



June 18, 2013

Mr. Douglas Breithaupt
Director and General Counsel
Criminal Law Policy Section
Department of Justice
284 Wellington Street
Ottawa, Ontario K1A 0H8

By Fax: 613-957-3738

Dear Mr. Breithaupt,

RE: Canada Gazette Part 1 Vol. 147, No. 23 — June 8, 2013

I am writing today regarding the proposed Order amending the Schedule to the *Security of Information Act* to expand the number of federal government employees who would be placed under a perpetual gag order.

We do not support this measure, nor does the information put forward by the government justify it.

In reviewing the justifications provided in the *Gazette*, it appears that there is essentially only one – to provide greater confidence to other governments that information they provide to the Government of Canada will not be released.

“The proposed Order would enable the Government of Canada to provide additional assurances to its international partners and allies that special operational information shared with Canada will be protected.”

There is no evidence or even an indication that the assurances currently provided by the Government of Canada are inadequate to meet the “operational requirements” of these foreign powers. Expanding the number of people potentially liable for up to 14 years incarceration requires at least an indication that there is a problem. None has been provided here.

In addition, the government should be able to show evidence that the proposed measures would remedy the identified problem. Since no problem has actually been identified, it is impossible to state that the measures being proposed would be in any way effective.

The provisions in Part 2 came into force December 24, 2001. More than a decade has passed, apparently without causing difficulties for Canadian security and intelligence, or those of foreign powers as a result of these groups of people not being covered by this Part. In the absence of any evidence that there are problems, there does not appear to be any justification for this draconian measure.

Apparently there are already 12,000 persons already covered by Part 2 of the *Security of Information Act*. No information has been provided about how many more people will be made subject to these repressive measures.

Three of the groups to be included are government legal counsel. Lawyers are already bound by client confidentiality provisions of Code of Conduct and subject to penalties for failing to keep client information confidential. It is not clear why it is necessary to add the risk of incarceration to this.

We also disagree that there will be no effect on the press. Individuals who will be subject to incarceration for possible violation of Part 2 would naturally be exceptionally cautious about divulging any information, especially given the sweeping definition of 'special Operational Information.' In particular, subsection 8(1)(g) includes "information or intelligence similar in nature to information or intelligence referred to in any of paragraphs (a) to (f) that is in relation to, or received from, a foreign entity or terrorist group." This vastly widens the scope of the previous six subsections, and can reasonably be said to have a chilling effect on information being provided to members of the media from any person subject to this Order.

Please do not hesitate to contact our office if you require any additional information. I have also included the link for the Consulting Canadians website for your convenience, although this faxed document will not allow you to link to it directly.

<http://www.consultingcanadians.gc.ca/hm.jsp?lang=eng>

It is apparently the website where government consultations are posted, and it allows electronic responses to government consultations. We suggest you consider using this facility in future if you are actually interested in receiving input on similar proposals.

Sincerely yours,

Vincent Gogolek
Executive Director