



Government of Canada
Permanent Mission of Canada
to the United Nations and the
Conference on Disarmament

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Reference: Joint Communication from Special Procedures

The Permanent Mission of Canada to the Office of the United Nations at Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to provide Canada's response to the Joint Letter of Allegation dated 27 November 2014 from the Special Rapporteur on Peaceful Assembly and Association, the Independent Expert on Human Rights and the Environment, the Special Rapporteur on Freedom of Opinion and Expression, the Special Rapporteur on Human Rights Defenders and the Special Rapporteur on Indigenous Peoples.

The response consists of one word document and five tabs.

The Permanent Mission of Canada to the Office of the United Nations at Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 27 January 2015

Canada

**RESPONSE OF THE GOVERNMENT OF CANADA
TO THE JOINT ALLEGATION LETTER OF 27 NOVEMBER 2014
BY FOUR SPECIAL RAPORTEURS,
CONCERNING THE ALLEGED SURVEILLANCE OF CERTAIN ENVIRONMENTAL
AND ABORIGINAL ORGANIZATIONS IN RELATION TO THE NORTHERN
GATEWAY PIPELINE PROJECT**

27 January 2015

I. INTRODUCTION

1. On 27 November 2014, Canada received a joint allegation letter from four United Nations Special Rapporteurs: the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on the rights of indigenous peoples.
2. The joint allegation letter brings to Canada's attention information that was obtained by the Special Rapporteurs concerning allegations that certain Aboriginal and environmental organizations seeking to participate in hearings concerning the Northern Gateway Pipeline Project have been subject to surveillance and monitoring "that put the independence of associations and the safety of their members at risk."
3. In relation to these allegations, the letter brings to Canada's attention Articles 17, 19 and 22 of the *International Covenant on Civil and Political Rights*, Articles 1, 2, 5 and 6 of the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*,¹ Human Rights Council resolution 24/5, as well as United Nations General Assembly Resolution 68/167.
4. The letter requests, within sixty days, Canada's observations on the following four matters:
 - (i) Any additional information and/or comment(s) on the allegations.
 - (ii) Any information on the laws or regulations under which the alleged surveillance activities were implemented.
 - (iii) An explanation of how the alleged actions of the Royal Canadian Mounted Police (RCMP) and the Canadian Security Intelligence Service (CSIS) are in accordance with Canada's obligations under international human rights law, particularly with regard to the right to freedom of association and freedom of expression.
 - (iv) Information about the current status of any surveillance and monitoring by the RCMP, CSIS and/or the National Energy Board (NEB) of Leadnow, Forest Ethics Advocacy Association, the Council of Canadians, the Dogwood Initiative, EcoSociety, the Sierra Club of British Columbia, Idle No More and/or any other civil society organizations.
5. In this response, Canada will provide general background information on the Northern Gateway Project as well as the respective roles and mandates of the NEB, RCMP and CSIS. With respect to the allegations of "monitoring" by the NEB, Canada will explain its position that there was no wrong-doing in this matter. In order to prepare for potential mass demonstrations and to ensure the continuing protection of the public and the safety of the hearings into the Northern Gateway Project, NEB officials reviewed relevant, publicly available information, and consulted with the police and their intelligence partners, in

¹ Adopted as an Annex to General Assembly resolution 53/144 (9 December 1998).

accordance with all applicable legal standards. With respect to the RCMP and CSIS, the alleged monitoring and surveillance in question are currently being considered by specialized domestic complaints and oversight mechanisms. Once these mechanisms have completed their reviews, their findings will be published in their respective Annual Reports.

II. BACKGROUND INFORMATION

A) THE RELEVANT PROTECTIONS AND REMEDIES IN CANADIAN LAW

6. As previously described in Canada's response to the Special Procedures concerning the alleged undue monitoring of an Aboriginal leader, Case no. CAN 4/2013, dated 10 January 2014, there is a robust framework of protections in Canadian law to ensure that public officials respect and protect individuals' privacy and freedom of expression and association rights. Effective remedial mechanisms are available where a violation of such rights has been alleged.
7. Most fundamentally, rights are guaranteed at the constitutional level in Canada by the *Canadian Charter of Rights and Freedoms* ("the *Charter*").² Section 2 guarantees the fundamental freedoms, including freedom of expression, freedom of peaceful assembly, and freedom of association. The *Charter* protects privacy rights through section 8, which guarantees that "everyone has the right to be secure against unreasonable search or seizure." The privacy rights under section 8 extend to reasonable informational privacy interests, including in the context of online activities.³ Section 8 also restricts the sharing of individuals' private information between government officials.⁴ The rights and freedoms in the *Charter* are subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. In the event of a government action that unjustifiably violates the *Charter*, courts can order an appropriate and just remedy, including an injunction or an order of compensatory damages. Canada is recognized for its effective, fair and independent justice system in matters of human rights.
8. The federal *Privacy Act* sets out a code of fair practices for the collection, use and disclosure of personal information by federal government institutions.⁵ It also provides those present in Canada with a right of access to their own personal information held by government institutions. An individual can complain to the Office of the Privacy Commissioner about a refusal to give access to requested personal information as well as with respect to any improper informational practices. The Privacy Commissioner has broad

² Part I of the *Constitution Act, 1982*, online: <http://laws.justice.gc.ca/eng/const/page-15.html>.

³ See e.g. *R. v. Morelli*, 2010 SCC 8 (Supreme Court of Canada), online: <http://canlii.ca/t/28mrg> ; *R. v. Cole*, 2012 SCC 53 (Supreme Court of Canada), online: <http://canlii.ca/t/ft969>.

⁴ See e.g. *R. v. Mills*, [1999] 3 S.C.R. 668 (Supreme Court of Canada) at para. 108 ("Privacy interests in modern society include the reasonable expectation that private information will remain confidential to the persons to whom and restricted to the purposes for which it was divulged."), online: <http://canlii.ca/t/1fqkl>.

⁵ R.S.C. 1985, c. P-21, online: <http://canlii.ca/t/524k6>.

powers to investigate complaints, and issues a report of findings and non-binding recommendations.⁶

9. The federal *Access to Information Act* grants all those present in Canada a right of access to records under the control of federal government institutions.⁷ An individual has a right to complain to the Office of the Information Commissioner in respect of a government institution's refusal to disclose requested records. The Information Commissioner has broad powers to investigate complaints and issues a report of findings and non-binding recommendations in respect thereof.⁸
10. Persons who may have concerns about surveillance or monitoring by the RCMP and CSIS affecting their right to privacy may also complain to specialized complaints mechanisms – the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police and the Security Intelligence Review Committee, discussed further below.

B) THE NORTHERN GATEWAY PIPELINE PROJECT

11. The Northern Gateway Pipeline Project is a proposal by Northern Gateway Pipelines Limited Partnership (Northern Gateway) to build and operate a terminal at Kitimat, British Columbia, and two pipelines between Bruderheim, Alberta, and Kitimat. A primary purpose of the project is to provide access for Canadian oil to international markets including existing and future refiners in Asia and the United States West Coast. The total estimated capital cost of the project is \$7.9 billion, which includes \$500 million for associated marine infrastructure.

C) THE NEB, RCMP, CSIS AND RELATED COMPLAINTS

i) The National Energy Board (NEB)

12. The NEB is an independent tribunal governed by the *National Energy Board Act*. Its responsibilities include, *inter alia*, the regulation of the construction, operation, and abandonment of pipelines that cross international borders or provincial boundaries, as well as the associated pipeline tolls and tariffs.⁹
13. Upon receipt of the Northern Gateway proposal, the Minister of the Environment and the Chair of the National Energy Board established a Joint Review Panel under the *Canadian Environmental Assessment Act* and the *National Energy Board Act*. As the three members

⁶ If the individual still disputes the government institution's refusal of access after a report is issued by the Commissioner, either the individual or the Commissioner can seek judicial review of the refusal.

⁷ R.S.C. 1985, c. A-1, online: <http://canlii.ca/t/523lx>.

⁸ Once the report is issued by the Commissioner, if the individual still disputes the government institution's refusal to disclose, either the individual or the Commissioner can seek judicial review of the refusal.

⁹ Details on the functions and responsibilities of the NEB are available on its website: <https://www.neb-one.gc.ca/bts/index-eng.html>.

of the Joint Review Panel were also members of the NEB, staff from the NEB supported the Panel. The Panel was directed to conduct an environmental assessment of the project and submit a report recommending whether or not the project was in the public interest. In its report, the Panel was to set out terms and conditions necessary or desirable in the public interest. The Panel was also directed to set out its rationale, conclusions, and recommendations relating to the environmental assessment of the project.

14. As an independent expert tribunal, the Panel gained a broad perspective on all aspects of the proposed project before making its recommendations. This included technical, as well as human and cultural, aspects of the project. Between January 2012 and June 2013, the Panel heard local, regional, and national perspectives about the project from affected individuals, Aboriginal groups, and other groups along the proposed pipeline and shipping routes. Public hearings for the proposed project attracted a high level of public interest. There were 206 interveners, 12 government participants, and 1,179 oral statements before the Panel. Over 9,000 letters of comment were received. The Panel held 180 days of hearings, of which 77 days were set aside for listening to oral statements and oral evidence. Most of the hearings were held in communities along the proposed pipeline corridor and shipping routes. The Panel heard and considered all views and evidence on the record, whether written or oral, to determine whether the proposed project was in the public interest. The details of the Panel's review process, as well as its decision, are set out in its final report, dated 19 December 2013.¹⁰
15. Given the strong opposition from some groups to the pipeline project, and the high level of publicity about and participation in the hearings, maintaining the safety and security of the Panel and of hearing participants was a concern to the NEB. Canada notes that, generally, the NEB has obligations under sections 124 and 125 of the *Canada Labour Code* to "ensure that the health and safety at work of every person employed" by the NEB is protected and to "ensure that the activities of every person granted access to the work place do not endanger the health and safety of employees."¹¹

- *Complaint to the NEB about monitoring of hearing participants*

16. By letter dated 27 November 2013, one of the public advocacy groups in question, Forest Ethics Advocacy, complained to the NEB about the alleged monitoring by the NEB of it and other groups participating in the Northern Gateway hearings.¹² The Joint Review Panel replied by letter dated 13 December 2013.¹³ In this letter, the National Energy Board explained in detail its position, the relevant parts of which are reproduced here for the Special Rapporteurs' convenience:

¹⁰ Available at: <http://gatewaypanel.review-examen.gc.ca/clf-nsi/dcmnt/rcmndtnsrprt/rcmndtnsrprt-eng.html>.

¹¹ *Canada Labour Code*, R.S.C. 1985, c. L-2, available at: <http://laws-lois.justice.gc.ca/eng/acts/l-2/page-55.html#h-51>. Also see the related *Canada Occupational Health and Safety Regulations* (SOR/86-304), available at: <http://laws.justice.gc.ca/eng/regulations/sor-86-304/index.html>.

¹² Letter dated 27 November 2013 from *ecojustice*, attached as Tab 1 to this Response.

¹³ Letter dated 13 December 2013 from Enbridge Northern Gateway Project Joint Review Panel, attached as Tab 2 to this Response.

...The National Energy Board has the duty to see that its public hearings are safe for the public, participants, NEB staff and the presiding members.

In order to help fulfill this duty, open source information and social media scans are conducted and information is sought from local police, the RCMP and other organizations that may help to identify and evaluate risks. The position of, and the passion expressed by, a party is not a factor in determining whether a party poses a risk. Any threats of criminal action, disobedience or disturbance to the process, however, are taken seriously so that appropriate security measures can be put in place before incidents occur to ensure the safety of the public, participants, NEB staff and presiding members.

Rallies and meetings planned near to, and to coincide with, our hearings are identified in this regard. Even when the organizers of these events are not a safety risk, the events themselves may attract individuals or groups who are. Events that are meant to be peaceful can turn violent despite the intentions of the organizers...

ii) *The Royal Canadian Mounted Police (RCMP)*

17. Police officers in Canada have powers and duties established by the common law¹⁴ and legislation.¹⁵ Their duties include preserving the peace, preventing crime, protecting life and property, and enforcing the law. In carrying out their duties, police officers must, at all times, conduct themselves and act in a fashion that is within their powers and consistent with the law. They are trained and required to operate within the framework set out by the *Charter* and other applicable legislation.
18. The RCMP is Canada's national police force and as such, has a wide range of security-related mandates and responsibilities. These include: national security criminal investigations, protective policing, border integrity, critical infrastructure protection, marine security, air carrier protection, critical incident management and a host of related support services. The safety of the public, the protection of property including critical infrastructure, and the safeguard of the integrity of government against criminal threats or intimidation are critical to the well-being of Canada's citizens as well as the Canadian economy. Accordingly, the Government of Canada and the RCMP have made national security an organizational priority of the RCMP, and the RCMP aims to effectively respond to threats to Canada's security by detecting, preventing, and investigating terrorism-related criminal activities in Canada.

¹⁴ *Knowlton v. R.*, [1974] S.C.R. 443 (Supreme Court of Canada); *Dedman v. The Queen*, [1985] 2 S.C.R. 2 (Supreme Court of Canada); *R. v. Godoy*, [1999] 1 S.C.R. 311 (Supreme Court of Canada). These cases provide that in exercising their duties, police may generally rely on common law powers "to the extent and in a manner that is reasonable in the circumstances."

¹⁵ See for example, the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-21, section 18; and the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281, section 14.

19. The 2014-15 RCMP Report on Plans and Priorities provides details over a three-year period on the RCMP's main priorities, programs and expected results.¹⁶
20. The RCMP's National Security Criminal Investigations Program includes a Critical Infrastructure Intelligence Team which examines physical and cyber threats to critical infrastructure in support of the RCMP's and the Government of Canada's critical infrastructure protection mandates. This section collaborates closely with domestic partners at the federal and provincial government levels, as well as other law enforcement groups and private sector stakeholders.
21. Generally, the RCMP, like other police services in Canada, may gather information on all categories of protest activity by individuals and/or groups nationwide in order to mitigate any potential criminal threats, maintain operational readiness and ensure public safety. Where it is deemed advisable, the RCMP may have a uniformed presence at public meetings, demonstrations or protests. The RCMP strives, at all times, to balance the need to maintain the peace with the democratic right to hold peaceful demonstrations.
22. Any member of the public may make a complaint against the RCMP to the Civilian Review and Complaints Commission for the RCMP (CRCC or "the Commission"). The CRCC is an independent agency created by Parliament to ensure that public complaints made about the conduct of RCMP members are examined fairly and impartially. The CRCC makes findings and recommendations aimed at correcting and preventing recurring policing problems, and reports to the RCMP Commissioner and the Minister of Public Safety. The CRCC's goal is to promote excellence in policing through accountability. The CRCC was established in 2014, and replaced the Commission for Public Complaints against the RCMP pursuant to amendments to the *RCMP Act*.¹⁷ The revised *RCMP Act*¹⁸ grants the new CRCC broad access to information in the control or possession of the RCMP, sets out the CRCC's investigative powers, permits the CRCC to conduct joint complaint investigations with other police complaints bodies and authorizes the CRCC to undertake policy reviews of the RCMP.¹⁹
 - *Complaint to the Commission about surveillance of Northern Gateway hearing participants and information-sharing with the NEB*
23. The British Columbia Civil Liberties Association (BCCLA) made a complaint against the RCMP to the previous Complaints Commission on 6 February 2014.²⁰ Canada observes that the subject-matter of this complaint is the same as the allegations made in the Special Rapporteurs' joint allegation letter; that is, the surveillance of the same public advocacy groups participating or taking an interest in the Northern Gateway Project hearings, and information-sharing with the NEB. The complaint refers to certain emails that had been

¹⁶ The Report can be found at: <http://www.rcmp-grc.gc.ca/rpp/2014-2015/rpp-eng.htm>.

¹⁷ *Enhancing the Royal Canadian Mounted Police Accountability Act*, S.C. 2013, c. 18, available at: http://laws-lois.justice.gc.ca/eng/annualstatutes/2013_18/FullText.html.

¹⁸ R.S.C. 1985, c. R-10, available at: <http://laws-lois.justice.gc.ca/eng/acts/R-10/FullText.html>.

¹⁹ Further details about the Commission are available at: <https://www.crcc-ccetp.gc.ca/en>.

²⁰ Letter dated 6 February 2014, from Champ & Associates, attached as Tab 3 to this Response, also online at: <https://bccla.org/wp-content/uploads/2014/02/RCMP-Complaint-.pdf>.

obtained pursuant to a request made under the *Access to Information Act*, which appear to be the same emails referenced in the Special Rapporteurs' joint allegation letter.

24. By letter dated 20 February 2014,²¹ the previous Complaints Commission initiated a public interest investigation into the complaint.
25. Pursuant to section 76.9 of the *Enhancing Royal Canadian Mounted Police Accountability Act*, the CRCC may decide whether to conclude complaints such as this one which had not been resolved by the previous Commission pursuant to the provisions of the former *RCMP Act* or the *RCMP Act (2014)*, and this complaint remains to be concluded under the former Act. Canada wishes to inform the Special Rapporteurs that the RCMP has been provided with the CRCC's interim report. Upon receipt by the RCMP of the information gathered during the CRCC's investigation, analysis will be conducted in order to permit the Commissioner to respond thereto, as required by the legislation. The Commissioner's response to the interim report will be sent to the Minister of Public Safety and to the Chair of the CRCC and must indicate if any further action has been or will be taken by the RCMP with respect to the complaint, and must provide reasons for acting, or not, on any of the CRCC's findings or recommendations. After receiving and considering the Commissioner's response, the CRCC will in turn prepare a final, written report setting out any findings and recommendations it deems appropriate, and will provide that report to the Minister of Public Safety, the Commissioner, the complainant and the RCMP member or other person whose conduct was the subject matter of the complaint. If applicable, there are also legislated protocols respecting the sharing of the Commission's final report with provincial or territorial governments. A summary of the report (with private information removed) will also be published on the CRCC's website.
26. Given this statutory review system that places legal obligations on the CRCC and the RCMP to ensure the effectiveness of the process, Canada considers that it would be premature to reply to the specific allegations to the Special Rapporteurs at this time. In Canada's view, because there is a specialized complaints mechanism that enjoys legislative investigative powers and benefits from direct RCMP engagement, that civilian review structure is the most appropriate forum for investigating the complaint and assessing whether the RCMP complied with the relevant laws and policies.

iii) *The Canadian Security Intelligence Service (CSIS)*

27. CSIS is at the forefront of Canada's national security establishment. CSIS' mandate is to investigate threats, analyze information and produce intelligence. It then reports to, and advises, the Government of Canada.

²¹ Letter dated 20 February 2014, from Interim Chair of the Commission for Public Complaints against the Royal Canadian Mounted Police, attached as Tab 4 to this Response, also online at: <https://bccla.org/wp-content/uploads/2014/03/20140220-RCMP-Complaints-Commission-Letter.pdf>.

28. The *CSIS Act*²² provides the legislative foundation for CSIS' mandate, outlines CSIS roles and responsibilities, confers specific powers and sets the framework for democratic control and accountability for CSIS. In particular, the Act strictly defines the type of activity that may be investigated and to whom the information gathered may be communicated and under what circumstances. Information is gathered primarily under the authority of section 12 of the Act, and must pertain to those individuals or organizations suspected of engaging in activities that may threaten the security of Canada (i.e., espionage, sabotage, political violence, terrorism, and clandestine activities by foreign governments). The *CSIS Act* expressly prohibits CSIS from investigating acts of lawful advocacy, protest, or dissent. CSIS may only investigate these types of acts if they are linked to threats to Canada's national security.²³
29. As part of its core mandate, CSIS reports and advises the Government of Canada on matters relating to threats to the security of Canada. CSIS collects information in Canada and abroad and uses it as the basis for providing advice to the Government of Canada about activities that may constitute a threat to the security of Canada. This information is collected from many sources, including: members of the public, foreign governments, human sources, technical interception of telecommunications, and open sources including newspapers, periodicals, academic journals, foreign and domestic broadcasts, official documents, and other published material, including that which is publicly-available on the internet. In planning and conducting an investigation, care is taken to ensure an appropriate balance between the degree of intrusiveness of an investigation and the privacy of individuals. Investigations that require use of more intrusive techniques, such as the interception of telecommunications, are subject to judicial authorizations, sought after the application of a rigorous process of challenge and controls.²⁴
30. All activities of CSIS, including surveillance, monitoring and information-sharing, are subject to oversight by an independent, external review body, the Security Intelligence Review Committee (SIRC), which is established and governed under sections 34-55 of the *CSIS Act*. SIRC is required by the Act to prepare an annual report to Parliament for the purpose of ensuring that the activities of CSIS are carried out in accordance with the Act and do not involve any unreasonable or unnecessary exercise by CSIS of any of its powers.
31. In addition, individual complaints against CSIS can be made to SIRC. The investigation of complaints by SIRC is conducted in private and is governed by sections 41-52 of the *CSIS Act*. In its investigation of a complaint, SIRC has access to all relevant information under the control of CSIS, whether classified or not (with the exception of a confidence of the Queen's Privy Council for Canada). The investigation may include a hearing and SIRC has the authority to summon witnesses and compel them to give oral or written evidence and to produce such documents and things that SIRC deems requisite to the full investigation and consideration of the complaint. SIRC can also receive evidence and other information whether or not that evidence would be admissible in a court of law. Once the investigation is complete, SIRC will provide the complainant with its findings, which will not include

²² The *CSIS Act* is available at: <http://laws-lois.justice.gc.ca/PDF/C-23.pdf>

²³ See the definition of "threats to the security of Canada" in section 2 of the *CSIS Act*.

²⁴ <https://www.csis.gc.ca/bts/ntlgn-en.php>

classified information, and will report on the complaint in its Annual Report to Parliament.²⁵ A report which may contain classified information including SIRC's findings and recommendations will also be sent to Canada's Minister of Public Safety and Emergency Preparedness and to the Director of CSIS.

- *Complaint to SIRC about surveillance of Northern Gateway hearing participants and information-sharing with the NEB*

32. The BCCLA made a complaint against CSIS on 6 February 2014.²⁶ Canada observes that the subject-matter of this complaint is the same as the allegations made in the Special Rapporteurs' joint allegation letter; that is, the alleged surveillance of the named public advocacy groups participating in the Northern Gateway Project hearings, and information-sharing with the NEB. The complaint refers to certain email messages that had been obtained pursuant to a request made under the *Access to Information Act*, which appear to be the same messages referenced in the joint allegation letter.
33. As part of SIRC's review of domestic investigations and emerging issues, SIRC has already conducted several reviews and audits on the topic of lawful advocacy, protest or dissent as can be seen in its Annual Reports. This topic was most recently addressed in SIRC's 2012-2013 Annual Report where it found that "activities related only to legitimate protest and dissent were not investigated [by CSIS]".²⁷
34. Canada wishes to inform the Special Rapporteurs that SIRC's investigation into the BCCLA's complaint remains ongoing. In Canada's view, the investigation of complaints of activities conducted by CSIS is part of SIRC's core mandate. Furthermore, SIRC will have the benefit of access to all classified information under the control of CSIS as well as access to CSIS personnel. SIRC is the most appropriate forum for investigating the complaint and assessing whether CSIS complied with the relevant laws and policies.
35. Because the complaint is still at the investigation stage, Canada is unable to comment further on the specific allegations made. Once SIRC makes its findings, it will report on the complaint in its next Annual Report to Parliament.

III. RESPONSE TO SPECIAL RAPORTEURS' SPECIFIC QUESTIONS

36. In the joint allegation letter, the Special Rapporteurs request Canada's observations on the following four matters:

A) CANADA'S COMMENTS ON THE ALLEGATIONS CONTAINED IN THE SPECIAL RAPORTEURS' JOINT ALLEGATION LETTER

²⁵ Further details of SIRC's complaints process is available at: <http://www.sirc-csars.gc.ca/cmpplt/mkeprt-eng.html>. Annual Reports of SIRC are available at: <http://www.sirc-csars.gc.ca/anrran/index-eng.html>.

²⁶ Letter dated 6 February 2014, from Champ & Associates, attached as Tab 5 to this Response, also online at: <https://bccla.org/wp-content/uploads/2014/02/SIRC-Complaint.pdf>.

²⁷ Annual Reports of SIRC are available at: <http://www.sirc-csars.gc.ca/anrran/index-eng.html>.

37. The allegation letter sent by the Special Rapporteurs conveys a number of allegations which are quoted in full in the four sub-headings below.

i) NEB in collaboration with RCMP and the CSIS have engaged in systematic information and intelligence gathering about organizations seeking to participate in NEB's Northern Gateway Project hearings in relation to an oil pipeline project.

These organizations are reported to include Leadnow, Forest Ethics Advocacy Association, the Council of Canadians, the Dogwood Initiative, EcoSociety, the Sierra Club of British Columbia and Idle No More. These organizations have reportedly no present or historical involvement in criminal activity and the alleged surveillance is reportedly related to their engagement in peaceful advocacy on environmental issues.

38. Neither the NEB nor the Joint Review Panel, either on their own or in collaboration with the RCMP or CSIS, engaged in systematic information or intelligence gathering about the organizations which participated in the Joint Review Panel hearings into the Northern Gateway Pipelines Project. The NEB and the Joint Review Panel used open sources to become aware of demonstrations or protests planned by persons or groups to take place at or near the locations of the hearings during the times when the hearings were scheduled to take place. This information was sought in order to provide protection to the Joint Review Panel, its staff, and hearing participants should the protests turn violent independent of the peaceful intentions of the organizers of those protests.
39. Of the organizations listed, only the Forest Ethics Advocacy Association participated as a party in the Northern Gateway Project hearings. Idle No More organized at least one of the demonstrations. However, neither the NEB nor the Joint Review Panel engaged in systematic information or intelligence gathering of these or any of the other organizations listed. Counsel for Forest Ethics Advocacy Association raised concerns about intelligence gathering with the NEB in a letter dated 27 November 2013, and the NEB responded by letter dated 13 December 2013, as noted above.
40. With respect to the RCMP and CSIS, since these allegations are the subject of ongoing complaints to the CRCC and the SIRC, respectively, it would not be appropriate for Canada to comment further at this time.

ii) CSIS provided NEB with intelligence gathered at the national and regional level about these organizations on 31 January 2013 despite a lack of information amongst law enforcement agencies of any criminal activity being about to be committed. It also seems that CSIS has kept providing intelligence to NEB, which has continued monitoring these organizations since 1 February 2013.

41. The NEB and the Joint Review Panel became aware of a public event in Vancouver during hearings on 31 January 2013, but is unaware of CSIS providing it with intelligence gathered as alleged.

42. With respect to the involvement of CSIS, again, as this allegation is currently before the SIRC, it would not be appropriate for Canada to comment further at this time.

iii) Additional information indicates that RCMP Critical Infrastructure Team informed NEB staff and at least one CSIS official on 19 April 2013 that it would “continue to monitor all aspects of the anti-petroleum industry movement.”

43. The RCMP response of 19 April 2013 was to a request dated 18 April 2013 by the NEB asking for assistance “establishing whether [a recent threatening YouTube video] represents a credible threat to the NEB panel members from the RCMP perspective.” The RCMP response indicated that it “currently has no intelligence indicating a criminal threat to the NEB or its members.” This correspondence is attached to the letter to the NEB from counsel for the Forest Ethics Advocacy Association, dated 27 November 2013.²⁸

44. Since the RCMP’s involvement in this intelligence-gathering is currently the subject of a complaint before the CRCC, it would not be appropriate for Canada to comment further at this time.

iv) Information received also refers to the biannual “NRCan Classified Briefings” held by Natural Resources Canada, at which CSIS and RCMP had reportedly shared information about security matters, including environmental human rights activists, with NEB and representatives of the energy industry.

45. The “NRCan Classified Briefings” are semi-annual briefings held in Ottawa by Natural Resources Canada (NRCan), in collaboration with the security and intelligence community, particularly CSIS and the RCMP. These briefings are attended by energy sector stakeholders and are provided to facilitate the exchange of security related information between the public and private sectors to enable the owners and operators of energy and utilities to take steps to ensure the safety, security and resilience of critical energy infrastructure.²⁹ Information about environmental human rights activists is not exchanged at these briefings.

46. The NEB, given its role in the energy sector and its obligations to ensure a safe work place, is among the regular attendees at the NRCan Classified Briefings on security matters.

²⁸ Attached as Tab 1 to this response.

²⁹ Natural Resources Canada (NRCan) is the department responsible for federal resource policies, and science and technology that support the sustainable development and competitiveness of the energy, forest, minerals and metals sectors, and their allied industries. The department enables the Government of Canada to address resource issues in a comprehensive manner, from a national perspective. Various resource and energy agencies, including the NEB, Atomic Energy Canada, the Canadian Nuclear Safety Commission, and the Northern Pipeline Agency report to Parliament through the Minister of Natural Resources. Further details concerning the department are available at: <http://www.nrcan.gc.ca/home>. The mandate and activities of the Energy Infrastructure Protection Division (EIPD) in particular are available at: <http://www.nrcan.gc.ca/energy/infrastructure/5899>.

B) INFORMATION ON THE LAWS OR REGULATIONS UNDER WHICH THE ALLEGED SURVEILLANCE ACTIVITIES WERE IMPLEMENTED

47. The relevant legislative mandates of the NEB, the RCMP and CSIS, as well as the broader framework for protections of the freedoms of association and expression and the right to privacy, have been set out elsewhere in this response.

C) EXPLANATION OF HOW THE ALLEGED ACTIONS OF THE RCMP AND CSIS ARE IN ACCORDANCE WITH CANADA'S OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW, PARTICULARLY WITH REGARD TO THE RIGHTS TO FREEDOM OF ASSOCIATION AND FREEDOM OF EXPRESSION

48. It should be acknowledged that Canada recognizes, protects, and respects freedom of expression and association, as set out in Articles 19 (freedom of expression) and 22 (freedom of association) of the *International Covenant on Civil and Political Rights*. Although it has not restricted the exercise of the freedoms in any manner whatsoever, Canada observes that neither right is absolute and restrictions may be imposed if necessary to ensure, *inter alia*, the protection of national security or of public order (*ordre public*), or the protection of the rights and freedoms of others, as long as the restrictions are necessary, legitimate and proportionate.³⁰
49. Canada supports the work of public interest advocacy organizations and defenders of human rights worldwide and at home. Fundamentally, Canada is an open society that values freedom of expression and the right of individuals to peacefully gather, demonstrate and protest. The rights to freedom of expression, assembly, association and movement in Canada, as well as the rights to liberty, security and physical integrity, are the very foundation of Canada's free and democratic society.
50. Indeed, social and political protests do occur in Canada on a frequent basis and on a myriad of issues. The scale of the protests may vary but the basic elements that guarantee the exercise of the right to protest publicly remain constant.
51. However, the exercise of rights must generally be understood within the relevant context. That rights and freedoms cannot be without limits reflects the reality that in a civil society comprising diverse and sometimes competing interests, a reasonable equilibrium must be reached between the right to social and public protest and the state's obligation to protect government institutions, critical infrastructure and the rights and safety of others.
52. In this matter, as Canada has described, the Joint Review Panel actively sought public participation and the opinions and views of individuals and organizations regarding the proposed pipeline project. Rather than being restricted, the freedoms of expression and association were encouraged to thrive. At the same time, the staff of the NEB viewed publicly-available information, and consulted with its partners in the policing and

³⁰ See for example the Human Rights Committee's General Comment No. 34, Article 19: Freedoms of opinion and expression (CCPR/C/GC34, 12 September 2011).

intelligence community, with the sole purpose of protecting the safety of the public and the Panel members and staff during the hearings.

D) INFORMATION ABOUT THE CURRENT STATUS OF ANY SURVEILLANCE AND MONITORING BY RCMP, CSIS AND/OR NEB OF LEADNOW, FOREST ETHICS ADVOCACY ASSOCIATION, THE COUNCIL OF CANADIANS, THE DOGWOOD INITIATIVE, ECOSOCIETY, THE SIERRA CLUB OF BRITISH COLOMBIA AND IDLE NO MORE

53. There is no surveillance and monitoring by the NEB of these or any other civil society organizations.
54. It would not be appropriate for Canada to comment on the status of any surveillance or monitoring by the RCMP or CSIS of any group, organization or individual that may be currently ongoing. However, Canada can assure the Special Rapporteurs that any such surveillance or monitoring is in accordance with applicable legal standards and subject to strict oversight by specialized bodies, the courts and Canada's Parliament.
55. With respect to past events, as noted, the alleged surveillance or monitoring of these organizations in the course of the Northern Gateway hearings is presently the subject of complaints against the RCMP and CSIS, which are still ongoing.

IV. CONCLUSION

56. Canada reiterates that freedom of expression and association are protected, respected and recognized in Canada as the foundation of a free and democratic society, and are subject to a robust framework of protections and remedial mechanisms. During the Northern Gateway hearings, the views of individuals and organizations were sought out and encouraged. The NEB's sole concern, in surveying publicly available information and consulting with its police and intelligence partners, was to ensure the safety of the public and of the Panel members during the hearings.
57. With respect to the actions of the RCMP and CSIS, the alleged monitoring and surveillance in question are currently being considered by specialized domestic complaints and oversight mechanisms. Once these mechanisms have completed their reviews, their findings will be published in their respective Annual Reports. Canada would be pleased to provide the findings to the Special Rapporteurs when they become available.

Ottawa
27 January 2015

Attachments:

Tab 1: Letter dated 27 November 2013 from *ecojustice*.

Tab 2: Letter dated 13 December 2013 from Enbridge Northern Gateway Project Joint Review Panel.

Tab 3: Letter dated 6 February 2014, from Champ & Associates, also online at: <https://bccla.org/wp-content/uploads/2014/02/RCMP-Complaint-.pdf>.

Tab 4: Letter dated 20 February 2014, from Interim Chair of the Commission for Public Complaints against the Royal Canadian Mounted Police, also online at: <https://bccla.org/wp-content/uploads/2014/03/20140220-RCMP-Complaints-Commission-Letter.pdf>.

Tab 5: Letter dated 6 February 2014, from Champ & Associates, also online at: <https://bccla.org/wp-content/uploads/2014/02/SIRC-Complaint.pdf>.