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BRIEFING NOTE TO THE MINISTER OF PUBLIC SAFETY

Project STANDARD – Sensitive Sectors

ISSUE

- Recent reports that the RCMP surveilled two journalists during a criminal investigation have raised questions about how the RCMP interacted with the media.

BACKGROUND

- In July 2007, after a complaint from the Director of CSIS, the RCMP began investigating the unauthorized release of a CSIS-authored SECRET document further to possible offences under the *Security of Information Act*.

- Investigators soon determined there were essentially two avenues to identify the perpetrator(s) of the release: to trace the origins of the document and its lawful distribution or to work backwards from the journalists reporting on its release.

- In pursuing the first avenue, it was determined that "literally thousands of individuals" in CSIS and approximately fifteen other government departments likely had access to the document since its creation in 2003, making tracing its origins and distribution a practical impossibility.

- As a result, the investigative team adopted the second avenue as its core investigative strategy. To that end, investigators developed profiles on the journalists involved based on open source research. Also, investigators conducted physical surveillance on two journalists – without proper internal authorization and contrary to RCMP policy for a period of nine days in August 2007. Investigators were attempting to identify the person leaking material to these reporters.

- On August 24, 2007, investigators finally sought permission to conduct this surveillance from RCMP National Headquarters (NHQ) pursuant to the existing sensitive sector investigation policy. It was denied and the denial included specific direction that the journalists not be referred to as suspects and that no surveillance or interviews be initiated without express prior approval from NHQ. Further, investigators were directed not to engage in any activity against these journalists which could even remotely be construed as a search and seizure effort by the police (**TAB A**). On August 25th a verbal appeal was made on this decision on behalf of the investigative team and denied.

- On August 31, 2007, along with a much more comprehensive operational plan and justification, permission for surveillance and was again sought from NHQ. It was again denied and the denial included criticism of the investigative team for not seeking approval prior to commencing surveillance in the first instance (**TAB B**).

- The rationale for the denials was comprehensive and nuanced referencing the sensitivity of the sector involved, the moral and ethical dimensions of this course of conduct, investigative necessity, the proportionality of the technique, the likelihood of gaining critical evidence, and the seriousness of the harm caused by the unauthorized disclosure.

- In 2008, subsequent to further investigation, permission was again sought to conduct surveillance and to obtain a In this case, the request was far more limited. It referenced only one journalist and limited the time period of the surveillance to that following a proposed interview where it was thought that the subject would contact the person who leaked the report. It was described as a last resort. Authority for the was denied. Limited physical surveillance was approved however no surveillance was ever conducted (**TAB C**).

CURRENT STATUS

- Project STANDARD – the investigation that began in 2007 – was concluded in November 2014.

STRATEGIC CONSIDERATIONS

- Media coverage appears to be based on recent court disclosures made during the course of ongoing civil litigation between the Government of Canada and Mr. Abousfian Abdelrazik. With respect to this issue, journalists caught up in an investigation, the disclosures are incomplete.

- Coverage is currently focused on the investigative team's proposal to surveil but has not confirmed that surveillance took place. Additionally, elements of these disclosures which referred to orders from NHQ to cease surveillance has not been reported. Nor has the careful analysis undertaken by NHQ that led to the denied requests – it remains unreleased.

- There has been some public discussion in recent media coverage of Project Standard in the context of the Juliet O'Neill case (*O'Neill v. Canada*). The 2007 decision NOT to authorize the surveillance of the journalists, taken by then Acting Assistant Commissioner Paulson, was grounded in a full appreciation of the ruling of Ontario Superior Court Judge Ratushny in the O'Neill matter.

- At the same time, the RCMP is acutely aware of the sensitivity of investigations that have a nexus to the media. To that end, the RCMP remains guided by the 2003 Ministerial Direction on National Security Investigations into Sensitive Sectors (**TAB D**) which states:

> Recognizing that there are no sanctuaries from law enforcement, special care is required with respect to RCMP investigations conducted … which have an impact on, or which appear to have an impact on, fundamental institutions of Canadian society [including the media]."

- While journalists have no privilege or immunity from investigation, the application of the RCMP's sensitive sector approval policy recognizes that the state's interests in the investigation of crime and the freedom of the press (or religious/academic freedom) need to be balanced appropriately on a case-by-case basis, contextualized by the facts as they present in each particular investigation. As evidenced in this case the facts need to be assessed against the proposed investigative strategy including the

necessity and proportionality of the strategy as compared to the nature of the offence, the degree of intrusiveness proposed and the likelihood of success.

- Vital to maintaining this balance is the centralized independent governance of these criminal investigations – a framework that was just being implemented at the time of these events in 2007.

e-Approved Mike Cabana Deputy Commissioner Federal Policing	15-11-13 Date	e-Approved Bob Paulson Commissioner	15-11-13 Date