

Energy Board Spies On Pipe Critics; Calls RCMP & CSIS

National Energy Board regulators including Sheila Leggett, head of a panel studying the Northern Gateway pipeline, has had the RCMP and anti-terrorist CSIS agency snoop on opponents of the project.

Leggett and other board staff sanctioned secret consultations with the Canadian Security Intelligence Service and RCMP for months, despite police assurances there was no evidence of law-breaking.

"This is outrageous," said Green Party leader Elizabeth May, MP for Saanich-Gulf Islands, B.C.

The board conducted hearings on whether to license Enbridge Inc.'s \$6 billion proposal to ship oil along a 1,200-km pipeline from Bruderheim, Alta. to the port of Kitimat, B.C.

The board asked the RCMP and CSIS for a "thorough review" of activities by pipeline opponents, including the Sierra Club, Forest Ethics Advocacy Association and Council of Canadians, according to documents released through *Access to Information*.

Federal agents and the Energy Board's security division monitored Facebook accounts, twitter feeds and websites like Rabble.ca, Genuinewitty.com and PoorMansMedia.ca for negative comments about the Enbridge project.

One secret RCMP report *Security Information Background* noted MP May had spoken at a rally of environmental groups opposed to the Northern Gateway pipeline.

"This is not what you do in a free society," May said in an interview. "Nobody is threatening them, but the National Energy Board is still acting as though legitimate public participation in their hearings represents some kind of threat. That's deeply troubling."

Sheila Leggett, the board's \$171,100-a-year vice chair, declined *Blacklock's* interview request.

In hundreds of pages of documents, emails and correspondence, board staff obsessed about the activities of Northern Gateway protestors despite repeated police assurances there was no criminal activity.

"I could not detect a direct or specific criminal threat," a senior RCMP official in Ottawa wrote the board in an April 19, 2013 email. In an earlier Jan. 31 note, RCMP in Prince Rupert, B.C. reported local groups had staged a "large-scale" protest rally: "Even this was peaceful."

However the board's security chief Richard Garber repeatedly asked federal police to investigate the activities of Northern Gateway opponents, at one point asking the RCMP to monitor YouTube videos posted by critics: "Your assistance is sought in establishing whether this represents a credible threat to the National Energy Board panel members," Garber wrote April 17, 2013.

On another occasion, in an enquiry apparently prompted by a request from Vice Chair Leggett, the security chief contacted Prince Rupert RCMP where the board was to conduct a public hearing: "Is there any way that I could impose upon you to produce a short, high-level analyses of the likelihood/potential for aggressive activities in Prince Rupert associated with the Enbridge Northern Gateway Joint Review Panel hearings?"

RCMP replied there were no threats. Yet the board prepared a confidential 19-page *Security Plan* that included street maps and photographs of Prince Rupert, a telephone number for the local hospital, and an advisory stating: "The National Energy Board has consulted the Canadian Security Intelligence

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"It just isn't getting any easier, is it?" Garber wrote in a Jan. 21 staff memo; "The Security Team, together with police and intelligence partners, will continue to monitor all sources of information and intelligence," he wrote in a separate memo.

Blacklock's attempted to contact Garber at his Calgary office but had no reply.

MP May noted opponents of the Northern Gateway pipeline have included legislators, municipal leaders, First Nations, trade unions and the Government of British Columbia.

"The implication of the National Energy Board contacting the RCMP and CSIS because these people may interfere with hearings is disturbing and anti-democratic," said May. "A regulator is supposed to be independent of one interest group or the other. A regulator is supposed to have an open mind. A regulator should not be concerned with groups that oppose a proposal – especially when the RCMP tell them there is no security threat."

Blacklock's requested to speak with Natural Resources Minister Joe Oliver but received no reply.



TOM KORSKI

RCMP To Watch "Anti-Oilsands" Crowd: Secret Memo

A secret RCMP memo warns "anti-oil sands" critics must be kept under police watch as an economic threat.

The Mounties in a confidential report to the National Energy Board warn it is "highly likely" oil sands opponents will break the law or threaten regulators, but note they can find no evidence of criminality: "(We) will continue to monitor all aspects of the anti-petroleum industry."

The memo was written for the energy board by Tim O'Neil, senior criminal intelligence research specialist with Federal Policing Criminal Operations at RCMP headquarters in Ottawa. O'Neil did not return *Blacklock's* calls.

"I find this utterly disturbing," said Nader Hasan, counsel for the

group Forest Ethics Advocacy Association. The group is one of several, including the Sierra Club and Council of Canadians, monitored by the RCMP and anti-terrorist Canadian Security Intelligence Service.

"These are federal agents monitoring peaceful protestors," said Hasan of Ruby Shiller Chan Hasan Barristers of Toronto. "It's disturbing that the RCMP and CSIS would work so closely with the National Energy Board in gathering intelligence on community groups."

The O'Neil memo dated April 19, 2013 was released through *Access to Information*.

O'Neil advised he could find no "direct or specific criminal threat" posed by oil sands critics, but

concluded there was "questionable rhetoric" by community groups.

"Opponents of the oil sands have used a variety of protest actions to draw attention to the oil sands' negative environmental impact, with the ultimate goal of forcing the shutdown of the Canadian petroleum industry," the RCMP memo continued.

"The anti-petroleum and anti-nuclear movement has attempted to interfere within the federal regulatory hearings and have used coordinated/mass interventions that have at times bogged down the regulatory hearings. In response, the federal government has instituted new regulatory procedures that will limit who may make formal presentations at the National Energy Board's public hearings."

Parliament in 2012 enacted new curbs on participation at public hearings. Under amendments to the *National Energy Board Act* Canadians wanting to appear at public hearings must prove their

"expertise" and provide evidence they are "directly affected" by a project, then submit an application for vetting by staff. Forest Ethics has challenged the amendments in Federal Court as an unconstitutional infringement of free speech.

The RCMP memo continued: "It is the focus of attention by many anti-oil sands, anti-Canadian petroleum and anti-petroleum pipeline operations, and it is highly likely that the National Energy Board may expect to receive threats to its hearings and its board members."

Members of Parliament expressed dismay at the RCMP's conduct.

"This is clearly about stifling dissent," said Halifax MP Megan Leslie, New Democrat environment critic; "One would hope a regulator would be at arm's length and impartial. I think we're getting into dangerous territory."



PAUL DELAHANTY

VOLCANOLOGIST WANTED, MUST WORK WEEKENDS

Natural Resources Canada is hiring an on-call volcanologist to stand by for "urgent volcanic situations" this winter.



The department said help was needed for the nation's only full-time government volcanologist, who works at the Geological Survey headquarters in Vancouver.

A second scientist is required to remain on call seven days a week "including non-business hours whenever there is volcanic activity," the department explained.

Canada has some two dozen volcanoes but has not experienced an eruption in more than two hundred years.

"We have volcanologists both to improve understanding of volcanic hazard in Canada and to understand the relationship between ancient volcanoes and

present-day deposits of metals and minerals," a Natural Resources spokesperson said.

All the country's volcanoes are located in British Columbia and Yukon Territory, including Mt. Garibaldi 66 km north of Vancouver, which last erupted 8000 years ago; and Yukon's Alligator Lake volcano, located 30 km southwest of Whitehorse.

Emergency Management B.C. notes all Canadian volcanoes are "sleeping", but advises residents to "practice a home evacuation" and keep an emergency kit on hand, according to a bulletin *Prepare For Volcano Hazards In British Columbia*.

"Fortunately a volcano will often give a period of advance warning before serious effects results," the agency noted.

Canada's last volcanic eruption occurred circa 1775 in B.C.'s Nass River valley. Oral histories of the Nisga'a people indicate two villages were decimated, killing 2000 people.



PAUL DELAHANTY

"Clarity for consumers"

Telecom regulators say rules are rules for wireless carriers that give away "free" cellphones to customers who sign new contracts.



The Canadian Radio Television and Telecommunications Commission said phone providers must follow "clear, standard and transparent" regulations in limiting fees charged customers.

Under a federal Wireless Code that took effect Dec. 2, wireless phone customers are entitled to cancel contracts without any penalty after two years.

Rogers Communications and Telus Inc. questioned if the policy applied to so-called "tab" accounts, where customers are provided a cellphone on signing a contract, and subsequently billed monthly for the cost to "pay down" their tab," the CRTC noted.

In a regulatory notice the commission ruled that customers who receive phones on a company "tab" are still entitled to protection from cancellation fees.

"This is very much in spirit with customer-friendly rules," said David Christopher of Open Media, a consumer advocacy group.

In its notice the telecom regulator explained, "The Wireless Code's cancellation fee provisions are meant to limit the maximum cancellation fee that can be charged, ensure that customers can cancel their contracts without penalty after 24 months, and provide clarity for consumers by establishing a clear, standard and transparent formula for calculating cancellation fees."

The code also reduces the maximum term on cellphone contracts from three years to two; caps data charges at \$50 a month and international roaming charges to a maximum \$100 a month; and requires that all contracting be written in plain language.



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Feds Privatize Inspections

Storekeepers, gas station owners and other merchants must pay to ensure accuracy of their weights and scales under a new privatization of inspections, says Industry Canada.

The department confirmed for the first time retailers will be charged for inspections under the *Weights And Measures Act*. The fees "will be determined by market forces" charged by private agencies, a department spokesperson told Blacklock's.

However a consumer advocacy group questioned the effectiveness of the scheme.

"When you are putting someone in an enforcement role, how do you supervise that?" said Ken Whitehurst, executive director of the Consumers Council of Canada; "It's like contracting out a private police force."

Industry Minister James Moore did not comment.

Government inspections date from the 1877 *Weights And Measures Act*, the first consumer legislation enacted by Parliament. Federal checks on scales and gauges have been reduced since 1994 as an austerity measure, resulting in more dishonest and inaccurate measurements, the industry department said.

Measurements Canada, the federal agency that oversees regulations, has determined 4.9 percent of all gas pumps inspected failed to meet the required 0.5% margin of error.

"Whenever surveys are done on gas pumps the tendency to error in the United States is on the side of the consumer, and in Canada against the consumer," said Whitehurst. "Fundamentally people have to know how much they are buying."

Industry Canada in a regulatory notice acknowledged that both consumers and small businesses should be "protected from

unscrupulous trade practices", but said it could not afford to hire the 350 new inspectors it estimates are required to keep up with the trade.



Instead the department proposed to privatize inspections at an unspecified cost to merchants, and eliminate inspections altogether in wholesale transactions like the loading of ore ships and oil tankers, pipeline meters and the industrial sale of gold, silver and diamonds.

"Parties involved in these transactions have the means and expertise to ensure accurate measurement and to protect their interests," the department said. "There would be no vulnerable parties in this category of trade."

Authorities proposed that storekeepers pay to have their scales and meters checked every five years, gas station owners every two years, and retail propane dealers once a year. The department calculated the number of inspections will rise from 42,000 to 250,000 a year.

 BY STAFF

[photo Library & Archives Canada]

HARMONY NOT EVEN CLOSE

A cross-border bid to harmonize Canadian and U.S. regulations is making paltry progress despite personal endorsements from the Prime Minister and President, say manufacturers.

The Regulatory Cooperation Council, announced with fanfare in 2011, has not generated the changes that were expected, says the Canadian Manufacturing Coalition.

In a letter, manufacturers said standardization of rules had proceeded at a snail's pace.

"Out of the thousands of regulations that affect companies manufacturing and selling products in each country, only a handful have been aligned to allow for a product to be designed, manufactured, approved, and sold in both countries through a single process," Robert Carberry, coalition assistant secretary, wrote the Cooperation Council.

The protest was co-signed by representatives of 27 industry associations including pharmaceutical, food, chemical, forest product and machinery makers.

Another industry group, Canadian Manufacturers and Exporters, said the council's

work was disappointing.

"The conversation is ongoing," said Mathew Wilson, vice president for national policy. "Regulators in both countries control the agenda; some are more open to change while others are not interested."

Wilson added, "It's really hard to pinpoint what is happening in some sectors."

The Cooperation Council was launched by Prime Minister Harper and U.S. President Obama with a mandate to work on twenty-nine priority areas, critics said.

The Manufacturing Coalition said that, despite years of cross-border free trade, "regulators did not align to meet modern business realities in the vast majority of instances."

"Manufacturers and their suppliers from across North America, while respecting the different legal requirements and cultural norms, have operated and treated the countries as essentially a single unit since the Canada-U.S. Free Trade Agreement," wrote coalition members.

The coalition represents some fifty manufacturing associations with 100,000 member companies.

 ALEX BINKLEY



Tom Hyland Blacklock

A pioneer publisher and war correspondent, confidante of three prime ministers and 1922 president of the Ottawa Press Gallery, Tom Blacklock was mourned at his passing in 1934 as "a keen observer blessed with a sense of proportion." Born in Halton County, Ont. in 1870, he became a frontier editor and first mayor of Weyburn, Sask. in 1903. Assigned to Parliament Hill by the Winnipeg Telegram in 1912 he remained a gallery man for life with columns published from Victoria to Halifax: As Tom Blacklock used to say, 'That ain't the way I heard it.'

BLACKLOCK'S REPORTER PUBLISHES DAILY ONLINE AT BLACKLOCKS.CA WITH A WEEKLY DIGEST OF NEWS AND SHARP-EYED FEATURES PUBLISHED EACH MONDAY, 50 WEEKS A YEAR.

Copyright: 1395804 Ontario Limited

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Piracy In Canada A \$30B Racket?

Claims that counterfeiting has ballooned to a multi-billion dollar black market in Canada are prompting the Department of Public Safety to commission a first-ever study of the trade.

billion a year in Canada.

"How long is a piece of string?" said Wayne Edwards, chair of the Canadian Anti-Counterfeiting Network. "I have no reason to doubt that number. The problem is so humongous it's more than a crime wave."

Public Safety Canada did not comment. However in a department notice, authorities cited data from the website Havoscope.com that estimated \$30 billion in Canadian counterfeiting includes \$1.14 billion a year in pirated software, and \$118 million in bootleg movies. The Havoscope data is based on media articles, academic journals and reports from police and other government agencies.

"While Havoscope admits the reported values are not perfect, its

The department said it will gauge the extent of piracy and bootlegging after citing one estimate it's now worth \$30

FEDS CONFIRM PIRACY FEES

Trademark and copyright holders must pay part of the cost of keeping counterfeit goods off the market under new legislation, authorities confirm.

"Rights holders will trigger the investigations," Industry Minister James Moore told a Commons committee studying Bill C-8, *An Act To Amend The Copyright Act And The Trademarks Act*; "We empower those victims, there are penalties imposed. This is the regime that was asked for frankly by firms that were being ripped off."

Officials told the Commons industry committee that owners of intellectual property will pay the cost of detaining, storing and destroying counterfeit imports seized by the Canada Border Services Agency.

"There will be a system under which trademark and copyright owners will be able to tell us if they own those rights," said Martin Bolduc, the agency's assistant vice-president of operations; "Under this bill we'll have the capacity to detain those shipments and contact the trademark or copyright holders so they can take measures before the courts."

The Department of Industry has not detailed a schedule of fees, but indicated there will be "consultation with stakeholders to identify what would be the appropriate scheme" of charges.

"What is the range of fees being considered?" asked MP Glenn Thibeault (NDP-Sudbury, Ont.); "Is it reasonable to require rights holders to share the cost of enforcement?"

Bolduc said storage expenses "are part of the private sector, so we have no say". Bolduc also advised MPs the Border Services Agency is relying on industry to "develop that training" required by guards to spot bootleg shipments: "The industry out there has the ability, the expertise, and we'll leverage that into what essentially will become the training package for our front line."

John Knuble, deputy minister of industry, told MPs counterfeiting that once was "confined primarily to luxury goods" now runs the gamut from toys to auto parts: "In short, all types of goods are being counterfeited today."

 BY STAFF

enormous estimates sourced from publicly-available information demonstrate just how important it is to focus on producing reliable estimates," reported Public Safety.

The department appealed for interest in a \$60,000 study due by March 3, 2014 on "possible recommendations on detailed methodologies that could be used to estimate the size of the market for counterfeit and pirated goods in Canada."

The Public Prosecution Service has told Parliament that counterfeiting accounted for 00.1 percent of its prosecutions last year. And the RCMP estimate the value of seized counterfeit goods at \$38 million annually.

"How much are the RCMP stopping? I've heard it is about 1 percent," said Edwards; "We don't have numbers either. A lot of this is driven by the underworld and criminal gangs; they're not going to share numbers with you."

The Commons industry committee scheduled hearings on

a piracy measure, Bill C-56 *An Act To Amend The Copyright Act* introduced last March 1, that proposes \$1 million fines and five years' imprisonment for the manufacture, sale and distribution of counterfeit goods under the *Trademarks Act* as well as the *Copyright Act*.

"When intellectual property is taken into account, theft has become an acceptable way of doing business - a way of life," said Edwards. "There is a whole mindset today that theft is alright. It's sad. This is what we face every day."

Bill C-56 would permit copyright owners to request the Department of Industry to help track and seize cross-border shipments of counterfeit products. However applicants would be liable for the cost of storing, handling and destroying bootleg items.

 BY STAFF

"Union Boss" Bill Wins Cabinet OK

The labour department is urging passage of a bill to speed decertification of unions in shipping, railways, broadcasting and other federally-regulated industries.

Private bill C-525 would amend three federal laws to permit decertification with the votes of as few as 45 percent of employees, and would repeal a *Canada Labour Code* card-check system used to certify unions.

"We support the intent behind Bill C-525 and will vote in favour of it," said MP Cathy McLeod, parliamentary secretary for labour. The labour minister, Kellie Leitch, did not comment. Leitch's department also declined to take *Blacklock's* questions.

McLeod, a former registered nurse, noted the bill would substitute secret balloting for the current *Labour Code* practice of permitting a simple majority of workers to apply to certify a bargaining agent by signing membership cards.

"If 11 out of 20 employees sign the union membership card, the remaining 9 individuals may not be asked to sign and may not even be aware that their colleagues want to form a union, yet would automatically be unionized," said McLeod, MP for Kamloops-Thompson-Cariboo, B.C. "This means that in many cases, unions can be certified without giving all employees the opportunity to express their wishes."

The bill would also amend the *Public Service Labour Relations Act* and *Parliamentary Employment & Staff Relations Act*.

"I will not be intimidated by union bosses," said Conservative MP Blaine Calkins, sponsor of the measure, who referred to "union bosses" five times in a twenty-minute address to the House; "Unions are driven by the need for power. They are furnished with a never-ending stream of monies through the dues they collect from those hard-working employees

they claim to represent"; "Union bosses...want to maintain their stranglehold on workers and muzzle their democratic voice."

Calkins' bill mirrors Saskatchewan legislation bound for the Supreme Court. Justices agreed Oct. 17 to hear a union appeal of the *Trade Union Amendment Act*, passed by the Regina legislature in 2008, that lowered the threshold for decertification to 45 percent.

"The voice of workers is being trumped by the personal desire of union bosses," said Calkins, MP for Wetaskiwin, Alta., a former Parks Canada employee. Calkins refused repeated requests for an interview.

In debate on Bill C-525, Liberal labour critic Rodger Cuzner said the legislation "fundamentally changes the rights of workers" in contradiction to certification rules in most provinces: "This bill is about one thing and one thing only, discouraging unionization in this country, plain and simple."

"Can anyone in this House say the process we are following, which would make a significant change to the *Code*, is either thoughtful or balanced and based

on the wishes of the people affected?" said Cuzner, MP for Cape Breton-Canso, N.S.; "Who do we think is driving the bill?"

MP Alexandre Boulerice, New Democrat labour critic, noted under balloting requirements of C-525 any workers who fail to attend a union certification vote are presumed to oppose it: "Do we all realize the dice are loaded in this bill?"

"This is really pernicious, really perverse," said Boulerice, MP for Rosemont-La Petite-Patrie, Que.

Ninety-two percent of Canadian workplaces are governed by provincial law. Federally-regulated sectors – numbering some 800,000 workers – include banks, marine shipping and port services, airports and air transportation, railways, canals, pipelines, tunnels, bridges, telephone and cable systems, radio and TV, grain elevators, feed and seed mills, uranium mining and processing, select fisheries and First Nations businesses and most Crown corporations.

 TOM KORSKI

WILL WORK, NO BENEFITS

Millions of self-employed Canadians would face simplified tax requirements and improved benefits under a private bill introduced in the Commons.

The New Democrat bill directs cabinet to convene a national task force specifically to improve benefit and tax policies for independent workers, part-time and contract employees and interns.

"It's something I know quite well from my thirty years of self-

employment," said MP Andrew Cash, a musician and songwriter. "I want to lay a new foundation for support of self-employment and this kind of work."

Cash's Bill C-542 *An Act To Establish a National Urban Workers Strategy* requires that Canada Revenue join the departments of labour, human resources, industry and Treasury Board for cross-country consultations.

Cash noted the self-employed

Canadians must collect and remit federal sales taxes; and part-timers and others are often disqualified or face onerous requirements in applying for employment insurance.

"This is an issue that spans all kinds of work silos, including people who are working multiple part-time jobs," said Cash, MP for Davenport, Ont. "We have professionals who are also in situations where they have no benefits and can't access a workplace pension."

"We need to start looking at

what the implications are of this kind of work."

The number of self-employed Canadians totals 2.7 million, a fifteen percent increase over the decade.

The typical self-employed worker is male, over 35, with post-secondary education and a working spouse, according to demographic data compiled in a 2010 Statistics Canada study *Self-Employment In The Downturn*.

 DALE SMITH

"What we do matters..."

Canada should undertake a thorough review of administrative tribunals, says a former Workers' Compensation official.

Prof. Ron Ellis of Osgoode Hall, speaking at an Ottawa conference, urged reforms of tribunals that arbitrate commonplace disputes from noise complaints under the federal *Transportation Act* to local landlord-tenant disagreements.

"The push for reforms has been there for decades," Ellis told the Advanced Administrative Law & Practice Conference; "What we do matters."

Ellis is former chair of the Ontario Workers' Compensation Appeals Tribunal, retiring in 1997. He has published a critical account *Unjust By Design* that concluded many administrative tribunals are

patronage-ridden, with little government oversight of their rulings or assurance that appointees are qualified and competent.

"Nothing in the book surprises," Ellis said. "People are surprised to see it written down. I think it awakens some leaders to a reality they have always known existed."

Ellis noted Canada has been late to reform administrative tribunals compared to the U.S., where adjudicators have been

vetted for competence since 1946; or the U.K. where tribunals have been monitored by a federal agency since 1958; and Australia, where similar federal oversight has been in place 1975.

"Almost all of our tribunals do not meet our requirements for independence and impartiality," said Ellis.

 KAVEN BAKER-VOAKES

Europe Calling On Billions On Contracts

Billions of dollars in public contracting must be opened to transatlantic bidders under a European Commission trade pact, according to a cabinet summary of the treaty.

The text of the pact remains confidential. And one MP noted the technical summary itself raises questions and contradictions on the agreement signed by the Prime Minister Oct. 18.

"We want to see the entire text," said MP Don Davies, New Democrat trade critic. "The purpose of this marketing document they've come out with is to have people look at individual parts, when really what we need to do is look at this comprehensively."

The pact would require municipalities, universities and school boards to open tenders to E.U. bidders on goods and services worth more than \$315,000; and capital projects over \$7.8 million.

"Those thresholds are pretty well in line," said Don Downe, a director of the Federation of

Canadian Municipalities. "Are they too high? Are they too low? They're pretty much what we asked for."

"I don't know how many companies in Europe would want to bid on a service contract for \$100,000 worth of paper," said Downe, mayor of the Municipality of Lunenburg, N.S. "Local contractors and suppliers are knowledgeable and competent, and goods and services are pretty basic. Large capital projects we open up to anybody and everybody; the more bids, the better the price range. When we have a tender on a solid waste facility and I have one bidder, I'm in trouble."

Under the 29-page Technical Summary of Final Negotiated Outcomes, the cap on goods and services contracts that would not be subject to international tenders is \$205,000 for the Government of Canada; \$560,000 for Crown and provincial agencies; and \$630,000 on public utilities.

The threshold on capital projects is \$7.8 million for all governments,

with a 25 percent Canadian-content rule on the purchase of buses, trains and streetcars, according to notes on the Canada-European Union Comprehensive Economic and Trade Agreement.

However the summary appeared to garble key details, said MP Davies. A page 17 reference states that "health care and other public services" are exempt from procurement rules, while an earlier reference on the same page states hospitals must open up tenders on contracts above \$315,000: "What exactly is excluded and what isn't?" said Davies, MP for Vancouver Kingsway.

The document also invokes a "ratchet" rule that once a public service is open to E.U. contractors, "that level of liberalization is locked in".

"Are municipalities at risk of being sued?" said Davies. "These are the kind of questions we need to delve into."

General exclusions for transatlantic contracting are provided for marine ports and airports; Québec "cultural industries"; co-production of national broadcasts; agricultural goods for food programs;

government-subsidized public-private infrastructure works; shipbuilding and repair in B.C., Manitoba, New Brunswick, Nova Scotia and Newfoundland & Labrador; police force purchases of "sensitive goods"; and marketing contracts by governments of B.C., Saskatchewan, Alberta, Québec, Nova Scotia, Prince Edward Island and Newfoundland & Labrador.

The Technical Summary also cited exemptions for aboriginal businesses, and economic development projects in Newfoundland & Labrador, Prince Edward Island, Nova Scotia, New Brunswick, Manitoba, Nunavut, Northwest Territories and Yukon – but only ten times a year.

The document did not explain further.

"When the text is revealed and we have something we can actually study – not somebody's spin or characterization – we can study and analyze it, and consult with a wide variety of Canadians who have not been consulted to understand what the impact is on this," said Davies.

Trade Minister Ed Fast was unavailable for comment.

 BY STAFF

FISHERMEN OK WITH PACT

Fishing groups are cautiously hopeful a European trade pact will boost business.

The pact grants European vessels most-favoured nation treatment in Canadian ports, and protection for processors of fish and seafood for export will expire three years after the treaty is ratified, expected in 2015.

Canada will also repeal high tariffs on European seafood imports, in exchange for removal of most transatlantic duties.

"When the deal is ratified the duty comes off live lobster right away, but from a Prince Edward Island perspective that is only 20 percent of the lobster we catch," said Ian MacPherson, executive director of the P.E.I. Fishermen's Association. "The majority of it goes to the processing sector."

Island fishermen were among the hardest hit by a collapse in 2013 lobster prices that fell below \$3 a pound.

"Europe is a strong market for us," said MacPherson. "The one variable that is beyond everyone's control is when the traffic drops,

there are price advantages we won't be able to assess until the tariffs start coming off."

E.U. tariffs to be repealed on ratification include 6 percent on processed salmon; 8 percent for live lobster, snow crab and frozen scallops; 12 percent on frozen shrimp; 13 percent for dried and salt cod; 15 percent for fresh salmon and frozen herring; 16 percent on frozen lobster; and 20 percent for cooked, peeled shrimp for retail sale and all mussel.

"Shrimp and snow crab and even herring and other species will have tremendous advantage with access to Europe," said Christian Brun, executive secretary of the Maritime Fishermen's Union. "This region imports the most from the sea; there is a lot of potential."

Brun continued, "This isn't going to solve any of our short-term woes in lobster or other industries in Atlantic Canada, but I think it will be a great improvement in the long run."

 KAVEN BAKER-VOAKES

Pricier Drugs With Pact?

A European trade pact will cost Canadians higher pharmaceutical prices, warns an advocacy group.

The Canadian Centre for Policy Alternatives calculated that extension of brand-name patents will delay introduction of lower-priced generic drugs at a cost of at least \$850 million a year.



"The more you delay the appearance of generics the higher the overall drug costs are going to be," said Dr. Joel Lexchin, co-author of the briefing note *CETA And Pharmaceuticals*.

No text of the pact has been released. However a *Technical Summary* noted, "Canada agreed to provide additional (sui generis) protection for pharmaceutical products by eligible patents in Canada."

CETA And Pharmaceuticals concluded the agreement "will now allow for what is called 'patent term restoration' (also called sui generis protection) that can add up to two years onto the length of a patent to account for the time between when the patent is filed and when the drug is eventually marketed."

The centre noted 20-year patents are currently standard under the World Trade Organization.

"There's no give and take," said Dr. Lexchin, professor at York University's School of Health Policy. "We are giving. The pharmaceutical industry in Europe is significantly stronger than in Canada."

The centre cited research from the Canadian Institute for Health Information that calculated drug costs now average \$900 per capita, according to a study *Drug Expenditure In Canada 1985 to 2012*.

Health Minister Rona Ambrose did not comment.

 KAVEN BAKER-VOAKES

Soda Pop & Microsoft Co.

Consumers as “indirect purchasers” can join class-action lawsuits but only in certain circumstances, the Supreme Court of Canada has ruled.

The judgment came in two cases – one involving soda pop sweetener, the other computer software – in which applicants sought to certify group lawsuits.

“The law is supposed to protect people against unjust enrichment which is a criminal offence,” said Andrew Roman, senior counsel with Miller Thomson LLP of Toronto.

The Supreme Court in a 9-0 decision ruled that a computer consulting firm Pro-Sys Consultants Ltd. could proceed with a class-action suit against Microsoft Canada Co. Pro-Sys alleges over a period of years Microsoft overcharged on products and software licenses in violation of the *Competition Act*.

Microsoft denies wrongdoing. Pro-Sys seeks damages on behalf of any B.C. residents who purchased Microsoft systems since Jan. 1, 1994, including updated versions of MS-DOS, Windows, Microsoft Office, Word or Excel applications and hundreds of other products.

However in a companion case *Sun-Rype Products Ltd. v. Archer Daniels Midland Co.*, judges dismissed an attempt by a fruit

juice company to certify a class-action lawsuit over alleged price-fixing of sweet corn syrup.

Archer Daniels Midland Co. and other suppliers earlier paid a total \$531 million settlement in the U.S. in 2004 after years of litigation alleging they fixed the price of high-fructose corn syrup, used as a sweetener in soda pop.

Sun-Rype launched the lawsuit a year after the U.S. settlement, alleged the price fixing continued in Canada amid an “inexplicable lack of business ethics” over a period from 1988 to 1995, according to court documents. The company had sought to identify millions of soft drink consumers as party to a class-action lawsuit.

Archer Daniels, ADM Agri Industries Inc., Bestfoods Inc., Cargill Inc., Cerestar USA Inc.,



DALE SMITH

Corn Products International and Unilever Bestfoods denied wrongdoing, and argued the class-action claim was “ill-defined”: “Consumers do not retain records of their food purchases 15 to 22 years ago. Even if they did, because of labelling laws in Canada which in some cases allow for both liquid sugar and HFCS to be labelled the same, it would be impossible for consumers to know which version they purchased.”

The Supreme Court in a 7-2 decision agreed. “Liquid sugar and high-fructose corn syrup were used interchangeably and a generic label indicating only ‘sugar/glucose-fructose’ could be used for either type of sweetener,” wrote Justice Marshall Rothstein.

The Sun-Rype judgment establishes a difficult test for consumer products under federal labelling requirements, Roman said.

ANTI-TRUST AGENCY WINS

The Competition Bureau has won a high court case over an anti-trust probe in the appliance trade.

The Supreme Court of Canada yesterday dismissed an application by Reliance Comfort Ltd., a supplier of gas and electric water heaters, challenging a \$10 million penalty proposed by federal investigators.

“A number of previous applicants have tried and failed to make the same argument that administrative monetary penalties of this size are criminal in nature,” said Nikiforos Iatrou, a partner with WeirFoulds LLP of Toronto.

Investigators began looking into Reliance Comfort Ltd. in 2012, alleging the company

“abused its dominant position” in renting and supplying water heaters to homeowners in several Ontario counties.

The Competition Bureau estimated Reliance had built up a 76% market share. However Reliance argued anti-trust filings were “replete with generalized statements” about the company’s affairs, according to court documents.

Reliance also argued the \$10 million penalty proposed by the Competition Bureau was so severe it violated the *Charter of Rights and Freedoms* – an argument dismissed by the Federal Court of Appeal.

Supreme Court justices agreed and dismissed Reliance’s argument.

“This is completely consistent with recent cases that have held that administrative monetary penalties, even large ones, are constitutional,” said Iatrou. “The mere fact the Competition Bureau seeks them does not somehow grant the person the full panoply of rights they would get in a full criminal setting.”

Competition Commissioner John Pecman has cited the Reliance case in public remarks. In a Montréal address last Jan. 30, Pecman said he believed the company “engaged in practices that appeared to be intentionally aimed at suppressing competition and restricting consumer choice.”

DALE SMITH

EGG KING SUES FOOD INSPECTORS

The Canadian Food Inspection Agency is being sued by the nation’s largest egg producer over claims of confidentiality of records.

Burnbrae Farms Ltd. filed two court applications asking that a federal judge take extraordinary measures to prevent food inspectors from releasing or even discussing its business. Neither Burnbrae executives nor the company’s counsel would speak to *Blacklock’s*.

Margaret Hudson, Burnbrae president, said in a statement the company’s action was “normal” and intended to clarify the type of records inspectors are entitled to release.

“Burnbrae Farms is a Canadian family egg business dedicated to quality,” the statement concluded.

The Food Inspection Agency said it was unable to discuss the dispute due to confidentiality clauses of the *Access to Information Act*.

In separate rulings Oct. 9 and Oct. 16, the agency ordered the release of unspecified information concerning Burnbrae. The company was twice cited for non-compliance by federal inspectors this year.

The processor asked Federal Court to order that government records be withheld. Burnbrae’s lawyer in an application also asked that the hearing itself be held behind closed doors, and that the judge order all document in the case be sealed from the public under *Federal Court Rules*.

The secrecy rules are typically invoked in cases of proprietary interest or protection of intellectual property.

In court documents, the processor claimed the inspection agency “acted without jurisdiction” and “made an unreasonable decision” in the confidential matter.

Lawyers did not comment on whether the case involved two failed health inspections this year – an April 19 citation for mold on ungraded egg shells at a plant in Upton, Que., and a March 22 order for undefined “non-compliance” with regulations on egg shells at Burnbrae’s Mississauga plant.

The company operates egg farms and processing plants in Québec, Ontario, Manitoba and British Columbia.

BY STAFF

A \$15M Maritime Fuel Break

Cabinet is extending a lapsed ethanol exemption that would have seen Maritimers pay more for home heating this winter.

Under expiring *Renewable Fuels Regulations* Maritime provinces were exempt from a 2 percent renewable requirement for home heating oil. Cabinet served notice it will again extend the exemption for six months effective No. 6.

"Renewable content is relatively more expensive," regulators earlier noted. The exemption is expected to save consumers, truckers and

industry the equivalent of \$14.7 million a year, by federal estimate.

In 2010 cabinet proposed a blanket mandate of 5 percent renewable fuel content in gasoline, and 2 percent in diesel and home heating oil. However, protests led to permanent 2011 exemptions on oil in the territories, northern Quebec and Newfoundland & Labrador; a permanent national exemption on diesel; and continual waiving of the mandate on heating oil in Maritime provinces, the largest users of the product.

Fifty percent of Nova Scotians and 81 percent of Prince Edward Islanders heat their homes with oil, according to Statistics Canada.

Environment Canada has reported that, despite the original 2010 mandates, domestic producers still account for only ten percent of renewable fuel content.

Cabinet earlier paid more than \$672 million in renewable fuel subsidies under a 2007 *ecoEnergy for Biofuels* program that offered producers up to 10¢/litre for ethanol and 20¢/litre for biodiesel.

Regulators suspended applications in 2010; a federal audit the following year questioned the "viability" of the project.

 BY STAFF

"GREETING CARDS"

A Poem By
Shai Ben-Shalom

The chain promises
cards for every occasion.

I search the collection;
inventory not nearly as complete
as claimed.

Suggestions:

Our sincere condolences
for the death of your mistress;
we know how close you were.

Congratulations
on your successful ED treatment!

We were saddened to hear
about the revocation of your
driving licence.

Our deepest sympathy
for the loss of your beloved mayor
to corruption.

*(Editor's note: the author, an Israeli-born biologist, has published his first collection of poems *Martians Among Us* with In/Words Press)*

FEDS GET 1 IN 5 TAXES

Canada Revenue Agency has been unable to collect four-fifths of the money owed by tax evaders despite vows of a crackdown, new documents show.

Summary tables obtained under the *Access to Information Act* show efforts to prosecute domestic tax evaders managed to recoup a fraction of money owed last year. Canada Revenue identified more than \$30 million in unpaid tax from Canadians who filed misleading returns, but only recovered \$6 million in fines.

"Canada's tax system is based on voluntary compliance and self-assessment," an agency spokesperson told *Blacklock's*. "In

Canada the vast majority of individuals pay their taxes on time without intervention. It is our belief that promoting a voluntary approach is the most cost-effective way to administer taxes in Canada."

Department records show apparently uneven patterns in tax evasion and enforcement.

In Atlantic Canada federal agents identified just over \$1 million in unpaid income and excise taxes, and collected a comparable amount in penalties. However Canada Revenue's Toronto West office identified \$23 million in unpaid taxes, but collected only \$295,000 in fines related to the delinquent payments.

Other offices reporting challenges were suburban Vancouver and Toronto North.

In Burnaby, B.C., Canada Revenue identified \$15 million in unpaid taxes but collected only \$800,000 in fines.

In Ottawa, the department successfully prosecuted 137 tax-filers last year.

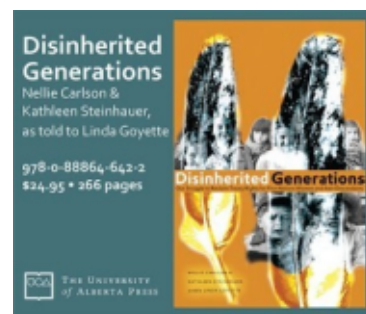
The summary tables included both tax evaders and individuals who submitted false claims for tax and GST refunds.

Canada Revenue said it successfully prosecuted 1,282 taxpayers in the period from 2006 to 2012, and recovered \$98 million of \$163 million owed.

 JUSTIN LING



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APPOINTMENTS

Agostinho, Luis – of Toronto, reappointed a member, Immigration & Refugee Board, Toronto Office, Nov. 15

Lafleur, Annie – of Montreal, reappointed a member, Immigration & Refugee Board, Montreal office, Nov. 15

Lemay, Marie – of Chelsea, Que., appointed president, Economic Development Agency of Canada for Québec, Nov. 25

Moore, Michael – of Bailieboro, Ont., appointed a member, Social Security Tribunal for Income Security, Nov. 23

Parker, Ronald – of Ottawa, appointed Associate Secretary, Treasury Board, Nov. 25

Smith, Alistair – of Ottawa, appointed Senior Advisor, Privy Council Office, Nov. 25

Swords, Colleen – of Ottawa, appointed Deputy Minister of Canadian Heritage, Nov. 4

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