

Ottawa won't appeal secrecy law ruling

Canadian Press
3 November 2006

Ottawa - The image of Canada's national police force suffered another blow Friday when the Conservative government announced it won't appeal a toughly worded judgment that ripped into the Mounties for attempting to intimidate the media.

Justice Minister Vic Toews said "it is not in the public interest" to challenge the Oct. 19 ruling that struck down key portions of Canada's secrecy law and quashed RCMP warrants used to search a reporter's home. The government will instead consider "legislative options" to resolve concerns raised by the case of Ottawa Citizen reporter Juliet O'Neill, Mr. Toews said in a terse statement.

Justice Lynn Ratushny found three sections of the so-called leakage provisions of the Security of Information Act were unconstitutionally vague and overly broad. At the same time, the Ontario Superior Court justice also lambasted the Mounties for abusing the legal process by targetting Ms. O'Neill with the aim of "intimidating her into compromising her constitutional right of freedom of the press."

Wade Deisman, a criminology professor and director of the National Security Working Group at the University of Ottawa, said the decision not to appeal will both speed up a rewrite of the contentious law and focus another negative light on the country's security apparatus. He said the O'Neill case bears out fears, expressed by critics when the secrecy law was toughened in 2001, that the provisions "would be used to disguise misdeeds done by the RCMP." "This thing has reached a critical mass and I don't think it's going to go away,"

Mr. Deisman added, likening current events to the MacDonald Commission of 25 years ago that last critically examined the Mounties. The entire episode relates to RCMP involvement in the illegal extradition of Maher Arar, a Syrian-Canadian who in 2002 was shipped by American authorities to be tortured in Syria at least in part on the strength of misleading RCMP information. It was an O'Neill story about Mr. Arar, citing "a security source" and a leaked document, that sparked the RCMP raid on the reporter's home and office in January 2004. The story offered details of what Mr. Arar allegedly told Syrian military intelligence during his year-long incarceration.

A public inquiry into the Arar case that wrapped up this fall cited the O'Neill story as an example of a series of troubling media leaks that appeared designed to portray Mr. Arar as a security threat long after he'd been released without charge. Justice Dennis O'Connor said it appeared someone had put out misleading information to damage Mr. Arar's reputation by suggesting there was credible evidence against him. The inquiry found no such evidence.

After the report's release in September, RCMP Commissioner Giuliano Zaccardelli told a Commons committee he became aware that the Mounties had given erroneous information to American officials soon after Mr. Arar was shipped to Syria. But the RCMP chief was at a loss to explain why he never publicly acknowledged the error or cleared Mr. Arar's name in the months and years that followed.

Mr. Zaccardelli also told the public security committee that the RCMP was still searching for the source of the O'Neill leak, but that the investigation was being held up by her court case.

That investigation would appear to be back to square one given the government's decision Friday not to appeal the Ratushny ruling.

"It's hardly sunk in," Ms. O'Neill said Friday, noting the case has been hanging over her head for almost three years. "It's been totally exhausting, especially the last two weeks waiting to see if they appeal." Her lawyer, Rick Dearden, gave Mr. Toews "full marks" for the decision, saying it allows parliamentarians already reviewing the Anti Terrorism Act to get on with the job of quickly amending an unconstitutional law. "Hopefully, they'll use Justice Ratushny's decision as a guide post for how they can word it in a way that will be constitutional," said Mr. Dearden.

The Canadian Newspaper Association also welcomed the announcement. "It's gratifying to see the government taking the right decision to resolutely uphold press freedom," Anne Kothawala, the association's president and CEO said in a statement.

The Ratushny ruling was the first of two court decisions last month that scotched significant sections of the Anti Terrorism Act, rushed into life in the fall of 2001 following the 9-11 attacks on the United States. Another Ontario Superior Court justice tossed out a key component of the legislation's definition of terrorist activity. Justice Douglas Rutherford found that by linking terrorist activity explicitly to religious, ideological or political motivation, the definition infringed Charter rights to freedom of expression, thought and religion.

See also:

<http://www.theglobeandmail.com/servlet/story/RTGAM.20061103.wleaks1103/BNStory/National/home>