

Our File: 1555

February 6, 2014

**BY COURIER**

Shayna Stawicki, Registrar  
Security Intelligence Review Committee  
122 Bank Street, Suite 200  
Ottawa, ON K1P 5N6

Dear Ms Stawicki:

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

We are legal counsel for the British Columbia Civil Liberties Association ("BCCLA"). By this letter, our client is making a complaint pursuant to section 41 of the *Canadian Security Intelligence Service Act* regarding the improper and unlawful actions of the Canadian Security Intelligence Service ("CSIS" or "the Service") in gathering information about Canadian citizens and groups engaging in peaceful and lawful expressive activities, and sharing it with other government bodies and private sector actors.

As set out in greater detail below, recent media reports indicate that the National Energy Board ("NEB" or the "Board") has engaged in systematic information and intelligence gathering about organizations seeking to participate in the Board's Northern Gateway Project hearings. Records obtained under the *Access to Information Act* confirm that this information and intelligence gathering was undertaken with the co-operation and involvement of CSIS and other law 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. The records suggest that the targeted organizations are viewed as potential security risks simply because they advocate for the protection of the environment.

This complaint is directed at all CSIS employees participating in, directing or supervising the impugned activities described in more detail in the body of this letter. In brief, BCCLA has serious concerns about the scope and extent of the Service's intelligence gathering activities and its practice of monitoring groups and organizations that seek to peacefully participate in public discourse about energy-related programs such as the Northern Gateway Project. BCCLA is particularly concerned about the chilling effect that such intelligence gathering and sharing will have on participation in the Board's proceedings, as

it appears to criminalize what is intended to be a forum for public expression and engagement in decision-making processes regarding projects of significant public interest. These activities violate sections 2(b), 2(c), 2(d) and 8 of the *Canadian Charter of Rights and Freedoms*, and are not authorized by section 12 of the *CSIS Act*.

## Background and Specific Concerns

For the past few years, BCCLA has become increasingly alarmed by reports about the interest expressed by Canadian law enforcement and security agencies in organizations engaged in environmental advocacy. Last year, media reports documented these agencies describing such groups as “a growing radicalized environmentalist faction within Canadian society that is opposed to Canada’s energy sector policies”.<sup>1</sup> Subsequent media reports have suggested that CSIS and other government agencies regard protests and opposition relating to the petroleum industry as threats to national security.<sup>2</sup>

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

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

- Documents released by the NEB indicate that CSIS provided the Board with intelligence information beyond the open-source information its own security staff were capable of gathering. Richard Garber, the NEB’s Group Leader of Security, wrote in a January 31, 2013 email that the Board’s security team had consulted with CSIS “at national and regional levels,” noting that they would continue monitoring all sources of information and intelligence together with police and intelligence partners.<sup>4</sup> The NEB’s “threat assessments” pertaining to hearings in Kelowna and Prince Rupert confirm that the Board consulted with “national-level intelligence

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

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

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

<sup>4</sup> Email of R. Garber re Prince Rupert security assessment, dated January 31, 2013 [A0008929\_37-000037-38].

resources" including "the Canadian Security Intelligence Service, both National Headquarters and Regional offices."<sup>5</sup> BCCLA finds it disturbing that CSIS would provide such high-level intelligence to an arms-length government adjudicative body such as the NEB, particularly since national and local police had no expectation of any criminal activity in connection with the Board's proceedings.

- A member of the RCMP's Critical Infrastructure Intelligence Team ("CIIT") wrote to NEB staff and at least one CSIS official, Tom Lanzer, on April 19, 2013 regarding the risk of interference with the Board's hearings by groups opposed to oilsands and pipeline development.<sup>6</sup> Despite acknowledging that CIIT had no intelligence indicating a criminal threat to the NEB or its members, the email advises that CIIT "will continue to monitor all aspects of the anti-petroleum industry movement" and confirms that this information is also being shared with CSIS. Again, BCCLA is troubled that CSIS and the RCMP would deem it necessary to share information and monitor the activities of groups and individuals who are not suspected of any criminality.
- The April 19, 2013 email also refers to the biannual "NRCan Classified Briefings" held by Natural Resources Canada, at which CSIS and the RCMP share information about security matters, including the monitoring of environmental organizations and activists, with the NEB and representatives of the energy industry.<sup>7</sup> Indeed, the email invites the Board's representatives to discuss their concerns with security officials at the next NRCan Classified Briefing meeting. Such information sharing may compromise the ability of individuals, groups, and organizations to participate fully and effectively before the NEB, as industry representatives may be receive information that assists in advancing their position before the Board, and the Board itself may be made privy to unproven yet highly prejudicial allegations against some of the parties appearing before it.
- Finally, it appears highly likely that "intelligence" gathered by CSIS and shared with the NEB and industry representatives includes personal information about specific individuals.

## Chilling Effect on Free Expression and Violations of Privacy

Freedom of expression is among the most fundamental of rights possessed by Canadians, and is guaranteed by section 2(b) of the *Canadian Charter of Rights and Freedoms*. Similarly, sections 2(c) and (d) of the *Charter* protect historically powerful modes of

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<sup>5</sup> National Energy Board, "Appendix 9: Enbridge Northern Gateway Project Integrated Security, Logistics and Communications Plan: Kelowna," dated January 24, 2013 [A0008929\_61-000061]; National Energy Board, "Appendix 11: Enbridge Northern Gateway Project Security Plan: Prince Rupert," dated January 23, 2013 [A0008929\_77-000077].

<sup>6</sup> Email of T. O'Neil to R. Garber and 23 other recipients re "Security Concerns - National Energy Board," dated April 19, 2013 [A0008929\_14-000014-15].

<sup>7</sup> Matthew Millar, "Harper government's extensive spying on anti-oilsands groups revealed in FOIs," *The Vancouver Observer*, November 19, 2013; Matthew Millar, "Harper government officials, spies meet with energy industry in Ottawa," *The Vancouver Observer*, November 22, 2013.

collective expression, namely peaceful assembly and association. Protecting democratic discourse and participation in decision-making is a core rationale for these freedoms. The Supreme Court of Canada has repeatedly emphasized the paramount importance of free expression to Canadian society. As Chief Justice McLachlin stated in *Grant v Torstar Corp*, “free expression is essential to the proper functioning of democratic governance.” For this reason, “freewheeling debate on matters of public interest is to be encouraged” because the truth-seeking function of public debate is dependent on the free flow of information and expression of diverse opinions.<sup>8</sup>

Any state action that discourages or deters individuals from engaging in free expression infringes section 2(b) of the *Charter*. Such violations are particularly egregious when they restrict expression concerning public affairs. BCCLA maintains that monitoring, surveillance, and information sharing with other government agencies and private sector interests creates a chilling effect for groups and individuals who may wish to engage in public discourse or participate in proceedings before the Board. Such scrutiny may also deter those who simply wish to meet with or join a group to learn more about a matter of public debate or otherwise exchange information or share views with others in their community. Indeed, BCCLA has already heard from several of the affected groups that members and prospective members of their organizations have expressed serious concerns and reluctance to participate in light of recent media reports of monitoring by law enforcement and security agencies.<sup>9</sup>

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

CSIS officials appear to equate advocacy for the environment at the expense of the petroleum industry as “a threat to the security of Canada”. But opposing certain energy sector policies, even those viewed as key national policies to the government of the day, does not constitute subversion or a threat to national security. The evidence confirms that the groups were not suspected of any criminal activity, and were planning only to express their opinions to decision-makers and the public at large. That is a core democratic activity that should not attract the attention of CSIS. Indeed, the *CSIS Act* makes clear that “lawful advocacy, protest or dissent” cannot be regarded as threat to national security. Accordingly, monitoring and surveillance of these groups was not authorized by section 12 of the *CSIS Act*, and constituted a breach of privacy and an unreasonable search pursuant to section 8 of the *Charter*.

Finally, BCCLA is also concerned that the Service’s ongoing collaboration and information sharing with the NEB and other interested parties may undermine the fairness of the Board’s proceedings. In this regard, BCCLA is concerned that disclosing to the NEB that

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<sup>8</sup> *Grant v Torstar Corp*, 2009 SCC 61 at paras. 48 and 52.

<sup>9</sup> BCCLA is prepared to provide the Committee with statements or other information from affected individuals and groups as to the impact of news reports of surveillance by law enforcement and security agencies on group membership and participation upon request or at such later stage as may be appropriate.

certain groups are of interest to or under investigation by CSIS may prejudice their credibility when they appear before the Board as intervening parties. As such, disclosure of intelligence information to the Board or other interested parties may compromise the right of these groups or individuals to participate in or even attend proceedings in which they have clearly expressed an interest. Moreover, CSIS is only authorized under section 12 of the *CSIS Act* to report intelligence or information to the Government of Canada, which would not include private sector actors or the arms-length NEB.

## Conflict of Interest

Recent media reports have identified several SIRC committee members who maintain close relationships with Enbridge and the petroleum industry. Given the subject-matter of this complaint, including allegations of inappropriate or unlawful collaboration between CSIS, the National Energy Board, and petroleum industry representatives (including Enbridge and Northern Gateway in particular), these ties raise serious concerns about conflict of interest, independence, and reasonable apprehension of bias.

BCCLA was therefore pleased to learn that the Hon. Chuck Strahl had done the right thing by voluntarily stepping down as SIRC Chair after it emerged that he is also registered as a lobbyist on behalf of Enbridge's Northern Gateway Pipelines project.<sup>10</sup> However, BCCLA remains concerned that other SIRC committee members may have similar conflicts arising from their close ties to the petroleum industry and controversial pipeline projects. In particular, we note that SIRC member Denis Losier currently sits on the board of directors for Enbridge NB, a wholly-owned Enbridge subsidiary, while SIRC member Yves Fortier previously sat on the board of TransCanada Pipelines, the company that is now behind the proposed Keystone XL project.<sup>11</sup>

Not only do these companies have direct and significant financial interests in the outcome of NEB proceedings, but they are also squarely implicated in matters raised in this complaint. For example, the above-mentioned "NRCan Classified Briefings," at which CSIS shared intelligence information with NEB and petroleum industry representatives, were sponsored by Enbridge.<sup>12</sup> In our view, the involvement in this complaint of any SIRC committee member who also works with the petroleum industry gives rise to a clear conflict of interest and reasonable apprehension of bias. In addition, participating in the investigation of this complaint could provide these individuals with information or insight which may be extremely valuable to their petroleum industry clients.

Given these serious concerns, BCCLA maintains that any Review Committee members having ties to the petroleum industry must recuse themselves from any participation or involvement in the investigation of this complaint, and no other member who may have similar ties to the petroleum industry should be designated to act in respect of this matter.

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<sup>10</sup> Matthew Millar, "Canada's top spy watchdog lobbying for Enbridge Northern Gateway pipeline," *The Vancouver Observer*, January 4, 2014.

<sup>11</sup> Greg Weston, "Other spy watchdogs have ties to oil business," *CBC News*, January 10, 2014.

<sup>12</sup> Matthew Millar, "Harper government's extensive spying on anti-oilsands groups revealed in FOIs," *The Vancouver Observer*, November 19, 2013.

## Conclusion

In light of the foregoing, BCCLA asks that the Committee undertake a full investigation of the allegations described in this complaint and those CSIS members who are or may have been involved in targeting groups participating or seeking to participate in NEB hearings. You will note that this letter is copied to Michel Coulombe, Interim Director of CSIS. As such, our letter also constitutes a complaint to the Director, as required under section 41 of the *CSIS Act*. As we anticipate that CSIS will issue its final response within thirty days, we would ask SIRC to take the preliminary steps needed to commence its review of the within complaint by appointing a member of the Committee to investigate this matter, keeping in mind the conflict of interest and bias concerns discussed above.

In particular, we expect the investigation to address the following questions:

- 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 sharing information about public interest, environmental and advocacy groups with members of the petroleum industry?
- Under what authority is CSIS acting when sharing intelligence concerning these groups with members of the petroleum industry?
- What information has been conveyed by CSIS to members of the petroleum industry? (We request copies of any notes, transcripts or recordings of these communications.)

We trust you will appreciate the urgency of this matter, and look forward to hearing from you regarding next steps in the complaint process as soon as possible. We remain available to address any questions or furnish any additional information which you may require in the course of your inquiry into this matter.

Yours truly,  
  
Paul Champ

c: J. Paterson, Executive Director, BCCLA  
M. Coulombe, Interim Director, CSIS