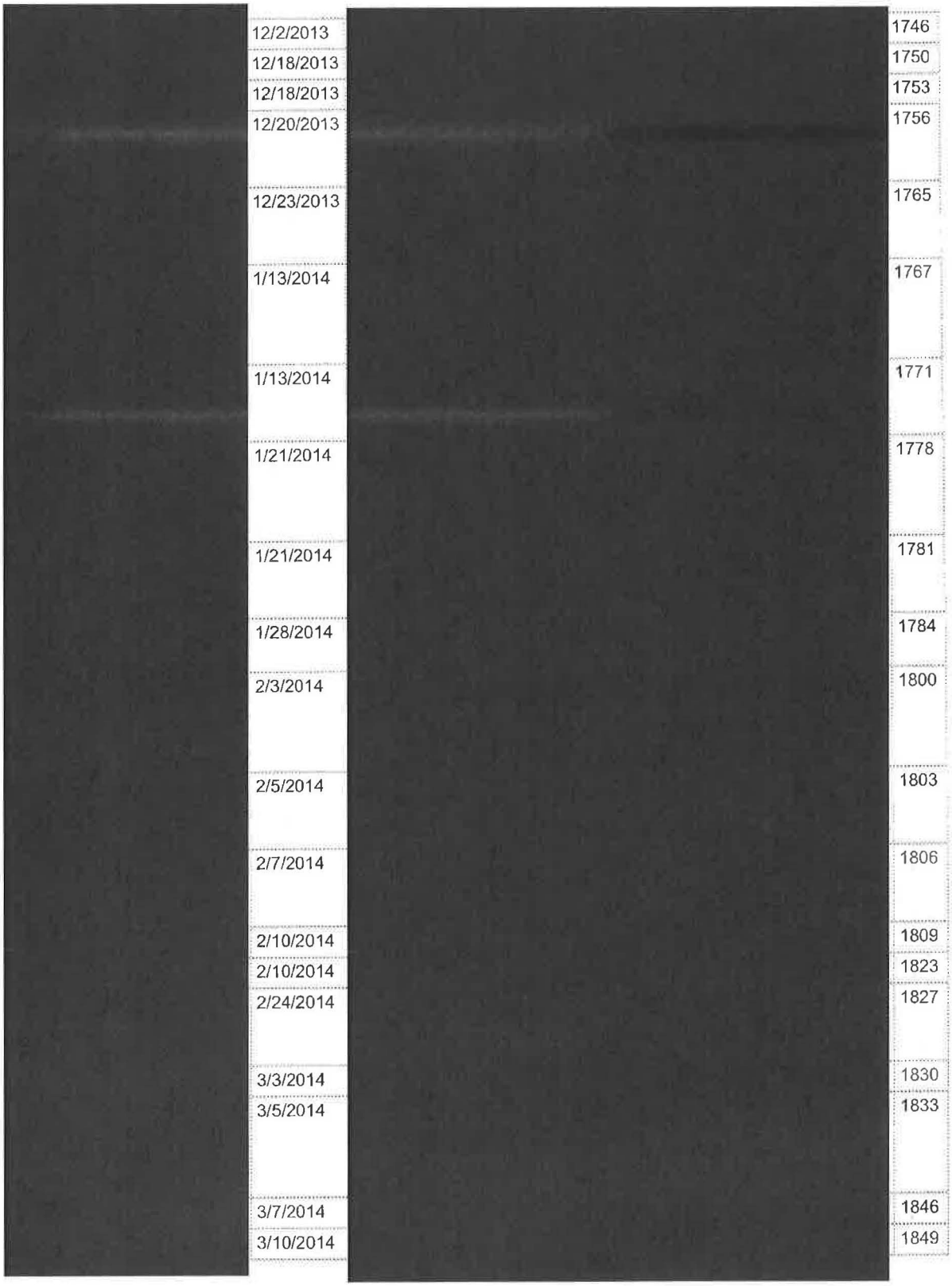
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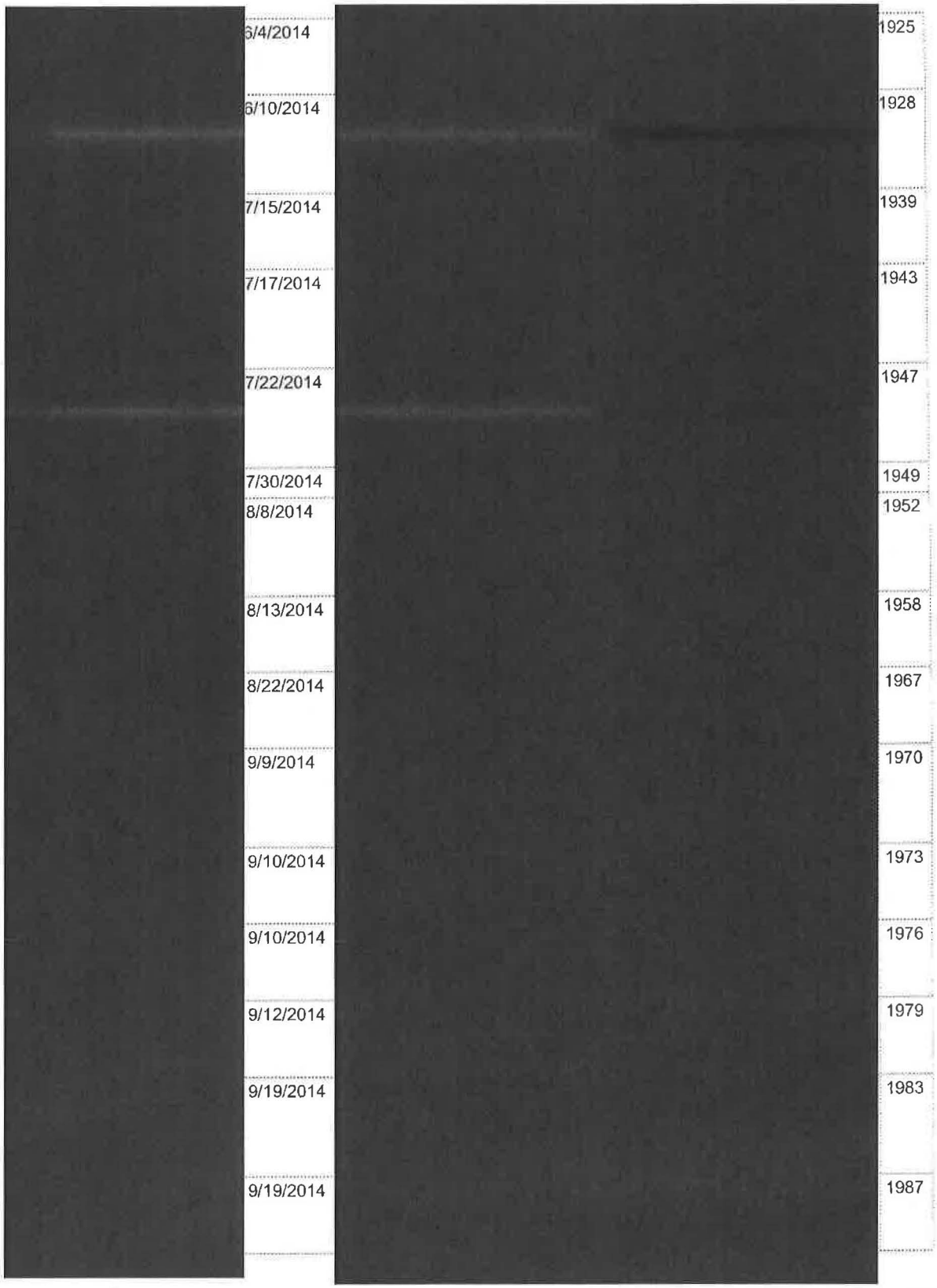
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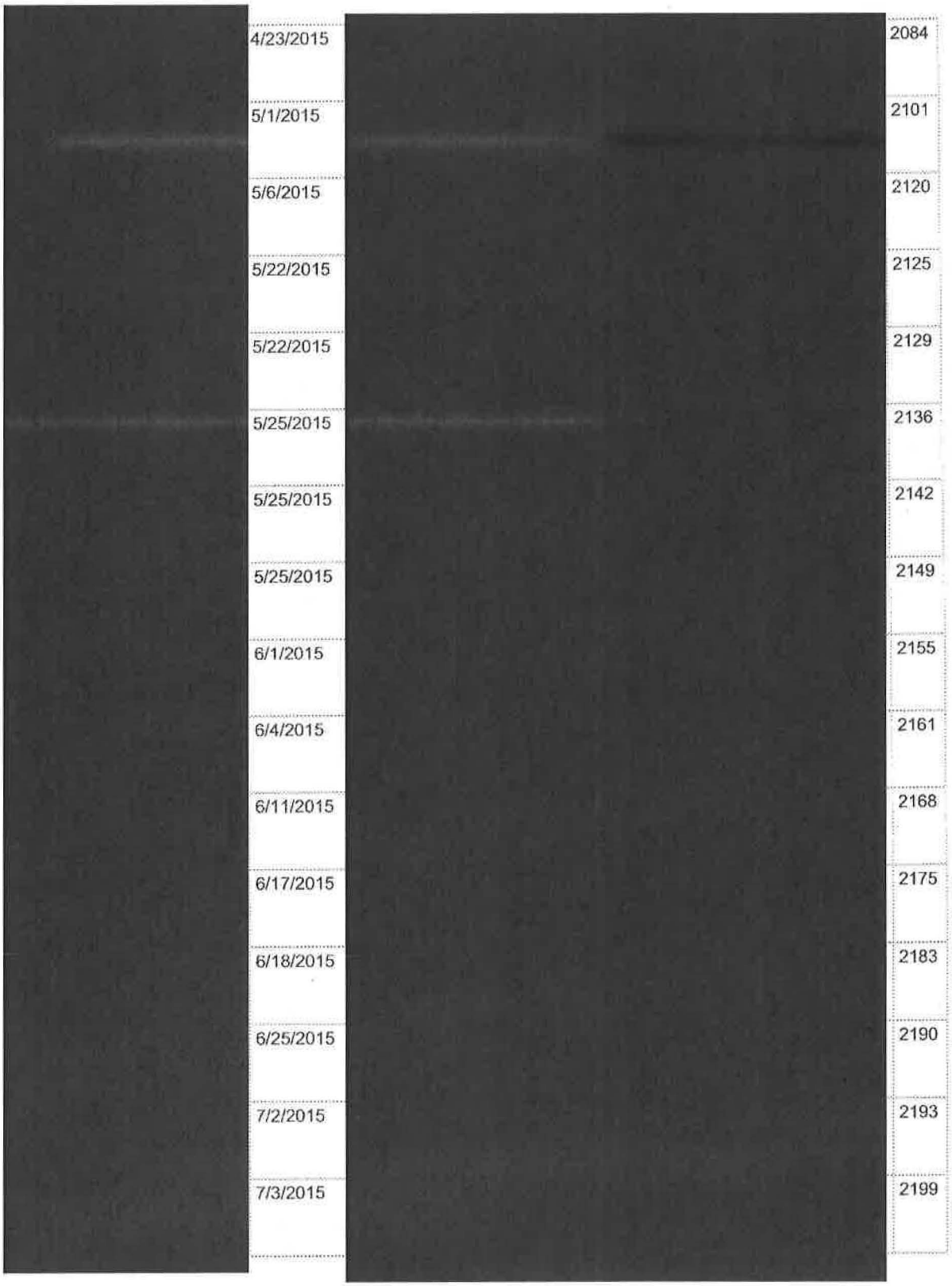
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Security Intelligence Review Committee

Comité de surveillance des activités de renseignement de sécurité

SECRET

File No.: 1500-481

November 30, 2015

Ms. Stéphanie Dion
Counsel
National Security Litigation & Advisory Group
Department of Justice Canada
PO Box 8127, Station T
Ottawa, ON K1G 3H6

Dear Ms. Dion:

RE: BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION - COMPLAINT AGAINST THE CANADIAN SECURITY INTELLIGENCE SERVICE PURSUANT TO SECTION 41 OF THE *CANADIAN SECURITY INTELLIGENCE SERVICE ACT (CSIS ACT)*

Please be advised that the Security Intelligence Review Committee (Committee) has scheduled the *ex parte* hearing to be held on January 28, 2016 and on January 29, 2016 in the above-noted matter.

The hearing will be held at the Committee's office located at 122 Bank Street, 4th Floor, in Ottawa, Ontario, and will begin at 9:30 a.m.

As agreed upon and confirmed by you in your letter dated October 29, 2015, the Committee expects to receive five copies of CSIS's Book of Documents for the *ex parte* hearing no later than December 4, 2015.

Should you have any questions with respect to the foregoing, please do not hesitate to contact the Committee's Registrar, Ms. Shayna Stawicki, at (613) 990-6319.

Yours sincerely,

Chantelle Bowers
Acting Executive Director

c.c.: ER&L

P.O. Box / C.P. 2430, Station / Succursale "D"
Ottawa, Canada K1P 5W5
Tel: 613 990-8441 Fax: 613 990-5230

Department of Justice Canada
Ministère de la Justice Canada

National Security Litigation & Advisory Group
PO Box 8127, Station T
Ottawa, Ontario
K1G 3H6

Groupe litiges et conseils en sécurité nationale
CP 8127, Succursale T
Ottawa (Ontario)
K1G 3H6

SECRET

November 17, 2015

BY HAND

Ms. Chantelle Bowers
Senior Counsel
Security Intelligence Review Committee
Jackson Building
122 Bank Street, 4th Floor
Ottawa, Ontario
K1P 5N6

Dear Ms. Bowers:

RE: ***BCCLA – Complaint against CSIS Pursuant to Section 41 of the CSIS Act***
Your File 1500-481

This is further to our meeting of July 8, 2015 and the earlier meetings of April 29 and June 16 with your predecessor, the Honorable Sylvie Roussel.

Enclosed is the "SIRC Complaint Worksheet" which was filled-out as per our discussions. As stated on the cover page of the worksheet, the purpose of this document is to outline the collection strategy and focus of the complaint that will be agreed to by all parties.

Should you require further information, please contact the undersigned at (613) 842-1356.

Canada

Sincerely,

Stéphanie Dion
Counsel

Encl.

cc: ER&L

[redacted] 51000-677

2014 07 08 (based on conversation with Sylvie Roussel 2015 06 16 and 2015 04 29)

SIRC COMPLAINT WORKSHEET

STRATEGY FOR DOCUMENT COLLECTION AND FOCUS, POST-JURISDICTION

SIRC may search independently in BRS in order to make a determination on jurisdiction. SIRC may also require access to certain documents (such as SSB documents) to make this determination. ER&L will assist with this.

Should SIRC decide that it has jurisdiction and will investigate a complaint, a meeting will be held with a representative from ER&L, SIRC counsel and Service counsel in order to identify SIRC's areas of interest and formulate a strategy for document collection and disclosure. This meeting will clarify the issues the committee wishes to investigate and to allow document collection for disclosure to SIRC to begin.

The purpose of this document is to outline the collection strategy and focus of the complaint that will be agreed to by all parties. This strategy may change throughout the investigation process, but should SIRC or the Service identify a need for this change, all parties must be informed as early as possible in order to be able to effectively address this change.

This worksheet deals strictly with the issue of disclosure as it relates to section 39 of the *CSIS Act*.

SIRC Complaint Worksheet

Name of Complainant: **BCCLA**	
DOB of Complainant: N/A	
File Numbers – ER&L	**File Numbers - SIRC**
[redacted]	**1500-481**
Post-Jurisdiction CSIS-SIRC meeting	**Dates: 2015 04 29, 2015 06 16, 2015 07 08**
Summary of Complaint: (as defined in the letter of complaint to Director and SIRC) CSIS is gathering info about Cdn citizens and groups engaging in peaceful and lawful expressive activities, and sharing it with other government bodies and private sector actors. Specifically NEB re: Northern Gateway Project ***** As defined in the pre-hearing teleconference call 2015 05 20: BCCLA is only interested in any CSIS investigation or information sharing re the goups (Leadnow, ForestEthics Advocacy Association, the Council of Canadaians, the Dogwood Initiative, EcoSociety, Sierra Club of BC, Idle no More) as they relate to Northern Gateway Pipeline protests	**SIRC will investigate the following:** (as discussed at the meeting) ***SIRC may advise of a shift in parameters at any time** Confirmed by letters between counsels and at the 2 pre-hearing teleconference calls: 1- Did the Service collect, by investigation or otherwise, information or intelligence about groups [Leadnow, ForestEthics Advocacy Association, Council of Canadians, Dogwood Initiative, EcoSociety, Sierra Club of British Columbia, Idle No More] or individuals for their activities in relation to the Northern Gateway Pipeline Project? 2- If yes, was the collection of information or intelligence lawful? 3- Did the Service provide information relating to groups [Leadnow, ForestEthics Advocacy Association, Council of Canadians, the Dogwood Initiative, EcoSociety, Sierra Club of British Columbia, Idle No More] or individuals opposed to to the Northern Gateway Pipeline Project to the National Energy Board or non-government members of the petroleum industry? 4- If yes, was it lawful to provide this information?
Pre-jurisdictional database searches	**Hits**

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
Branches/Regions queried (IS, walk-ins, R&S, etc.) **ADP**	**Other Branches and regions that will be approached to provide documents?** **BCR, PR, [redacted] HQ, IAB, possibly ITAC** ***BCR, PR, [redacted] HQ: request to search for group names** **[redacted] HQ to also provide [redacted] Directional Statements from HQ to Regions (since 2009 12 31)** ***IAB: reports re energy sector, NPOs, contact reports, briefings (since 2009 12 31)** ***ITAC: Report matrix – title of reports, dissemination chart, [redacted] (since 2009 12 31)**

BRS search string variations: [redacted]

Sample Search Strings	# hits [redacted]
[redacted]	[redacted]

Proposed Search String (BRS):	Agreed upon Search string:
As above	As above; [redacted] from 2009 12 31

BRS [redacted] to be Searched:

[redacted] √

Usually searched, depending on type of complaint:

[redacted]

Not searched unless requested:

[redacted]

Other BRS [redacted] required: (from list above)

[redacted]

[redacted] search string variations:

Search	[redacted] Search String	No. of Hits	[redacted] Search String	No. of Hits
1	[redacted]	[redacted]	[redacted]	[redacted]
2				
3				
4				
5				
6				
7				

[redacted]

Proposed [redacted] search string:	Agreed upon Search string:
As above	As above, [redacted]
[redacted]	Yes – provided in initial set of documents in 2014

[redacted]

Other Service databases besides BRS and [redacted] to be searched?

No

[redacted]

Additional information:

ADP – Received a copy of a complaint letter to CSIS from BCCLA from 2009. Have not disclosed to SIRC not relevant and no complaint to SIRC ever filed [redacted]

Participants:

Stéphanie Dion, NSLAG (2015 04 29, 2015 06 16, and 2015 07 08)

[redacted] ER&L (2015 04 29, 2015 06 16, and 2015 07 08)

Sylvie Roussel, SIRC (2015 04 29, and 2015 06 16)

Chantelle Bowers, SIRC (2015 07 08)

1500-481 : 02

Department of Justice Canada
Ministère de la Justice Canada

National Security Litigation & Advisory Group
PO Box 8127, Station T
Ottawa, Ontario
K1G 3H6

Groupe litiges et conseils en sécurité nationale
CP 8127, Succursale T
Ottawa (Ontario)
K1G 3H6

SECRET

July 8, 2015

RECEIVED
JUL 0 8 2015

RECEIVED
JUL 0 9 2015

1325/15

REFERRED TO	DATE	INIT
DED Sr. Counsel	07/09/15	
Registrar		

BY HAND

Ms. Shayna Stawicki
Registrar
Security Intelligence Review Committee
Jackson Building
122 Bank Street, 4th Floor
Ottawa, Ontario
K1P 5N6

Dear Ms. Stawicki:

RE: ***BCCLA – Complaint against CSIS Pursuant to Section 41 of the CSIS Act***
Your File 1500-481

Below you will find the topics that will be addressed at the *ex parte* hearing of the above-mentioned matter. As mentioned in my correspondence of June 22, 2015, the witnesses have not yet been identified as we do not have an indication of when the *ex parte* hearing will be held.

Witness #1 will testify on the following subjects:

- any operational reports in the Service's holdings mentioning the groups identified in the complaint letter: Leadnow, ForestEthics Advocacy Association, Council of Canadians, the Dogwood Initiative, EcoSociety, Sierra Club of British Columbia, Idle No More;

[redacted]

Witness #2 will testify on the following subjects:

- the Intelligence Assessment Branch (IAB) and its role in delivering briefings and reports to Government of Canada and others partners;
- the Service's involvement in the biannual National Resources Canada classified briefings.

Canada

Additional witnesses may be required and other topics may be addressed at the *ex parte* hearing in order to respond to issues raised at the *in camera* hearings as well as inquiries made by the Committee.

Should you require further information, please contact the undersigned at (613) 842-1356.

Sincerely,

Stéphanie Dion
Counsel

cc: ER&L

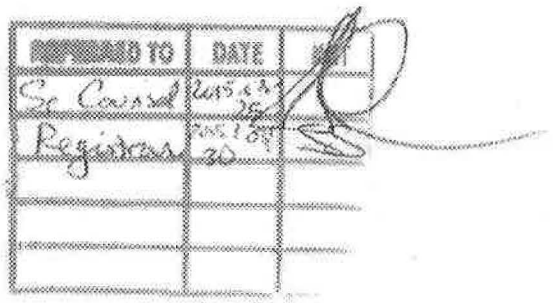
[redacted] 51000-677

Champ & Associates
www.champlaw.ca

Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6
T: 613-237-4740
F: 613-232-2680

Paul Champ
pchamp@champlaw.ca

Our File: 1555



March 25, 2015

BY COURIER

Shayna Stawicki, Registrar
Security Intelligence Review Committee
122 Bank Street, 4th Floor
Ottawa, ON K1P 5N6

Dear Ms Stawicki:

Re: British Columbia Civil Liberties Association ("BCCLA")
Complaint re CSIS Surveillance and Information Sharing with the NEB
SIRC File No.: 1500-481

We are writing to inquire as to the status of above-noted complaint by the British Columbia Civil Liberties Association ("BCCLA"), which was first presented to the Review Committee on February 6, 2014.

It has now been more than three months since we last heard from the Review Committee, and BCCLA continues to await further information from SIRC regarding the next steps in this matter. As noted in our December 9, 2014 letter, BCCLA is prepared to proceed with its complaint before Mr Fortier, and looks forward to hearing from you soon to ensure that the Review Committee's inquiry into this important matter proceeds in a timely fashion.

We also take this opportunity to call the Review Committee's attention to additional records which have recently been disclosed under the *Access to Information Act*. These documents, copies of which are enclosed for Mr Fortier's review, provide further evidence of CSIS's ongoing involvement in gathering and sharing information and intelligence about protests concerning the petroleum industry, including the Northern Gateway Project. Perhaps most significantly, these records show that CSIS prepares reports and shares

formation regarding protest activities, even where it recognizes that such actions are lawful and therefore outside the Service's statutory mandate under s.12 of the *CSIS Act*.[1]

As set out in BCCLA's initial complaint, such intelligence gathering and information sharing regarding legitimate and lawful environmental advocacy on issues of significant public debate is a disturbing trend that represents a significant threat to the freedoms of all Canadians as guaranteed under the *Charter*. It is also a clear sign that CSIS is acting well beyond its statutory mandate. As you know, Parliament has placed very clear limits the scope of the Service's intelligence-gathering activities, expressly providing that CSIS's mandate "does not include lawful advocacy, protest, or dissent."[2]

Given the foregoing, we would ask that you please provide copies of the enclosed documents to Mr Fortier. We look forward to hearing from you very soon regarding the next steps in Review Committee's inquiry into this serious and important matter.

Yours truly,

Paul Champ

encls.

c: J. Paterson, Executive Director, BCCLA

[1] See, e.g., Memorandum of Assistant Director Tom Venner to the Director re Meeting of the Deputy Ministers' Committee on Resources and Energy, Monday, 9 June 2014 at page 2 of 3: "The Service recognizes that many of these issues involve legitimate protest and dissent and as such, have no mandate nexus." Also see: Memorandum of Assistant Director Tom Venner to the Director re Meeting of the Deputy Ministers' Committee on Resources and Energy, Monday, 19 June 2014, at pages 1 and 3 of 4.

[2] *Canadian Security Intelligence Service Act*, RSC, 1985, c.C-23, s. 2.

Our file: 117-2014-389

FEB 27 2015

Mr. Jim Bronskill
The Canadian Press
800-165 Sparks Street
Ottawa, Ontario
K1P 5B9

Dear Mr. Bronskill:

This refers to your *Access to Information Act* request of November 10, 2014, for "**2014 06 04 / Background Note for DM Resources and Energy Committee (9 June 2014) / Internal Tracking No. 18507; and 2014 06 17 / Background Note for DM Resources and Energy Committee (18 June 2014) / Internal Tracking, received on November 18, 2014**".

Enclosed please find a copy of the releasable material pertaining to the subject of your request. Portions of the material have been exempted from disclosure by virtue of one or more of sections 13(1), 15(1) (as it relates to the efforts of Canada towards detecting, preventing or suppressing subversive or hostile activities), 16(1)(a) or (c), 19(1), and/or 21(1)(a) or (b) of the *Act*.

With regards to the information exempted pursuant to subsection 19(1), I wish to inform you that the disclosure provisions contained in subsection 19(2) were considered however, none of them applied.

You may use the contact information located in the letterhead to contact us should you wish to obtain clarification concerning your request. Please provide the file number at the top of this letter in any subsequent correspondence.

Please be advised that you are entitled to file a complaint to the Information Commissioner concerning the processing of your request within sixty days of the receipt of this notice. In the event you decide to avail yourself of this right, your notice of complaint should be addressed to: Information Commissioner of Canada, 30 Victoria Street, Gatineau, Quebec, K1A 1H3.

Yours truly,

[redacted]

Coordinator
Access to Information and Privacy

Attachments

MEMORANDUM TO THE DIRECTOR

MEETING OF THE DEPUTY MINISTERS' COMMITTEE ON RESOURCES AND ENERGY

15:00 – 16:00
Monday, 9 June 2014
269 Laurier Avenue West, 19th Floor Boardroom

BACKGROUND

This *ad hoc* meeting of Deputy Ministers has been called to discuss the federal response to protests associated with resource and energy development in anticipation of possible events in summer 2014. The issue is being driven by violence of the hydraulic fracturing protests in New Brunswick in 2013 (**TAB 1**), and the Government's interest in assuming a proactive approach to possible issues as the summer approaches.

GOVERNMENT OPERATIONS CENTRE RISK FORECAST 2014

Public Safety will present on the Government Operations Centre (GOC) report titled "Government of Canada Risk Forecast – 2014 Protests and Demonstration Season" (**TAB 2**) in which the GOC identifies and assesses the potential risks associated with the spring/summer protests and demonstrations. The GOC assesses the risk for 2014 as low (characterized by awareness-building protest activities) with possible medium risk activities (characterized by disruption to critical infrastructure including transportation networks).

In reviewing the Risk Forecast (TAB 2),

Traditional Aboriginal and treaty rights issues, including land use, persist across Canada Discontent related to natural resource development across Canada is largely an extension of traditional concerns. In British Columbia, this is primarily related to pipeline projects (such as Northern Gateway). In central Canada,

The Service recognizes that many of these issues involve legitimate protest and dissent and as such, have no mandate nexus.

GUIDED DISCUSSION

If you require any further information, please do not hesitate to contact me.

Tom Venner
Assistant Director
Policy and Strategic Partnerships

Enclosed:

- **TAB 1:** "Violent Confrontation over Seismic Testing (Hydraulic Fracturing) in New Brunswick"
- **TAB 2:** "Government of Canada Risk Forecast – 2014 Protests and Demonstration Season (Government Operations Centre)

Violent Confrontation over Seismic Testing (Hydraulic Fracturing) in New Brunswick

On 2013 10 17, violence erupted near the Elsipogtog First Nation, New Brunswick, when the RCMP enforced a provincial court injunction against an encampment of (bolstered by a number of self-described Mi'kmaq warriors). The camp, situated on Highway 134 (near the town of Rexton), had blocked the facility and equipment of SWN Resources Canada (an American-owned shale gas exploration company) since September 29, 2013.

A broad convergence of Aboriginals and non-Aboriginals have attempted to prevent hydraulic fracturing in New Brunswick since 2011, but since the late spring of 2013 have sought to prevent SWN from conducting preliminary seismic testing which is done to ascertain if hydraulic fracturing is feasible.

During the October 17th raid and subsequent arrests, Molotov cocktails were thrown at the RCMP and several shots were fired from the nearby woods. Shortly after the initial RCMP raid, approximately 300 local Aboriginals and non-Aboriginals confronted and subsequently broke the RCMP line resulting in additional arrests. During this period, six RCMP vehicles were destroyed by fire. In total, 40 people were arrested.

The RCMP recovered three firearms, knives, unspent ammunition, and small improvised explosive devices (IED'S) from the camp. RCMP Assistant Commissioner Brown subsequently stated that the IED's "were akin to a Boston Marathon-type of bombing." In response to the RCMP raid, and in support of the Elsipogtog First Nation, activists and militants engaged in more than 50 peaceful solidarity protests, demonstrations and road blockades across the country.

Since the summer of 2011, militants and extremists have engaged in equipment sabotage, multiple road blockades, and the

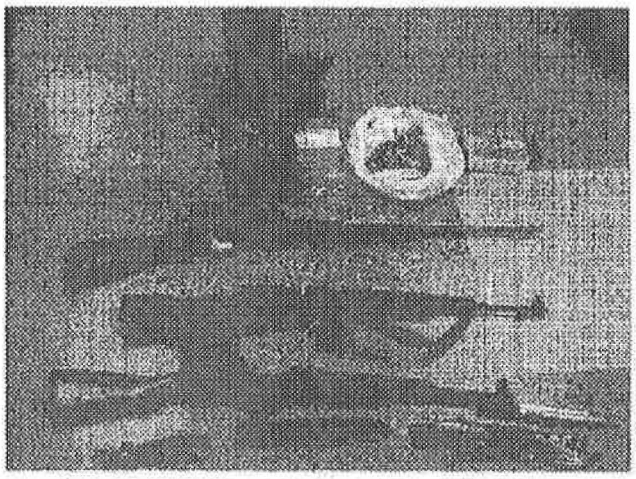
[1] As outlined in the United Nations Declaration of Rights of Indigenous Peoples (UNDRIP) which Canada endorsed as an aspirational document in 2010.

destruction of six RCMP vehicles (previously mentioned) resulting in over 100 arrests since June 2013. The cost of industrial equipment sabotage has exceeded $250,000 (excluding the estimated $300,000 to replace the six RCMP vehicles) while the additional cost to law enforcement has reportedly surpassed $4 million.

This included some of the self-described "Mi'kmaq Warriors" who came from other parts of the Maritimes and often attempted to co-opt the direction and actions of this group.

Regulatory and Crown decisions on a range of natural resource development and critical infrastructure projects are expected in 2014

RCMP Photo of some of the item seized at the raid.



Government Operations Centre

Government of Canada Risk Forecast
2014 Protests & Demonstrations Season

Date of issue: 01 May 2014

GOC-COG

RDIMS# 1092364

Prepared by: Planning Division

Canada

EXECUTIVE SUMMARY

The notoriety and success of past civil society movements including the Arab Springs (2010), the Occupy Movement (2012-present), the Idle No More movement (2012 – 2013) and Pipeline demonstrations across Canada and the US, as well as the province-wide student demonstrations in Quebec (2012) have inspired citizens to build grass roots movements and have their voices heard on a wide range of issues across larger and larger geographic areas.

Over the last several years, protests and demonstrations in Canada have been motivated by social, political, environmental, First Nations-related issues or some combination of these. These general categorizations continue to hold true.

Based on previous Government Operations Centre (GOC) work on historical protest/demonstration trends and ongoing tracking of protest and demonstration trends, as well as public announcements and other pre-protest/demonstration indicators observed by the GOC and federal partners, a number of conclusions can be drawn:

- Of the usual protests and demonstrations which occur in Canada annually only a limited number rise to the level of being of a national interest;
- The majority of protests and demonstrations are peaceful in nature and their individual impacts are short-lived;
- Due to the local nature of protests and demonstrations, it is often difficult to develop a national picture because most information and impact stays at the local level;
- Other aspects of protests and demonstrations need to be considered (*e.g.*, the use of social media, the engagement of youth populations, the perceived success of previous protest "movements", growth in the geographic breadth of protest and demonstration activity, as well as a seeming increase in the targeting of critical infrastructure);
- Exact triggers are difficult to predict. What information or action will be seized upon as a trigger is not usually known to either side of a confrontation, and there are too many potential trigger points to identify which ones will ignite a situation;
- At this point, the federal partners consulted had no information to indicate that any identified issues had yet provoked significant organizing activity or would do so in the near to medium terms.

Thus, the GOC forecasts a **LOW** risk during the 2014 spring / summer protest and demonstration season, with the possibility of **MEDIUM** level events occurring.

1. SCOPE

The purpose of this document is to identify and assess the potential risks associated with the 2014 spring / summer protests and demonstrations season.

While response to protests and demonstrations do not generally fall under federal responsibility, disruptions to critical infrastructure may trigger a federal response, or at least situational reporting by the GOC.

2. METHODOLOGY

The risk forecast is based on a previously completed five-year environmental scan, a statistical update to the scan, as well as an interdepartmental meeting (April 1, 2014) hosted by the GOC and consisting of representatives of nine other federal partners organizations. The meeting was used to discuss and share information regarding members' knowledge of any future potential large, disruptive or geographically widespread protests or demonstrations in Canada which may rise to the level of national or federal interest.

3. BACKGROUND

As a result of the increased scope and reach of civil society protest and demonstration activities, and their correspondingly wider impact on critical infrastructure, the GOC began to examine the strategic effect of major protest and demonstration movements from the perspective of their growing frequency, their impact on critical infrastructure, and of the need for any federal government response.

The GOC conducted a five-year environmental scan of past protests and demonstrations in Canada that affected the national interest or had an impact on critical infrastructure.

After conducting a trend analysis of protests and demonstrations, the GOC concluded that most of the protests and demonstrations naturally fell into four primary categories:

- **Social Issues** protests include specific issues and concerns (e.g. labour actions, anti/pro-abortion rights protests, pro-marijuana demonstrations), as well as broad-based grievances and protests against generic conditions (*e.g.*, Occupy Wall Street).

- **Political Issues** protests are generally for or against domestic or international political developments. This would include the Quebec student protests, opposition to Federal employment insurance reforms, protests against perceived political injustices by foreign governments, protests against decisions taken by municipal, provincial or federal government, and protests in-opposition to domestic or international political events (e.g., political leadership conferences, WTO/IMF meetings, G8/G20 meetings).

- **Environmental Issues** protests include pipeline protests, Non-Governmental Organization (NGO) organized protest events, and all protests in opposition to government or industry environmental policy decisions or actions. This also includes animal rights-related protests.

- **First Nations Issues** protests include all protests with a First Nations nexus, including Idle No More protests, Assembly of First Nations-organized events, fishing-related protests, and treaty or resource development-related protest activities.

That said, not all significant protests and demonstrations can be slotted exclusively under these headings. Some issues are naturally compatible (*e.g.*, some evironmental and First Nations issues) and supporters may come together to engender organizations responsible for large, disruptive or geographically widespread protests and demonstrations which can not be categorized under a single heading.

The GOC's environmental scan also indicated that mass protests and demonstrations have proven to be a highly effective means to communicate information on political views, alternative policy and specific agendas.

4. LIKELIHOOD AND SEVERITY ASSESSMENT

The likelihood and severity assessment for this Risk Forecast is based on:

A. Historical protest/demonstration trends
B. Ongoing tracking of protest and demonstration trends by the GOC and other federal partners;
C. Public announcements and other pre-protest/demonstration indications observed by the GOC and federal partners;
D. The collective assessment by those on the working group.

A. Historical protest/demonstration trends

As stated earlier, over the last several years, protests and demonstrations in Canada have been motivated by social issues, political issues, environmental issues, First Nations-related issues or some combination of these.

Historically, the majority of protests and demonstrations are peaceful in nature and their individual impacts are short-lived (rail/highway blockades, traffic and port and entry disruptions).

Of the usual protests and demonstrations which occur in Canada annually only a limited number rise to the level of being of a national interest. The criteria for the GOC to report on protests and demonstrations (*i.e.*, domestic civil disturbances) is for an event resulting in actual or potential, significant disruption to government operations, critical infrastructure and/or pose a significant, actual or potential threat to public safety. Thus, while there has rarely been "a significant actual or potential threat to public safety", large, disruptive, and geographically widespread protests and demonstrations have caused disruption to government services and critical infrastructure.

B. Ongoing tracking of protest and demonstration trends by the GOC and other federal partners

Although post-"Idle No More" (INM) First Nations protests and demonstrations actually decreased after April 2013, a recent statistical update to the GOC's environmental scan found that Aboriginal issues are still the leading motivator of protests and demonstrations, though at a much reduced occurrence rate. Political issues, environmental issues and social issues followed (in that order), though collectively only represented about one-quarter of the events tracked.

However, these findings should only be taken as demonstrative and not concrete fact. Due to the local nature of protests and demonstrations, it is often difficult to develop a national picture because most information and impact stays at the local level. If not covered by the media or publically reported on by local authorities, federal partners and the GOC may not be aware of some protests and demonstrations.

C. Public announcements and other pre-protest/demonstration indications observed by the GOC and federal partners

Federal partners reported that while they are aware of public calls or announcements for organized protests and demonstrations motivated by various issues, none have yet demonstrated a level of organization, public acceptance or geographic coverage to warrant potential federal/national level interest. Instead, a number of partners pointed out that the pre-protest/demonstration season indicators they would have otherwise expected to observe over the course of the winter did not materialize. Most reported that they were not aware of any significant ongoing pre-protest/demonstration activities.

D. The collective assessment by those on the working group

During the discussion of the working group, several potential motivating issues were identified (e.g., anti-pipeline; anti-fracking/shale gas; First Nations issues collectively; various political and environmental issues). However, while all agreed that any one of these issues could motivate large, disruptive, or geographically widespread protests and demonstrations, none of the partners had any information to indicate that any of these issues had yet provoked significant organizing activity or would do so in the near to medium terms.

Other Factors

That said, previous GOC experience has revealed that there are some influencing factors that should be considered:

First is the use of social media. Many interest groups and civil society movements have leveraged the power of social media not only to spread their various messages farther than ever before, but have also been able to translate this digital reach into the physical environment by more effectively and efficiently organizing larger numbers of interested individuals over larger geographic areas. The result has been larger single issue or related-issue protests and demonstrations occurring concurrently in multiple locations.

The spread of "citizen journalism" through social media and other internet fora allows for even wider distribution of alternatively sourced information into the mainstream, which can then translate into even wider coverage to otherwise less politically active populations.

Related to the use of social media, is the activation and engagement of youth by many of the issue-related movements that have been established in the last half decade.

Finally, the notoriety and success of past civil society movements will necessarily encourage new groups to emulate the actions and activities of those that came before them. While at the same time, existing groups continue to perfect their methodologies.

For the GOC, this has meant that individual protests and demonstrations which in and of themselves may not have been a significant priority in the past are now noted because of their potential for spawning additional or concurrent protests or demonstrations in support of the original issue in other locations.

This growth in the geographic breadth of protest and demonstration activity, as well as a seeming increase in the targeting of infrastructure (*i.e.*, the transportation section, especially rail and road) has increased the strategic impact of recent protest movements. A recent example of critical infrastructure (CI) disruption occurred in Sarnia, ON, in December 2012 where a CN line was blocked for approximately 1 week and disrupted delivery of supplies to Sarnia's Chemical Valley, which if prolonged, may have resulted in job losses. The VIA passenger corridor in the Kingston / Belleville are was disrupted and generated abundant media coverage; as well, ports of entry, such as Blue Water Bridge in Sarnia, were also targeted. The impacts are quite fluid and vary according to the nature and length of disruption.

Potential Triggers

Exact triggers are difficult to predict. What information or action will be seized upon as a trigger is not usually known to either side of confrontation, and there are too many potential trigger points to identify which ones will ignite a situation. A dispute over a relatively minor incident can spark a larger local incident with sympathy events elsewhere.

However, some potential strategic trigger points could include:

- The Government's regulatory, policy and legislative agenda. Some activists may feel the Government has not consulted with them, such as the ongoing Northern Gateway Keystone XL and shale gas protests.

- Financial contribution to communities with unresolved disputes. Frustration toward education issues, funding mechanisms, land claims and treaties that may spark provincial protests causing major disruptions to critical infrastructure, small businesses, and traffic. The mass student protests in Quebec are a prime example.

- The Government's response to an emergency could also feed discontent. For example, the Attawapiskat housing crisis triggered protests. Any perceived inadequate response to cyclical events, like forest fires and floods, may be a flash point. There is still discontent from First Nations evacuees as a result of the 2011 Manitoba Floods (over 1,800 still have not returned home).

5. IMPACT ASSESSMENT

The impact from protest activities may include: disruption of services and inconvenience to the public (transportation disruptions), damage to property, disruption of government operations (municipal / provincial / federal), increased media coverage and scrutiny, political fallout, economic losses (*i.e.*,

transportation or port of entry blockades, policing costs), and in the extreme, injury and loss of life.

There are three levels of risk associated with protest activities:

LEVELS OF RISK	DEFINITION
Low	
Medium	
High	

Although the impact increases with each risk level, the probability of occurrence diminishes. For example, extremist actions will result in high impact, but the probability of its occurrence is low.

The duration of a particular protest action will also affect its impact, as the longer the activity lasts, the greater the disruption and potential impact. For example, the blockade of a rail line leading to Sarnia, Ontario's Chemical Valley for one week in December 2012 was on the verge of affecting the supply of propane in Ontario, potentially leading to harmful economic effects. This type of disruption can lead to increased pressure for more robust response by authorities. This in turn can further aggravate an already delicate situation.

6. RISK FORECAST

The risk forecast considers the likelihood, severity and impact assessments outlined above as well as the risk tolerance of the Canadian public and of the various levels of government.

The Canadian public, as well as all levels of government in Canada, recognize that lawful advocacy, protest and dissent are rights protected by the *Canadian Charter of Rights and Freedoms*. As such, there exists in Canada a very high risk tolerance regarding protest and demonstration activities, though this tolerance declines when there is proven illegality or a threat of violence and injury, or the protest / demonstration continues over an extended period of time.

This elevated tolerance level, along with the fact that at this point, there is little information to predict the occurrence of one or more large, disruptive, or geographically widespread protests or demonstrations necessitates the GOC to forecast a **LOW** to **MEDIUM** risk during the spring / summer protest and demonstration "season".

7. GOC RESPONSE

Public Safety Canada has the overarching responsibility for response coordination supported by the federal family.

In the event that protest activities become a national interest, the Federal Emergency Response Plans (FERP) would form the basis of response and coordination by the Government. The FERP outlines how the primary Federal institutions will be engaged through their emergency support functions. Supporting departments may be called upon, depending on the situation, to provide specialized assistance. The GOC will be the hub, and be responsible for:

- **Operations:** monitoring, validating and coordinating a response to events of a national interest.
- **Interdepartmental consultation:** coordinated communications with interested and responsible federal departments and agencies, as well as provincial and private sector partners.
- **Situational Awareness:** consolidated reporting to senior officials will be provided.
- **Risk Assessment:** threats and impacts to Canada's critical infrastructure will be analyzed to determine the level of response.
- **Planning:** developing a course of action.
- **Briefing Senior Decision-Makers:** coordinated briefing of senior officials, including the Assistant Deputy Ministers Emergency Management Committee and the Assistant Deputy Ministers National Security Operations Committee, on developments related to an incident and the federal response.

10. CONCLUSION

While there is a certainty that some protests and demonstrations will occur during the spring and summer of 2014, and there are enough issues brewing in various domains (*e.g.*, legislative, regulatory, political, *etc.*) which have the potential to trigger large, disruptive or geographically widespread protests and demonstrations, there is little or no concrete information indicating more than a normal level of protest and demonstration activity.

MEMORANDUM TO THE DIRECTOR

MEETING OF THE DEPUTY MINISTERS' COMMITTEE ON RESOURCES AND ENERGY

10:30 – 12:00
Monday, 19 June 2014
269 Laurier Avenue West, 19th Floor Boardroom

BACKGROUND

Further to the agreement at the 9 June *ad hoc* meeting of Deputy Ministers, this follow-up meeting has been called to further discuss the federal response to potential protests associated with resource and energy development issues in summer 2014. The discussion is being driven by the violence that occurred surrounding the hydraulic fracturing protests in New Brunswick in 2013 (TAB 1), and the Government's interest in proactively preparing for possible issues as the summer approaches.

At the time of writing, Public Safety had not provided any information in support of the discussion. As such, information included represents issues that may be raised.

NOTHERN GATEWAY PIPELINE DECISION

The federal government is expected to render its decision pertaining to the proposed Northern Gateway pipeline project on 17 June.[1] The project was approved by the National Energy Board in late 2013, and has become a touchstone for opposition to oil sands development. While most of the Aboriginal (and non-Aboriginal) opposition falls under the category of legitimate protest and dissent,

[1] The proposed Northern Gateway pipeline project would carry oil to tankers for export to the U.S. and Asia. It would be 1,177 km in length and run from Bruderheim, Alta, to Kitimat, B.C carrying 525,000 barrels per day. If approved, the estimated start-up date is in 2017.

Although an announcement had not been made at the time of writing, it is expected to be one of three possibilities: approval; approval with additional Aboriginal consultation; or rejection. Each of these decisions could have a distinct impact on Government-Aboriginal relations, particularly during summer and fall 2014.

In the event that the Government approves the pipeline, the Service assesses that

The Government may also announce that while it supports the Northern Gateway project, it will not approve it until after additional Aboriginal consultation is conducted
The Service assesses that

There is also a possibility that the Government could reject the pipeline. The Service assesses

the Service assesses that

GOVERNMENT OPERATIONS CENTRE RISK FORECAST 2014

Public Safety may present on the Government Operations Centre (GOC) report titled "Government of Canada Risk Forecast – 2014 Protests and Demonstration Season" (**TAB 3**) in which the GOC identifies and assesses the potential risks associated with spring/summer protests and demonstrations. The GOC assesses the risk for 2014 as low (characterized by awareness-building protest activities) with possible medium risk activities (characterized by disruption to critical infrastructure including transportation networks).

In reviewing the Risk Forecast (**TAB 3**),

Traditional Aboriginal and treaty rights issues, including land use, persist across Canada Discontent related to natural resource development across Canada is largely an extension of traditional concerns. In British Columbia, this is primarily related to pipeline projects (such as Northern Gateway). In central Canada,

The Service recognizes that many of these issues involve legitimate protest and dissent and as such, have no nexus to CSIS' mandate.

GUIDED DISCUSSION

Public Safety may also lead DMs in a guided discussion of a protest or demonstration incident. Originally intended as a table-top exercise, this discussion will consider possible federal responses to protest and demonstration incidents. .

If you require any further information, please do not hesitate to contact me.

Tom Venner
Assistant Director
Policy and Strategic Partnerships

Enclosed:

- **TAB 1:** "Violent Confrontation over Seismic Testing (Hydraulic Fracturing) in New Brunswick"
- **TAB 3:** "Government of Canada Risk Forecast – 2014 Protests and Demonstration Season (Government Operations Centre)

[redacted]

DATE
20150312

[redacted]

RE / OBJET:

[redacted]

SYNOPSIS / SOMMAIRE:

[redacted]

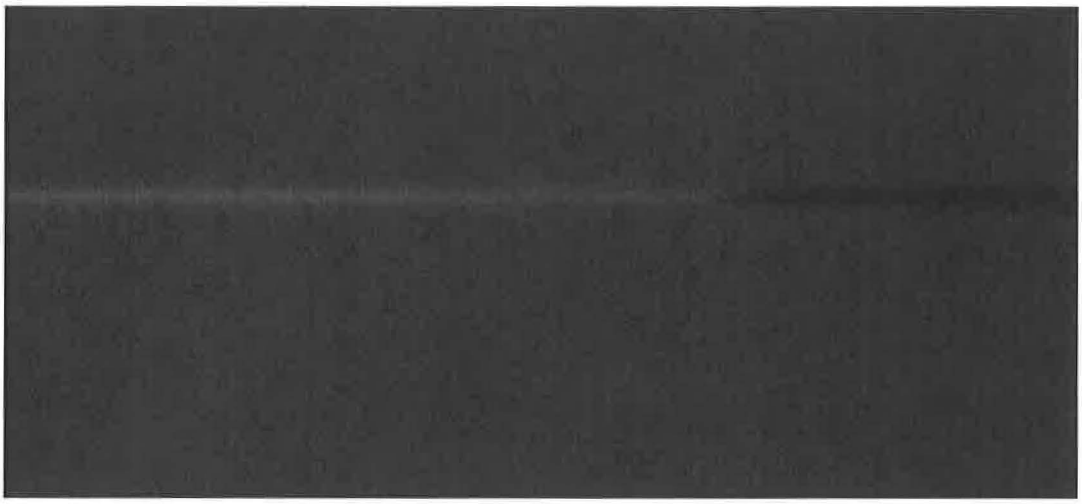
INFORMATION / RENSEIGNEMENTS:

[redacted]

[redacted]

ANALYSIS / ANALYSE:

[redacted]



[redacted]

DATE
20150225

[redacted]

RE / OBJET:

[redacted]

SYNOPSIS / SOMMAIRE:

[redacted]

INFORMATION / RENSEIGNEMENTS:

[redacted]

[redacted]

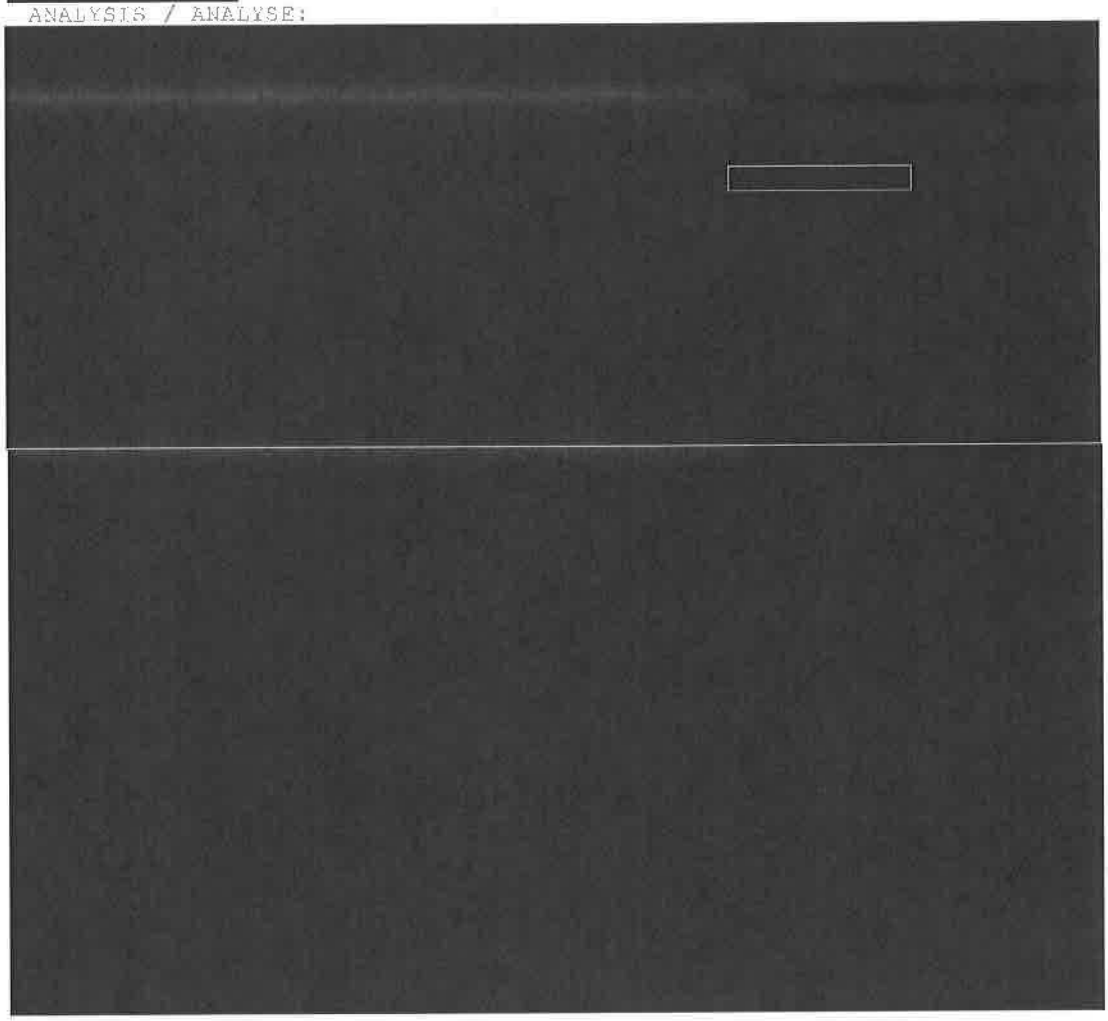
LEADNOW is an independent advocacy organization that runs campaigns on the major issues of our time, engages people in participatory decision-making, and organizes in communities across Canada. Their mission statement notes: 'We envision a country where people work together to build an open democracy, create a fair economy, and ensure a safe climate for all generations'.

[redacted]

[redacted]

[redacted]

ANALYSIS / ANALYSE:



[redacted]

[redacted]

DATE
20150108

[redacted]

RE / OBJET:

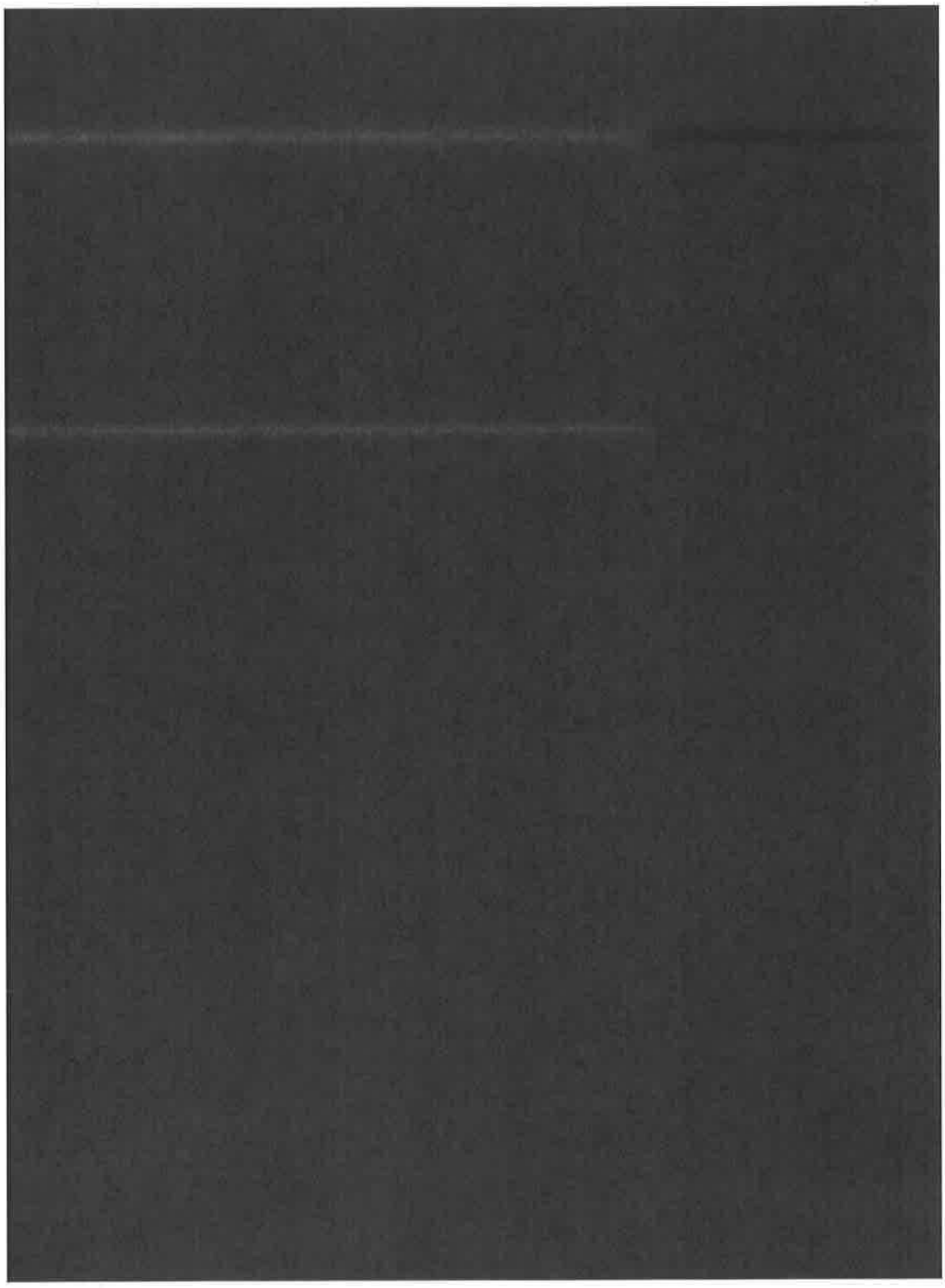
[redacted]

SYNOPSIS / SOMMAIRE:

[redacted]

INFORMATION / RENSEIGNEMENTS:

[redacted]



[redacted]

ANALYSIS / ANALYSE:

[redacted]

[redacted]

DATE
20150106

[redacted]

RE / OBJET:

[redacted]

SYNOPSIS / SOMMAIRE:

[redacted]

[redacted]

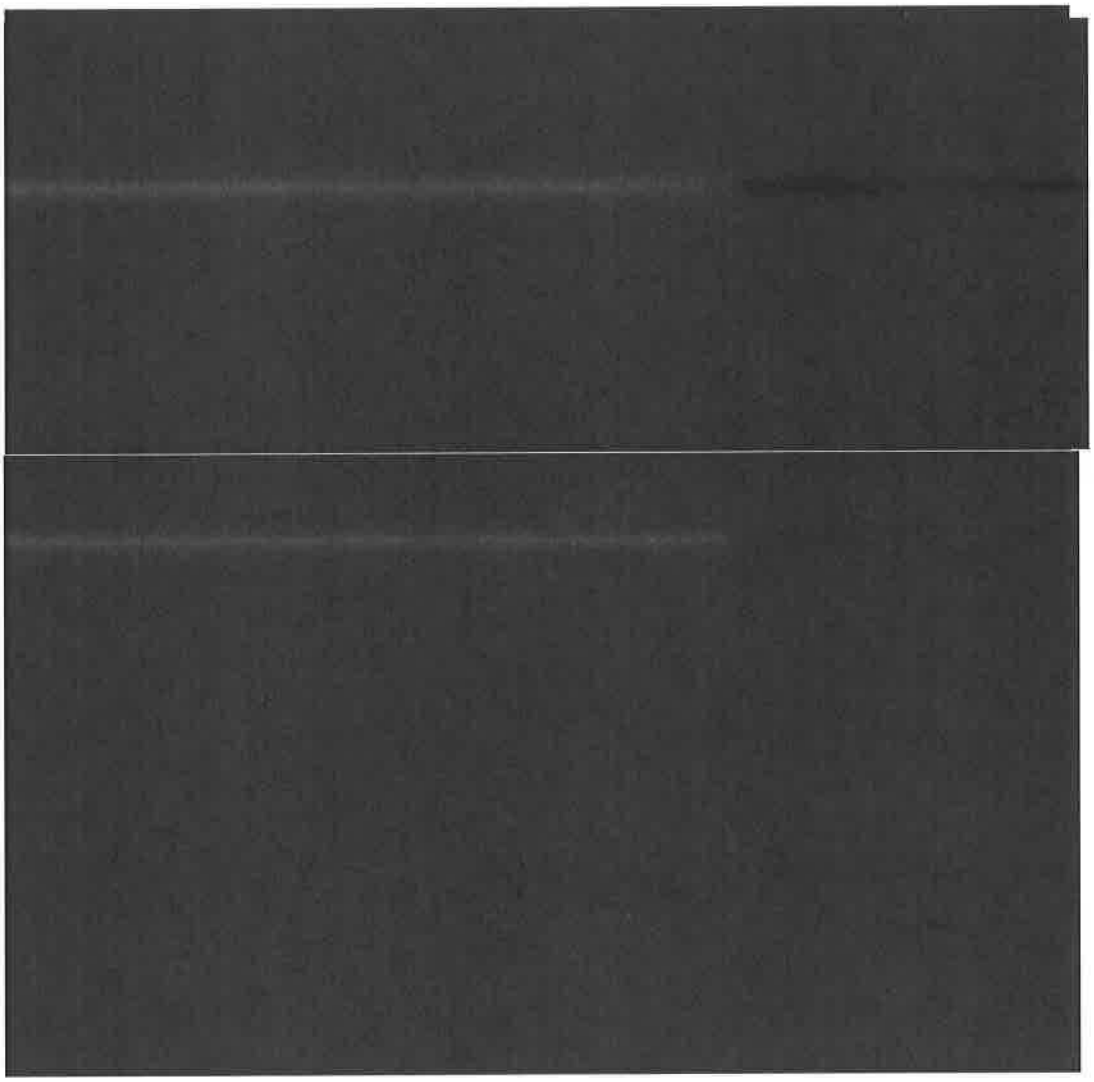
[redacted]

INFORMATION / RENSEIGNEMENTS:

[redacted]

ANALYSIS / ANALYSE:

4) The above information is reported to assist the Service in assessing the threat environment and the potential for serious violence stemming from [redacted]



Nath[illegible] Theriault

From: Nathalie Theriault
Sent: Monday, December 15, 2014 11:20 AM
To: 'Yves Fortier'
Cc: Sylvie Roussel; Manon Vincent; Michael Doucet
Subject: Dossier 1500-481
Attachments: Lettre dossier 1500-481.pdf

Bonjour Me Fortier,

Voici la lettre datée du 9 décembre 2014, dans le dossier 1500-481.

Bonne journée
Nathalie

Champ & Associates

www.champlaw.ca

Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6
T: 613-237-4740
F: 613-232-2680

Paul Champ
pchamp@champlaw.ca

Our File: 1555

December 9, 2014

BY FACSIMILE - 613-990-5230

Nathalie Thériault, Registrar
Security Intelligence Review Committee
PO Box 2430, Station "D"
Ottawa, ON K1P 5W5

Dear Ms Thériault:

Re:

Complaint re CSIS Surveillance and Information Sharing with the NEB
SIRC File No.: 1500-481

We write further to your November 28, 2014 letter, and in relation to our correspondence regarding concerns regarding the assignment of the Hon. Yves Fortier to preside over the Security Intelligence Review Committee's investigation of its complaint.

On the basis of the information set out in your November 28, 2014 letter, is prepared to proceed with its complaint before Mr Fortier as the presiding member. However, we note that reserves its right to raise any conflict of interest concerns which may arise or otherwise come to its attention during the course of these proceedings.

We look forward to hearing from you soon regarding the next steps in proceeding with this complaint.

Yours truly,

Paul Champ

c:

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RECEIVED
DEC 0 9 2014

Champ & Associates

www.champlaw.ca

1500-481

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Fax/Téléc :(613)232-2680

In Camera 2014/12/9
Registrar Davidson

FAX COVER SHEET / PAGE COUVERTURE

TRANSMITTED TO/NUMÉRO DU DESTINATAIRE : (613) 990-5230

TO/ DESTINATAIRE: Nathalie Thériault, Registrar

FROM/ EXPÉDITEUR: Paul Champ

RE/OBJET: **BCCLA Complaint re CSIS Surveillance and Information Sharing with the NEB**
SIRC File No.: 1500-481

DATE: December 9, 2014

Pages including cover sheet/Nombre de pages (incluant celle-ci): 2

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Paul Champ
pchamp@champlaw.ca

Our File: 1555

December 9, 2014

BY FACSIMILE - 613-990-5230

Nathalie Thériault, Registrar
Security Intelligence Review Committee
PO Box 2430, Station "D"
Ottawa, ON K1P 5W5

Dear Ms Thériault:

Re: British Columbia Civil Liberties Association ("BCCLA")
Complaint re CSIS Surveillance and Information Sharing with the NEB
SIRC File No.: 1500-481

We write further to your November 28, 2014 letter, and in relation to our correspondence regarding BCCLA's concerns regarding the assignment of the Hon. Yves Fortier to preside over the Security Intelligence Review Committee's investigation of its complaint.

On the basis of the information set out in your November 28, 2014 letter, BCCLA is prepared to proceed with its complaint before Mr Fortier as the presiding member. However, we note that BCCLA reserves its right to raise any conflict of interest concerns which may arise or otherwise come to its attention during the course of these proceedings.

We look forward to hearing from you soon regarding the next steps in proceeding with this complaint.

Yours truly,

Paul Champ

c: J. Paterson, Executive Director, BCCLA
R. Mangat, BCCLA

Fil

Security Intelligence Review Committee

Comité de surveillance des activités de renseignement de sécurité

PROTECTED B

File No.: 1500-481

November 25, 2014

BY COURIER

Mr. Paul Champ
Counsel
Champ & Associates
Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6

Dear Counsel:

RE: BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION – COMPLAINT AGAINST THE CANADIAN SECURITY INTELLIGENCE SERVICE PURSUANT TO SECTION 41 OF THE *CANADIAN SECURITY INTELLIGENCE SERVICE ACT*

I write further to your letter dated October 28, 2014. The member of the Security Intelligence Review Committee (Committee) assigned to preside over the investigation of your client's complaint, the Hon. Yves Fortier, P.C., C.C., O.Q., Q.C., has instructed me to inform you of the following:

> It is a matter of public record that Mr. Fortier was a non-executive member of the TransCanada Board of Directors from April 1992 to July 1998. Since he resigned from the Board in July 1998, Mr. Fortier has never occupied any position with TransCanada. Mr. Fortier has never occupied any position with Enbridge.

Should you have any questions with respect to the foregoing, please do not hesitate to contact me at (613) 990-6319.

Yours sincerely,

Nathalie Thériault
Registrar

c.c.: Ms. Stéphanie Dion, National Security Litigation & Advisory Group
P.O. Box / C.P. 2480, Station / Succursale "D"
Ottawa, Canada K1P 5W5
Tel: 613 990-8441 Fax: 613 990-5230

13-07-14

Champ & Associates

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1500-481

REFERRED TO	DATE	INIT
M Counsel [illegible]		
Registrar		
Chair		
Exec	14/10/29	MP

FAX COVER SHEET / PAGE COUVERTURE

TRANSMITTED TO/NUMÉRO DU DESTINATAIRE : 613-990-5230

TO/ DESTINATAIRE: Nathalie Thériault, Registrar
Security Intelligence Review Committee

FROM/ EXPÉDITEUR: Paul Champ

RE/OBJET: Complaint of BCCLA, made pursuant to section 41 of the *CSIS Act* (SIRC File No. 1500-481)

DATE: October 28, 2014

Pages including cover sheet/Nombre de pages (incluant celle-ci): 3

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Paul Champ
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Our File: 1555

October 28, 2014

BY FACSIMILE - 613-990-5230

Nathalie Thériault
Registrar
Security Intelligence Review Committee
PO Box 2430, Station "D"
Ottawa, ON K1P 5W5

Dear Ms Thériault:

Re: Complaint of BCCLA, made pursuant to section 41 of the *CSIS Act*
SIRC File No.: 1500-481

We write further to the presiding member's direction dated October 8, 2014, regarding the complainant's conflict of interest concerns.

The member has asked the complainant to confirm it will bring a formal motion for recusal. Having reviewed the matter, we must advise that, at this time, we do not have sufficient information regarding Mr Fortier's ties to the companies involved in the complaint. We initially raised our concern in the original complaint dated February 6, 2014, citing a news story that Mr Fortier had previously sat on the board of directors of TransCanada, a company implicated in this complaint. We raised this concern again in our letter dated September 25, 2014, when we were informed that Mr Fortier had been appointed as the presiding member despite our express reservations.

At this time, all we know is that Mr Fortier sat on TransCanada's board of directors. We do not know the years he occupied the position, or any other details regarding his involvement with TransCanada. Consequently, we would ask, with very great respect, if the presiding member could furnish additional details regarding his involvement with TransCanada and Enbridge. Specifically, we would ask the following:

1. In what years did Mr Fortier sit on TransCanada's board of directors?

2. Has he occupied any other positions with the company? If so, what are the years and other details?

3. Has he ever occupied any positions with Enbridge, or otherwise had connections with the company? And if so, what are the years and other details?

4. Does he have close relationships with any of the current executives or board members of either TransCanada or Enbridge? If so, what are the details?

At law, once concerns of bias are raised, it is proper for a board or tribunal to disclose information about the allegedly disqualifying circumstances and afford the parties an opportunity to comment on this information. (See, e.g., *Dulmage v Ontario (Police Complaints Commissioner)* (1994), 21 OR (3d) 356; *CUPE Local 1378 v Residence Monseigneur Chiasson*, [1996] NBJ No. 86 (NBCA); and *Eckervogt v. British Columbia*, 2004 BCCA 398, where the B.C. Court of Appeal suggests at para. 49 that a decision-maker should "make a complete disclosure of his interest" so a party can make an informed decision whether to waive any concerns about bias.)

While we appreciate that this request for information is sensitive, we hope that Mr Fortier can understand our client's concern given the serious issues raised by this complaint. (Indeed, we note that the Commission for Public Complaints Against the RCMP has expedited a parallel complaint against the RCMP on similar issues as it has been deemed a matter of "public interest".)

To conclude, we wish to emphasize again our great respect for Mr Fortier and his exceptional reputation and accomplishments. But reasonable apprehension of bias issues cannot turn on the relative integrity of the individual decision-maker. We look forward to hearing from you.

Yours truly,

Paul Champ

c: J. Paterson, BCCLA

Champ & Associates
www.champlaw.ca

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Paul Champ
pchamp@champlaw.ca

Our File: 1555

October 28, 2014

BY FACSIMILE - 613-990-5230

Nathalie Thériault
Registrar
Security Intelligence Review Committee
PO Box 2430, Station "D"
Ottawa, ON K1P 5W5

Dear Ms Thériault:

Re:
SIRC File No.: 1500-481

We write further to the presiding member's direction dated October 8, 2014, regarding the complainant's conflict of interest concerns.

The member has asked the complainant to confirm it will bring a formal motion for recusal. Having reviewed the matter, we must advise that, at this time, we do not have sufficient information regarding Mr Fortier's ties to the companies involved in the complaint. We initially raised our concern in the original complaint dated February 6, 2014, citing a news story that Mr Fortier had previously sat on the board of directors of TransCanada, a company implicated in this complaint. We raised this concern again in our letter dated September 25, 2014, when we were informed that Mr Fortier had been appointed as the presiding member despite our express reservations.

At this time, all we know is that Mr Fortier sat on TransCanada's board of directors. We do not know the years he occupied the position, or any other details regarding his involvement with TransCanada. Consequently, we would ask, with very great respect, if the presiding member could furnish additional details regarding his involvement with TransCanada and Enbridge. Specifically, we would ask the following:

1. In what years did Mr Fortier sit on TransCanada's board of directors?

2. Has he occupied any other positions with the company? If so, what are the years and other details?

3. Has he ever occupied any positions with Enbridge, or otherwise had connections with the company? And if so, what are the years and other details?

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At law, once concerns of bias are raised, it is proper for a board or tribunal to disclose information about the allegedly disqualifying circumstances and afford the parties an opportunity to comment on this information. (See, e.g., *Dulmage v Ontario (Police Complaints Commissioner)* (1994), 21 OR (3d) 356; *CUPE Local 1378 v Residence Monseigneur Chiasson*, [1996] NBJ No. 86 (NBCA); and *Eckervogt v. British Columbia*, 2004 BCCA 398, where the B.C. Court of Appeal suggests at para. 49 that a decision-maker should "make a complete disclosure of his interest" so a party can make an informed decision whether to waive any concerns about bias.)

While we appreciate that this request for information is sensitive, we hope that Mr Fortier can understand our client's concern given the serious issues raised by this complaint. (Indeed, we note that the Commission for Public Complaints Against the RCMP has expedited a parallel complaint against the RCMP on similar issues as it has been deemed a matter of "public interest".)

To conclude, we wish to emphasize again our great respect for Mr Fortier and his exceptional reputation and accomplishments. But reasonable apprehension of bias issues cannot turn on the relative integrity of the individual decision-maker. We look forward to hearing from you.

Yours truly,

Paul Champ

cc

Security Intelligence Review Committee

Comité de surveillance des activités de renseignement de sécurité

PROTECTED B

File No.: 1500-481

October 8, 2014

BY COURIER

Mr. Paul Champ
Counsel
Champ & Associates
Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6

Dear Counsel:

RE: BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION – COMPLAINT AGAINST THE CANADIAN SECURITY INTELLIGENCE SERVICE PURSUANT TO SECTION 41 OF THE *CANADIAN SECURITY INTELLIGENCE SERVICE ACT*

I write further to your letter dated September 25, 2014. The member of the Security Intelligence Review Committee (Committee) assigned to preside the investigation of your client's complaint, the Hon. Yves Fortier, P.C.,C.C.,O.Q.,Q.C., has instructed me to inform you of the following:

> As the presiding member investigating your complaint, I am seized of the matters you raise in your letter dated September 25, 2014 and as such I am responding to you in that capacity.
>
> On the issue of the potential conflict of interest allegations, the proper course of action to deal with such matters is for a party to formally raise the matter with the presiding member through a motion asking that the member recuse himself from the file and that a ruling on the matter be made thereafter considering the relevant jurisprudence on the issue.
>
> I note that you have raised the conflict of interest issue in your letter dated September 25, 2014. I would ask that you confirm whether you intend to bring a formal motion with supporting documentation and argument or whether I shall proceed on the basis of your letter dated September 25, 2014. If you wish to bring a formal motion, I ask that you submit your motion materials, supporting argument and case law by October 28, 2014 in order to prevent

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delays in this investigation. Your motion materials will be shared with the Canadian Security Intelligence Service who, as respondent, will be afforded an opportunity to make submissions on the motion. For the time being I remain the presiding member in this investigation.

Should you have any questions with respect to the foregoing, please do not hesitate to contact me at (613) 990-6319.

Yours sincerely,

Nathalie Thériault
Registrar

c.c.: Ms. Stéphanie Dion, National Security Litigation & Advisory Group

Sylvie Roussel ok

RUBY SHILLER CHAN HASAN
BARRISTERS

FACSIMILE COVER SHEET

DATE: October 7, 2014

TO: Security Intelligence Review Committee (SIRC)

FAX: 613.990.5230

FROM: Clayton Ruby

Clayton Ruby, C.M.
B.A., LL.B., LL.M., LL.D. (honoris causa)
(Professional Corporation)

11 Prince Arthur Avenue
Toronto, Ontario
M5R 1B2

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F 416 964 9193
E ruby@rubyshiller.com
W rubyshiller.com

NUMBER OF PAGES (INCLUDING THIS COVER PAGE) = 3

MESSAGE: _____

cc: Justin Trudeau (via email – justin.trudeau@parl.gc.ca)
Thomas Mulcair (via email – thomas.mulcair@parl.gc.ca)

PLEASE CALL CHERYL MCKINNON AT 416-964-9664 IF ASSISTANCE IS NEEDED.

SC

1167

RUBY
SHILLER
CHAN
HASAN
BARRISTERS

Clayton Ruby, C.M
B.A., LL.B., LL.M., LL.D.
(honoris causa)
(Professional Corporation)

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October 7, 2014

VIA FAX: (613.990.5230)

Security Intelligence Review Committee
(SIRC)
P.O. Box 2430, Station "D"
Ottawa, ON K1P 5W5

Dear Sir/Madam:

I am writing to you with respect to the appointment of Yves Fortier to lead an investigation into the complaint that CSIS gathered and shared information about activists opposed to Canada's energy policies. As a previous member of the board of TransCanada Pipelines, his prior relationship to the petroleum industry renders this choice irresponsible and absurd!

Allegations that CSIS and other government agencies consider protests and opposition to the petroleum industry as possible threats to national security are very serious. The CSIS Act states, "lawful advocacy, protest or dissent" cannot be regarded as threats to national security. Should these allegations be proven to be true, CSIS will be in contravention of their own *Act*!

Any review of these allegations should be thorough, unbiased and result in a finding that is beyond reproach whatever that finding may be. To believe that a finding delivered by Mr. Fortier could be perceived to be unbiased is seriously misguided. Canadians have the right to question the actions of their Government and its agencies. Of equal importance are the answers Canadians receive with respect to these questions. When allegations of wrongdoing arise, Canadians have the right to an honest finding resulting from an investigation that is beyond reproach.

Any findings by a review committee, led by Mr. Fortier, will forever be seen as biased and not provide Canadians with the sense of justice being done.

It is a colossal waste of time and money to proceed with this committee.

Yours truly,

Clayton C. Ruby
/ckm

c.c.: Justin Trudeau (via email -justin.trudeau@parl.gc.ca)
Thomas Mulcair (via email -thomas.mulcair@parl.gc.ca)

[redacted]

DATE 2014 10 07

[redacted]

RE / OBJET:

[redacted]

SYNOPSIS / SOMMAIRE:

[redacted]

[redacted]

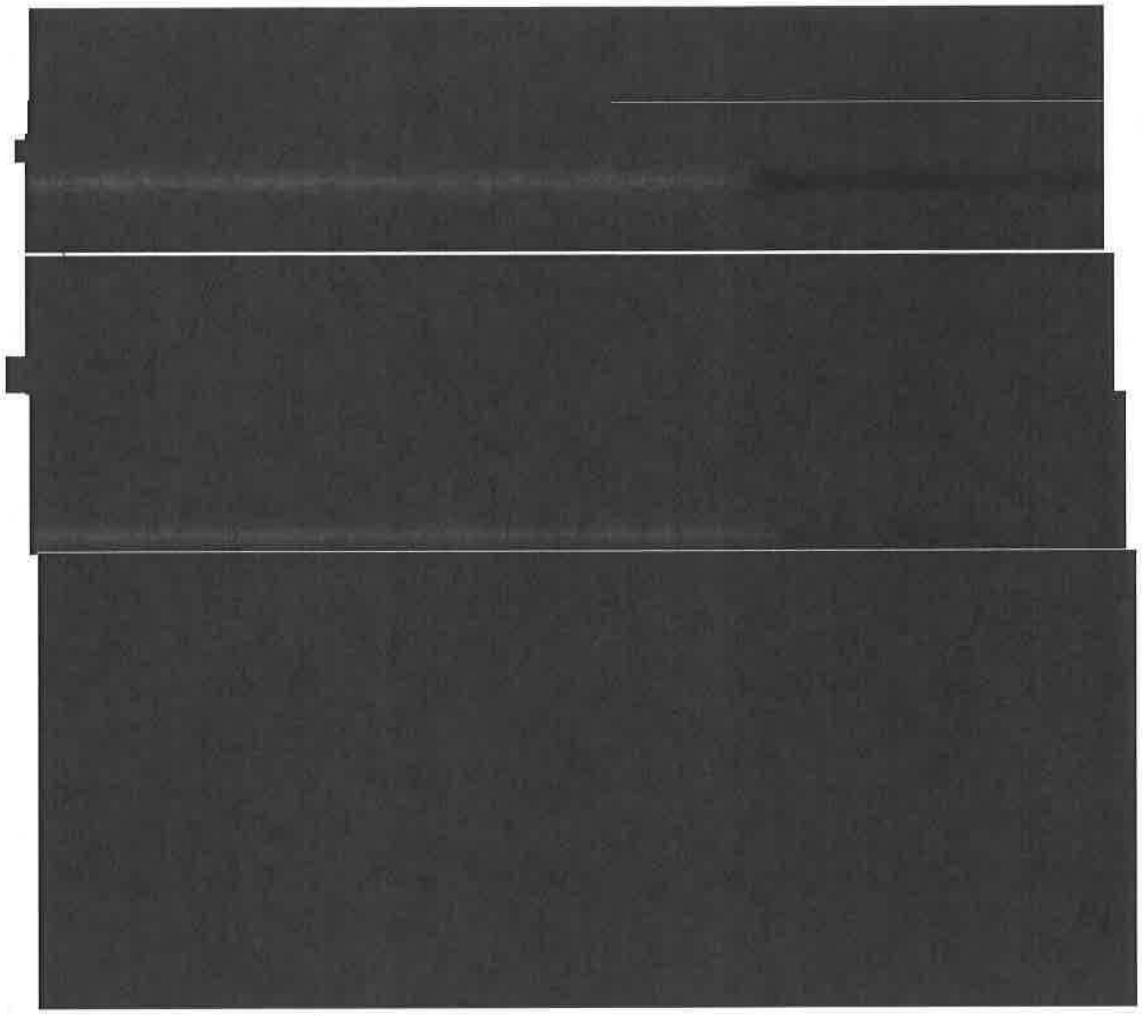
INFORMATION / RENSEIGNEMENTS:

[redacted]

ANALYSIS / ANALYSE:

4. The above information is reported to assist the Service in assessing the threat environment and the potential for serious violence stemming from [redacted]

[redacted]



[redacted]

DATE
20141003

[redacted]

RE / OBJET:

[redacted]

SYNOPSIS / SOMMAIRE:

[redacted]

[redacted]

[redacted]

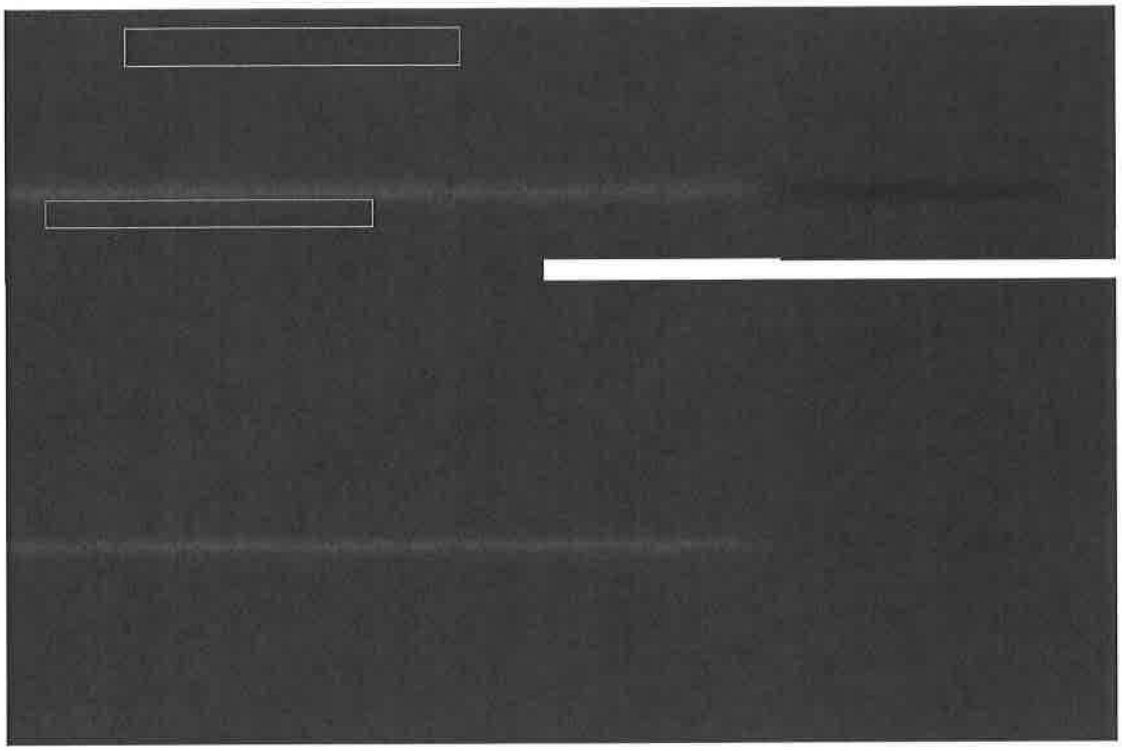
INFORMATION / RENSEIGNEMENTS:

[redacted]

ANALYSIS / ANALYSE:

5. The above information is reported to assist the Service in assessing the threat environment and the potential for serious violence stemming from [redacted]

[redacted]



[redacted]

DATE
20140926

[redacted]

RE / OBJET:

[redacted]

SYNOPSIS / SOMMAIRE:

[redacted]

[redacted]

INFORMATION / RENSEIGNEMENTS:

[redacted]

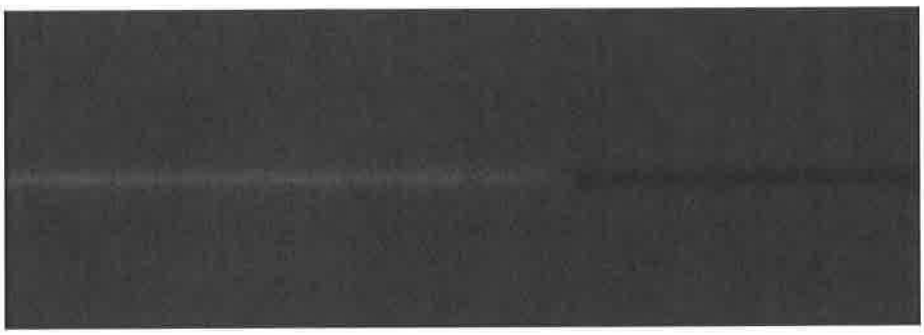
[redacted]

ANALYSIS / ANALYSE:

4. The above information is reported to assist the Service in assessing the threat environment and the potential for serious violence stemming from [redacted]

[redacted]

[redacted]



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1500-481

REFERRED TO	DATE	INIT
[illegible]		
[illegible]		
Charles		CJF
Marc		

FAX COVER SHEET / PAGE COUVERTURE

TRANSMITTED TO/NUMÉRO DU DESTINATAIRE : (613) 990-5230

TO/ DESTINATAIRE: Nathalie Thériault,
Security Intelligence Review Committee

AND TO/ ET À : Stephanie Dion,
Department of Justice (613) 842-1345

FROM/ EXPÉDITEUR: Paul Champ

RE/OBJET: **Complaint of BCCLA**
SIRC File No. 1500-48

DATE: September 25, 2014

Pages including cover sheet/Nombre de pages (incluant celle-ci): 3

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Paul Champ
pchamp@champlaw.ca

Our File: 1555

September 25, 2014

BY FACSIMILE - 613-990-5230

Nathalie Thériault
Registrar
Security Intelligence Review Committee
PO Box 2430, Station "D"
Ottawa, ON K1P 5W5

Dear Ms Thériault:

Re: Complaint of BCCLA, made pursuant to section 41 of the *CSIS Act*
SIRC File No.: 1500-481

We are writing further to your letter of September 8, 2014, in which you advise that the above-noted complaint has been assigned to the Honourable Yves Fortier, PC, CC, OQ, QC. While BCCLA recognizes Mr Fortier's exemplary reputation, and does not question his personal or professional integrity, the organization must nevertheless object to his appointment as the presiding SIRC member in the present complaint.

A reasonable apprehension of bias does not depend upon the qualities or qualifications of the particular decision-maker, but rather on the perceptions of those involved in the proceedings as well as the public at large. It was for this reason that BCCLA raised concerns about the possible appointment of any SIRC committee member having ties to the petroleum industry from the outset. In particular, BCCLA's February 6, 2014 complaint letter expressly referred to the highly-publicised ties between several SIRC members and the petroleum industry, including Mr Fortier's former position on the board of TransCanada Pipelines, the company behind the controversial Keystone XL pipeline project.[1]

Given the subject matter of the present complaint, including allegations of inappropriate or unlawful collaboration between CSIS, petroleum industry representatives (including TransCanada corporate security advisors), and an administrative tribunal (the National

[1] Greg Weston, "Other spy watchdogs have ties to oil business," *CBC News*, January 10, 2014.

nergy Board), BCCLA maintains that the involvement of any SIRC members with significant ties to the petroleum industry in this complaint gives rise to a reasonable apprehension of bias.

In light of these concerns, BCCLA maintains that Mr Fortier should recuse himself from any participation or involvement in the investigation of this complaint, and that only a SIRC member having no similar ties to the petroleum industry should be designated to act in this matter.

The BCCLA reiterates that Mr Fortier's personal integrity is not at issue. Indeed, he is clearly a Canadian of extraordinary accomplishment and rectitude who has made significant contributions to Canada. Still, the BCCLA submits that this is a highly serious complaint and should be handled in a manner that is in every way beyond reproach, with justice not only done, but seen to be done.

We look forward to hearing from you in the near future regarding this matter, and reserve our right to make further, formal submissions regarding the above-noted issues at such time as may be appropriate. The other preliminary issues raised by the CSIS regarding the scope of the complaint can be dealt with after this matter is addressed.

Yours truly,

Paul Champ

cc: J. Paterson, BCCLA
Stephanie Dion, Department of Justice (Counsel for CSIS)

Department of Justice Canada
Ministère de la Justice Canada

National Security Litigation & Advisory Group
PO Box 8127, Station T
Ottawa, Ontario
K1G 3H6

Groupe litiges et conseils en sécurité nationale
CP 8127, Succursale T
Ottawa (Ontario)
K1G 3H6

PROTECTED

1500-481

September 22, 2014

BY HAND

Ms. Sylvie Roussel
Senior Counsel
Security Intelligence Review Committee
Jackson Building
122 Bank Street, 4th Floor
Ottawa, Ontario
K1P 5N6

Dear Ms. Roussel:

Re: BCCLA – Complaint against CSIS Pursuant to Section 41 of the CSIS Act - Your File 1500-481
Representations by CSIS prior to SIRC Determining Jurisdiction

Please submit this correspondence to the Honourable Yves Fortier who was recently assigned to the above-mentioned complaint.

The Service requests that a management conference be held specifically for the purpose of identifying the issues that will be investigated as part of this complaint. The complaint set out in the February 6, 2014 correspondence to the Security Intelligence Review Committee (the Committee) asks that the Committee investigate overly broad questions that, in many instances, do not relate to "any act or thing done by the Service" as provided by Section 41 of the *CSIS Act*.

While the Service appreciates and acknowledges the role that organizations like the BCCLA play with respect to civil liberties issues, the Service submits that the BCCLA's complaint must be better defined and articulated into a complaint of a discrete act or thing done by the Service that the Committee is capable of investigating. The Committee must be cautious in allowing a complainant to initiate, by way of a complaint, a review of the Service's investigations regarding domestic threats and information sharing with Canadian government agencies without specific information to support the allegations. The Committee ought not to allow itself to become a proxy of the BCCLA in a matter which falls within the ambit of a review and not a complaint.

Based on the Complainant's letter and the scope of section 41 of the *CSIS Act*, the Service proposes that the following issues be investigated as part of this complaint:

1) Did the Service investigate groups or individuals for their engagement in lawful advocacy, protest or dissent activities in relation to the Northern Gateway Pipeline Project?

2) If yes, was the investigation lawful?

3) Did the Service provide information relating to individuals or groups involved in lawful advocacy, protest or dissent in relation to the Northern Gateway Pipeline Project with the National Energy Board or non-government members of the petroleum industry?

4) If yes, was it lawful to provide this information?

It should be noted that the Committee has conducted several reviews and audits on the topic of "lawful advocacy, protest or dissent".[1] The latest period reviewed by the Committee ended December 31, 2011. Upon completion of this latest review, the Committee found that "activities related only to legitimate protest and dissent were not investigated"[2]. As such, the Service proposes to focus its document collection to documents dated after December 31, 2011.

In order for the Service to meet its disclosure obligations, it is paramount that these issues be clearly identified at the onset. Until such time that the issues to be examined in the course of this complaint are clearly identified by the Committee, the Service will be initiating its document collection based on the 4 issues identified above for documents dated after December 31, 2011.

Should you require further information, please contact the undersigned at (613) 842-1356.

Sincerely,

Stéphanie Dion
Counsel

c.c. ER&L

[redacted]51000-677

c.c. Paul Champ

[1] Since 2000, the topic of "lawful advocacy, protest or dissent" has been discussed in 6 SIRC Annual reports (1999-2000, 2001-2002, 2006-2007, 2008-2009, 2012-2013).
[2] SIRC 2012-2013 Annual Report, *Bridging the Gap*, p.24.

[redacted]

DATE
20140915

[redacted]

RE / OBJET:
[redacted]

SYNOPSIS / SOMMAIRE:
[redacted]

INFORMATION / RENSEIGNEMENTS:
[redacted]

[redacted]

ANALYSIS / ANALYSE:

[redacted]

[redacted]

File

Security Intelligence Review Committee

Comité de surveillance des activités de renseignement de sécurité

PROTECTED B

File No.: 1500-481

September 8, 2014

BY COURIER

Mr. Paul Champ
Counsel
Champ & Associates
Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6

Dear Counsel:

RE: BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION – COMPLAINT AGAINST THE CANADIAN SECURITY INTELLIGENCE SERVICE PURSUANT TO SECTION 41 OF THE *CANADIAN SECURITY INTELLIGENCE SERVICE ACT*

I wish to inform you that the above-noted matter has been assigned to the Honourable Yves Fortier, P.C., C.C., O.Q., Q.C..

I will contact you shortly regarding the next steps.

Should you have any questions with respect to the foregoing, please do not hesitate to contact me at (613) 990-6319.

Yours sincerely,

Nathalie Thériault

Nathalie Thériault
Registrar

P.O. Box / C.P. 2430, Station / Succursale "D"
Ottawa, Canada K1P 5W5
Tel: 613 990-8441 Fax: 613 990-5230

10/45/14

Security Intelligence Review Committee

Comité de surveillance des activités de renseignement de sécurité

PROTECTED B

File No.: 1500-481

September 8, 2014

BY HAND

Ms. Stéphanie Dion
Counsel
National Security Litigation & Advisory Group
Department of Justice Canada
PO Box 8127, Station T
Ottawa, ON K1G 3H6

Dear Ms. Dion:

RE: BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION (BCCLA) - COMPLAINT AGAINST THE CANADIAN SECURITY INTELLIGENCE SERVICE PURSUANT TO SECTION 41 OF THE *CANADIAN SECURITY INTELLIGENCE SERVICE ACT (CSIS Act)*

I wish to inform you that the above-noted matter has been re-assigned to the Honourable Yves Fortier, P.C., C.C., O.Q., Q.C..

I will contact you shortly regarding the next steps.

Should you have any questions with respect to the foregoing, please do not hesitate to contact me at (613) 990-6319.

Yours sincerely,

Nathalie Thériault

Nathalie Thériault
Registrar

c.c.: ER&L

P.O. Box / C.P. 2430, Station / Succursale "D"
Ottawa, Canada K1P 5W5
Tel: 613 990-8441 Fax: 613 990-5230

10/14/14

Security Intelligence Review Committee

Comité de surveillance des activités de renseignement de sécurité

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File No.: 1500-481

July 4, 2014

BY COURIER

Mr. Paul Champ
Counsel
Champ & Associates
Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6

Dear Counsel:

RE: BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION – COMPLAINT AGAINST THE CANADIAN SECURITY INTELLIGENCE SERVICE PURSUANT TO SECTION 41 OF THE *CANADIAN SECURITY INTELLIGENCE SERVICE ACT*

I am writing further to your letter dated June 9, 2014, wherein you indicate the Complainant's preference with respect to document disclosure. I wish to inform you that any procedural issues or requests can be raised with the presiding member at the pre-hearing conference. The pre-hearing conference will be scheduled after a member of the Security Intelligence Review Committee (Committee) is assigned.

Should you have any additional questions, you may contact the Committee's Registrar, Ms. Nathalie Thériault, at (613) 990-6319.

Yours sincerely,

Sylvie E. Roussel
Senior Counsel

P.O. Box / C.P. 2430, Station / Succursale "D"
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Counsel	6/24/14	
Counsel	6/24/14	
Counsel MP	24/6/14	

Our File: 1555

June 9, 2014

BY MAIL

Sylvie E. Roussel
Counsel
Security Intelligence Review Committee
122 Bank Street, Suite 200
Ottawa, ON K1P 5N6

Dear Ms Roussel:

Re: B.C. Civil Liberties Association - Complaint Pursuant to s. 41 of the Act
SIRC File 1500-481

I am writing further to the letter dated June 2, 2014, that we received from the Executive Director, Mr Doucet, regarding the above noted complaint.

We look forward to a pre-hearing conference call setting the terms of the investigation. In the meantime, I would like to comment on the suggestion that the complainant should obtain documents from the Canadian Security Intelligence Service under the *Access to Information Act*. It is our experience that making requests of CSIS for documents under the *ATIA* is not very productive as often little to nothing is disclosed, and there are usually significant delays. It is generally my preference to request a summons or *subpoena duces tecum* for a CSIS witness, with a demand that they appear with certain documents. This seems to be not only more productive and expeditious, the legal test for exemptions is narrower under the *Canada Evidence Act* as compared to the *ATIA*. (Of course, SIRC could also simply issue a pre-hearing production order, but as I recall the Committee is generally not inclined to issue such orders.)

If you have concerns about the complainant proceeding in this fashion, please advise.

Yours truly,

Paul Champ

c: J. Paterson, Executive Director, BCCLA

Security Intelligence Review Committee

Comité de surveillance des activités de renseignement de sécurité

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File No.: 1500-481

June 2, 2014

BY COURIER

Mr. Paul Champ
Counsel
Champ & Associates
Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6

Dear Mr. Champ:

RE: BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION (BCCLA) – COMPLAINT AGAINST THE CANADIAN SECURITY INTELLIGENCE SERVICE PURSUANT TO SECTION 41 OF THE *CANADIAN SECURITY INTELLIGENCE SERVICE ACT (CSIS Act)*

Further to the letter from Ms. Sylvie E. Roussel, Senior Counsel for the Security Intelligence Review Committee (Committee), dated March 28, 2014, I wish to advise you, on behalf of the Committee and in accordance with section 11 of the Committee's *Rules of Procedure*, that the Committee determined on May 27, 2014 that it does have the jurisdiction to investigate your client's complaint under section 41 of the *CSIS Act*. Once a member of the Committee has been assigned to the file, you will be notified.

You will be contacted by the Committee's Registrar to schedule a pre-hearing conference to set the terms of reference for the investigation of your client's complaint.

In accordance with subsection 48(2) of the *CSIS Act*, your client has the opportunity to make representations to the Committee either in writing or personally at a hearing.

The *Access to Information Act* (ATI) provides citizens with the right to access information held by government institutions. Your client may wish to make an Access to Information request to CSIS to prepare for a hearing of this matter. For more information on making such a request, you may wish to consult the following website:

P.O. Box / C.P. 2430, Station / Succursale "D"
Ottawa, Canada K1P 5W5
Tel: 613 990-8441 Fax: 613 990-5230

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http://www.tbs-sct.gc.ca/tbsf-fsct/350-57-eng.asp (*ATI Act*)

Should you have any questions regarding the foregoing, please do not hesitate to contact Ms. Sylvie E. Roussel, at (613) 990-8445.

Yours sincerely,

Michael Doucet
Executive Director