

BACKGROUND – SECRET SPYING COURT CHALLENGE

What was the original complaint against CSIS and the RCMP about?

In February 2014, the BC Civil Liberties Association (BCCLA) filed complaints against the Canadian Security Intelligence Service (CSIS) and Royal Canadian Mounted Police (RCMP) for allegedly spying on the activities of peaceful community groups and activists concerned about the Enbridge Northern Gateway Pipeline.

The BCCLA complaint alleged that, contrary to sections 12 and 19 of the *CSIS Act*, CSIS was monitoring environmentalists who were opposed to the Northern Gateway Pipeline Proposal, and sharing this information with the National Energy Board (NEB) and petroleum industry companies. The BCCLA further alleged that this spying activity was deterring individuals from associating with environmental groups and expressing their opinions and that this chilling effect interfered with the freedoms of expression and association as protected by Section 2 of the *Charter*. Specifically named in the complaints were Dogwood Initiative, ForestEthics Advocacy (now Stand.earth), Sierra Club BC, Leadnow.ca, and the #IdleNoMore movement.

What were the Secret Hearings?

CSIS's oversight body, the Security Intelligence Review Committee (SIRC), conducted secret hearings in Vancouver on August 12 to 14, 2015 into the complaint that CSIS spied on community groups. The hearings involved lawyers from the BCCLA, members from the various groups named in the complaint, and lawyers for CSIS. Witnesses involved in the complaint were then ordered to keep silent about what happened in the proceedings. These witnesses remain under a gag order.

What did SIRC conclude in response to the BCCLA complaint?

SIRC dismissed the BCCLA complaint in a decision provided in September 2017. A confidentiality order by SIRC prevented the BCCLA from making the report public, which was partially lifted after BCCLA challenged the order. [The BCCLA is now challenging SIRC's dismissal of the complaint in Federal Court.](#)



SIRC found that CSIS was not monitoring the environmentalists or groups named in the BCCLA complaint. However, despite this finding, SIRC appears to contradict itself as it acknowledges that CSIS was investigating “targets” who were opposed to pipelines and also that “ancillary information” on other non-targets may have been targeted “incidentally”.ⁱ In addition, the thousands of pages of documents produced by CSIS appear to confirm that the agency was gathering information about the groups in question.

SIRC also notes that CSIS was gathering information for “domain awareness” and that there was a need for CSIS to “ascertain potential triggers and flashpoints” and be “aware of what is happening should a threat arise”.ⁱⁱ

SIRC accepted that some of the groups were “chilled” by the belief that they were being spied on.ⁱⁱⁱ SIRC further acknowledged that these concerns were reasonable based on the public information available. However, SIRC ultimately found that these fears were unjustified based on the confidential evidence.

Why are the documents being released now?

Until recently, the BCCLA has been unable to disclose this decision to the public as SIRC had placed a sealing order on it. The BCCLA fought this sealing order, and the Federal Court ruled that the BCCLA could make the decision public because the matter is now before the Courts and the open-court principle prevails.

What is contained in the documents or “Protest Papers”?

A very large volume of documents were disclosed to the BCCLA in the course of the Court process. SIRC relied on these documents in reaching its decision, but they were kept secret from the BCCLA and the public. These documents are very heavily redacted, with many being totally blacked out. The record reveals 441 CSIS operational reports that were relevant to the SIRC inquiry, with a total of over 2,200 pages. This on its own suggests a high level of CSIS activity related to investigating those opposed to the Northern Gateway Pipeline. More importantly, some environmental and advocacy groups are named in the CSIS reports, including Leadnow, the Dogwood Initiative, and the Council of Canadians.



What are the next steps in the case?

The BCCLA has challenged SIRC’s decision in court, and the process is ongoing. The BCCLA will be seeking that the redactions in the documents be removed, and requesting more details about CSIS activities and interests. This legal process may take several years.

The BCCLA is arguing that the SIRC Report suggests that CSIS monitors environmentalists generally for “domain awareness” and that information on some individuals and groups is collected “incidentally”.^{iv} We believe that this amounts to keeping tabs on peaceful environmental groups, which is not only unlawful under the *CSIS Act*, it suggests a bias in the spy agency that sees environmentalists as an inherent threat.

ⁱ SIRC Report, paras. 120, 139, 141-142, 153 and 241

ⁱⁱ SIRC Report, para 103

ⁱⁱⁱ SIRC Report, paras. 157-158, 192 and 204

^{iv} SIRC Report, para 103