

**Submission to the
National Security and Intelligence
Committee of Parliamentarians'
Review of the RCMP's Federal Policing Mandate**

**from the
International Civil Liberties Monitoring Group**

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For the past two decades, our organization has documented and raised concerns about actions taken by the Royal Canadian Mounted Police in relation to its national security and anti-terrorism activities. We have also noted with great concern the persistent lack of cooperation by successive RCMP Commissioners with the Civilian Complaints and Review Commission, the Information Commissioner's finding of systemic problems in the RCMP's lack of compliance with access to information laws (and a lack of willingness to meaningfully improve), findings of non-compliance by the Office of the Privacy Commissioner, and other areas of non-compliance with oversight and review bodies.

We are therefore pleased to see the National Security and Intelligence Committee of Parliamentarians review the RCMP's federal policing activities, including national security, and submit this brief report in the hopes that it will support the committee's work.

While the focus of our work, and therefore this report, is on anti-terrorism and national security, we recognize the historic and ongoing role of RCMP in the creation of secret policing in Canada, enforcing rules against "undesirables," "secessionists" and other groups critical of the government, and that the force was founded to enforce earliest aspects of colonialism on this land.

In conjunction with all this, we believe that any analysis of the RCMP's policing work must be made through a lens of de-tasking and questioning the role of the RCMP as the largest federal law enforcement body, just as communities are grappling with the question of policing across the country.

We believe a central challenge to the RCMP's federal policing mandate revolves around its role in carrying out its anti-terrorism and national security activities. In this paper, we explore these concerns in four different areas:

1. Anti-terrorism and the policing of Muslims
2. The conjunction of anti-terrorism laws and the policing of Indigenous communities
3. Concerns around the RCMP's surveillance activities
4. The RCMP's role in national security information sharing

We believe these are illustrative of areas requiring greater scrutiny and proposals for reform in the RCMP's activities, and hope that they aid in guiding the committee's review of the RCMP's work.

Anti-terrorism and the policing of Muslims

In the aftermath of the Sept. 11, 2001, attacks on the United States, Canada adopted its first *Anti-terrorism Act*, ushering in a new national policing focus on countering terrorism. Key to this was granting new resources and controversial powers to police and intelligence agencies. Since then, multiple reports and studies have documented concerns around racial profiling, secrecy and lack of accountability, and ever-growing surveillance powers in the fight against terrorism. The RCMP, as Canada's national police force, has played a key role in these concerns.

Perhaps most well-known in terms of police misconduct and problematic activity are the cases of

Maher Arar, Ahmad Abou-Elmaati, Abdullah Almalki, Muayyed Nureddin. Two commissions of inquiry found that actions taken by the RCMP (along with other agencies), played a role in the grievous rights violations these men faced through acts of rendition, illegal detention, and torture. As noted by the House of Commons Standing Committee on Public Safety in its *Review Of The Findings And Recommendations Arising From The Iacobucci And O'connor Inquiries*:

“In releasing his conclusions, Justice O’Connor noted that the RCMP had breached its own information-sharing policies, provided the Americans with inaccurate information about Mr. Arar, neglected to oversee its own investigation, inaccurately described Mr. Arar and his wife as Islamist extremists with suspected ties to Al-Qaeda and refused to support the efforts of the Government of Canada to have Mr. Arar released from prison in Syria.”¹

In Justice Iacobucci’s findings regarding the cases of Mistrs Abou-Elmaati, Almalki and Nureddin, he states that the RCMP played an indirect role, and demonstrated “deficiency” in its actions, in the events leading to the arrest, detention, mistreatment and torture of these men.²

Following these inquiries, the RCMP committed to revising and improving their approach to anti-terrorism investigations. And while cases of rendition and the RCMP’s complicity foreign acts of mistreatment diminished, evidence continues to demonstrate the profiling of Muslims in Canada as “terrorist threat”.

For example, materials produced by the RCMP for police training on radicalization, obtained by academics Jeffrey Monaghan and Adam Molnar through Access to Information requests, demonstrate a persisting focus on Muslims. As the authors write, training modules on Islam “are not intended to demonstrate a nuanced understanding of Islam, but instead represent menacing and threatening aspects of Islam as a violent enemy of the West.” A slide in a workshop titled “The future of terrorism?” contains nothing but an image of a young girl dressed in what appears to be a hijab, with no other text.³

In another example, in 2017 the RCMP was discovered using a screening questionnaire at the Roxham Road border crossing in Quebec that asks asylum seekers how they feel about Muslim headscarves, the Islamic State, and whether they would mind having a female boss. The guide only targeted Muslim asylum seekers, with no mention of other religions in the guide. This only came to light after an asylum seeker was accidentally given a copy of the guide. The sole focus on Muslims demonstrates a clear profiling of Muslim migrants as being a primary source of concern to the federal police force.⁴

In another incident, the RCMP was found to have entrapped two Muslim individuals in BC in

¹ <https://www.ourcommons.ca/Content/Committee/402/SECU/Reports/RP4004074/securp03/securp03-e.pdf>

² https://publications.gc.ca/collections/collection_2014/bcp-pco/CP32-90-2008-1-eng.pdf

³ Jeffrey Monaghan & Adam Molnar (2016) Radicalisation theories, policing practices, and “the future of terrorism?”, *Critical Studies on Terrorism*, 9:3, 393-413, DOI: 10.1080/17539153.2016.1178485

⁴ <https://www.thestar.com/news/canada/2017/10/11/rcmp-officers-screened-quebec-border-crossers-on-religion-and-values-questionnaire-shows.html>

2018. The BC Court of Appeal upheld a finding by a Supreme Court judge that the John Nuttall and Amanda Korody, both Muslim converts who also struggled with mental illness and addiction, had been led into an attempted terrorist attack by the RCMP. The original judge called the situation a “travesty of justice,” that the two accused were “pushed” by the RCMP, and that the “police did everything necessary to facilitate the plan.”⁵

Finally, there is the case of Abdulrahman El Bahnasawy. A young Canadian living outside Toronto with his family, he had struggled for several years with addiction and mental illness. There is no doubt that he had been involved in troubling conversations online regarding extremist and violent actions. However, an FBI informant was heavily involved in those discussions, arguably leading El Bahnasawy further along a path to violent extremism. Of deep concern, though, is that the FBI was aware of El Bahnasawy’s mental illness. They went so far as to involve the RCMP, asking them to provide them with El Bahnasawy’s medical records from the Centre for Addiction and Mental Health in Toronto. It has been alleged that these records were obtained unlawfully (without judicial authorization) and then shared with the FBI days before El Bahnasawy’s arrest.

What is clear is that this young man who had just turned 18 was known to the RCMP, and the FBI, to suffer from severe mental illness and addiction. Instead of alerting his parents and helping to ensure that he received the medical attention he needed in order to avoid his participation in an act of violence, they allowed him to cross the border with his family on a trip to New Jersey where he was arrested by the FBI.

The family’s lawyer, Dennis Edney, argues the RCMP’s co-operation made it easier for American agents to manipulate him deeper into a plot to commit terrorist acts in New York City’s Times Square.

The justice system failed El Bahnasawy and his family at every turn. Facing a prolonged trial, he pleaded guilty and is now serving 40 years in US prison. This could have easily been avoided had the RCMP worked to divert El Bahnasawy towards medical help. The family has filed a complaint regarding the RCMP’s conduct with the National Security and Intelligence Review Agency.

Policing of Indigenous communities and anti-terror laws

While Canada’s anti-terrorism laws, and by extension the RCMP’s anti-terrorism activities, have generally been framed to address foreign threats (with belated focus on domestic acts of hate-based violence), these laws and powers have also been used to continue the criminalization and targeting of Indigenous people in Canada. The RCMP has played a key role in this respect.

Perhaps most glaring is the fact that shortly after the passage of the *Anti-terrorism Act* and the creation of new Integrated National Security Enforcement Teams (INSETs), one of the first reported uses of these teams was to conduct a heavily armed raid of the home a member of the West Coast Warrior Society in British Columbia. The raid was under the guise of searching for

⁵ <https://www.cbc.ca/news/canada/british-columbia/john-nuttall-amanda-korody-2018-1.4952431>

weapons, but no unauthorized firearms were found. While the RCMP at the time denied that they viewed this as a terrorism investigation, they were nonetheless using powers granted under new anti-terrorism laws to carry out the raid.⁶

While a more in-depth discussion of the RCMP's surveillance activities will follow further on in this, Indigenous land defenders and their allies have been particular targets for the force. For example, in 2014 the British Columbia Civil Liberties Association filed a complaint with the Civilian Review and Complaint Commission (CRCC) regarding the RCMP's surveillance of opponents to the Northern Gateway Pipeline. The eventual report from the CRCC showed numerous examples of the RCMP creating files on organizers who were engaged in peaceful, lawful activities.⁷

Other documents from around the period of protests against the Northern Gateway pipeline revealed that the RCMP conducted what researchers viewed as "intimate" surveillance of Indigenous protesters, and labeled a leading non-violent Indigenous land defense organization, the Indigenous Environmental Network, an "extremist" group.⁸

In 2016, the RCMP was also revealed to have, as of 2014, been running Project SITKA, which collected information on 313 Indigenous protesters, and eventually created files on 89 whom it considered a "threat" and who were "willing and capable of utilizing unlawful tactics," despite the report also finding that there was no "intentional criminal nexus." The list was classified at the time under the "terrorism-extremism" umbrella. While the RCMP said at the same time that SITKA had already ended, it was later revealed to have been reactivated in 2016, shortly before the federal government's announcement of its purchase of the Trans Mountain Pipeline.

According to the CBC: "[Researcher Jeff] Monaghan said the Sitka list was designed to be available for front-line officers dealing with Indigenous rights protests. He said the criteria the RCMP used to place people on the list may over-dramatize the actual threat an activist pose," and that by focusing on rhetoric, language and other forms of protected expression, the RCMP is infringing on charter protected rights.⁹

This surveillance also demonstrates the disturbing trend of conflating economic security and national security, especially when it comes to the protection of "critical infrastructure" such as pipelines and other extractive activities. This confluence was seen, for example, in the original wording of the *Security of Canada Information Sharing Act* in 2015, with the inclusion of "economic security" as a key component of what constituted a national security threat. While that has since been removed, "critical infrastructure" remains as a trigger for national security information sharing. This trend is also seen in the fact that, since 2005, RCMP and other national security agencies have held regular meetings with members of the oil and gas industry, briefing

⁶ <https://www.straight.com/article/did-post-9-11-bill-give-cops-too-much-power>; <https://data2.archives.ca/e/e449/e011207542.pdf>; <https://ammsa.com/publications/windspeaker/anti-terrorist-unit-raids-native-activists-home>

⁷ <https://dogwoodbc.ca/news/civil-liberties-advocates-condemn-rcmp-spying/>

⁸ <https://www.aptnnews.ca/national-news/rcmp-tracked-movements-indigenous-activist-extremist-group-documents/>

⁹ <https://www.cbc.ca/news/indigenous/rcmp-project-sitka-list-1.5422152>

them on security threats to this sector all while surveilling Indigenous people.¹⁰

This concern is exemplified in the RCMP's policing of, and raids on, Wet'suwet'en territory, where Indigenous land defenders have been opposing the construction of the Coastal GasLink pipeline. The community has been heavily surveilled, and police interventions have been heavily armed.

The ongoing use of the country's national security apparatus including the RCMP to enforce an injunction to remove Wet'suwet'en land defenders from their territory, and to force the Coastal Gas Link natural gas pipeline through Indigenous territory without free, prior and informed consent, demonstrates ongoing problems with the RCMP's policing of Indigenous communities. It is part of a pattern of, over the past decades, provincial and federal governments increasingly positioning resource development and the extraction of fossil fuels as superseding Indigenous law and rights, and painting the defense of those rights as threatening Canada's "national security;" which they define as including Canada's "financial stability" and "economic interests."¹¹

The surveillance and readiness to intervene continues, as highlighted in recent news coverage from APTN of Privy Council Office concerns about growing links between Mohawk activists and Wet'suwet'en hereditary chiefs, and the RCMP's continued surveillance of Indigenous land defenders.¹²

Surveillance

While above we have highlighted concerns regarding RCMP surveillance of Indigenous land defenders and environmental activists, there are also broader concerns about the RCMP's use of emerging surveillance tools and technology.

The last two years have seen growing documentation of the RCMP's troubling use of algorithmic and biometric surveillance of the public, both online and in person. This can generally be broken down into the categories of facial recognition surveillance and online surveillance.

Facial recognition surveillance

Facial recognition technology is being used by Canadian law enforcement and intelligence agencies at a growing pace. The technology has been found to be biased and inaccurate. It also allows for gross violations of fundamental rights and freedoms protected under both Canadian and international law. This includes violation of Canadian Charter rights protecting against unreasonable search or seizure (s. 8), as well as infringing upon the right to peaceful assembly (s. 2(c)), to free expression (s. 2(d)) and to equality (s. 15(1)). Similarly, it violates Articles 17 (privacy) and 21 (assembly) of the International Covenant on Civil and Political Rights. Gaps in

¹⁰ <https://www.nationalobserver.com/2017/05/18/news/canadas-spies-collude-energy-sector>

¹¹ <https://iclmg.ca/wetsuweten-solidarity-2021/>

¹² <https://www.aptnnews.ca/national-news/ottawa-tracked-mohawk-wetsuweten-2020-blockades-memo/>

Canadian law mean that this technology is being adopted without any meaningful accountability or transparency.

It is crucial that there be clear legislative rules and restrictions around the use of such powerful and invasive technology. It is also incumbent upon law enforcement agencies, such as the RCMP, to take appropriate steps to ensure they are not violating the rights of the population, and that they seek out proper judicial authorization in order to engage in surveillance or other activities that infringe on those rights.

However, it is clear that the RCMP has failed to take appropriate action in their use of facial recognition technology.

In early 2020, it was revealed that the RCMP had been using Clearview AI facial recognition technology for several months without the public's knowledge. When this was first revealed, the RCMP lied to both the public and to government oversight bodies about their use of this controversial technology. Eventually, they were obliged to tell the truth in the face of coming news coverage. Following that revelation, the public learned that the RCMP has used one form of facial recognition or another for the past 20 years, without any public acknowledgement, debate, or clear oversight. This includes no public Privacy Impact Assessments, and no mention in annual reports or in updates regarding their activities to parliamentary committees.

In early 2021, an investigation by the Office of the Privacy Commissioner of Canada (OPC) and some of its provincial and territorial counterparts found that Clearview AI had violated Canadian privacy laws.¹³ In a further investigation of the use of Clearview AI by the RCMP, OPC found that the RCMP's use of Clearview AI had been unlawful.¹⁴ The RCMP has rejected that finding, though, arguing that the force cannot be held responsible for the lawfulness of services provided by third parties. This decision signals that the RCMP plans to continue contracting with other services that could potentially violate Canadian law, and with it the rights of people in Canada.

A second, lesser-known case is that the RCMP also contracted the use of a US-based private "terrorist facial recognition system" known as IntelCentre.¹⁵ This company claims to offer access to facial recognition tools and a database of more than 700,000 images of people associate with "terrorism." According to the company, these images are acquired from various sources online, including social media, just like Clearview AI. Also, like Clearview AI, it is unclear how these images are verified, or the legal justification for collecting these images. Even worse than Clearview AI, though, is that this system comes with the added stigma of being allegedly linked to terrorism. Worsening the situation, we have no idea how the RCMP used this tool, let alone the force's legal basis for using it. It is clear, though, that it could have devastating impacts on someone who is falsely accused.

In the same response to the OPC's findings regarding its use of Clearview AI, the RCMP committed to numerous internal measures to ensure greater oversight, more stringent evaluation

¹³ <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2021/pipeda-2021-001/>

¹⁴ https://www.priv.gc.ca/en/opc-actions-and-decisions/ar_index/202021/sr_rcmp/

¹⁵ <https://thetyee.ca/News/2021/04/28/RCMP-Secret-Facial-Recognition-Tool-Looked-Matches-Terrorists/>

of novel technology, and more rigorous training of officers, with a deadline of summer 2022 for many of these new procedures to be put in place. It will be important to monitor this process. Previous commitments on transparency and safeguards regarding surveillance activities have not been fulfilled (as we will discuss in the next section). Further, so long as the RCMP takes action internally, with little transparency, and that these actions are based on internal guidelines and not legislation or (at a minimum) ministerial directives, it remains possible that further violations will ensue.

Online surveillance

There have been multiple revelations of the RCMP using controversial online surveillance tools which experts have likened to mass surveillance. Like facial recognition, the RCMP has failed to publicly disclose these surveillance activities and, once disclosed, have downplayed their impact. For example, in 2020 the Tyee revealed that the RCMP had awarded a new contract to Babel Street, a US-based company that uses algorithms to track, analyze and translate online communications.¹⁶ It is used extensively by law enforcement agencies in the United States. The RCMP has said in the past that it uses such software to move from “reactive” policing to the controversial practice of “proactive” policing: identifying potential threats before they occur by surveilling and collecting information on individuals who are not suspected of having engaged in criminal activity.

This latest revelation is one in a long line of reports from the Tyee, the Canadian Press, the CBC and others documenting the RCMP’s use of online media monitoring tools to spy on internet users. In one case, it was revealed that the RCMP collected information online to create detailed profiles of anti-mining activists, despite their never being suspected of planning, let alone committing, a crime.¹⁷

In 2019, the Tyee also revealed the existence of Project Wide Awake, an RCMP initiative to monitor online communications, including on a wide range of social media sites, in order to engage in “proactive” policing to “help detect and prevent a crime before it occurs.” Based on the RCMP’s invitation for bids that led to the Babel Street contract, it would appear that this new tool is meant to compliment and expand on the Social Studio software they were already using.¹⁸

Following the outcry caused by the Tyee’s report in 2019, the RCMP announced it would undertake an audit of its online surveillance practices, and release details publicly. While the force stated the review would be completed by summer 2020, it was never shared publicly. In other reports, the RCMP also committed to a privacy impact assessment (PIA) of its online surveillance – which is supposed to be completed before new activities come into effect – that would be filed with the Office of the Privacy Commissioner (OPC) and a summary made public online. No such summary is on the RCMP website, and it is unclear whether the PIA has been submitted to the OPC.

¹⁶ https://thetyee.ca/News/2020/09/23/RCMP-US-Artificial-Intelligence-Firm-Spy-Users/?utm_source=national&utm_medium=email&utm_campaign=240920

¹⁷ <https://iclmg.ca/rcmp-mass-surveillance/>

¹⁸ <https://thetyee.ca/News/2020/11/16/You-Have-Zero-Privacy-RCMP-Web-Spying/>

Information sharing and disclosure

A 2020 study of national security information disclosure conducted jointly by the National Security and Intelligence Review Agency (NSIRA) and the Office of the Privacy Commissioner of Canada (OPC), revealed that in 2020 the RCMP disclosed to the Department of National Defence/Canadian Armed Forces (DND-CAF) a dataset with the biometric information of thousands of individuals — men, women and children — who have been “detained by a third party on suspicion of being members or supporters of a terrorist organization.”¹⁹ The disclosure was made proactively by the RCMP, on the basis that they believed it fell within the scope of the DND-CAF’s counterterrorism mandate and because the CAF was active in the region where the individuals were detained.

While not explicitly stated, it is almost certain that this dataset relates to the thousands of individuals who continue to be detained in camps and prisons in North Eastern Syria by the Kurdish administration on allegations that they support and/or are members of Daesh (also known as ISIS).

It’s important to note that the individuals detained, estimated at more than 40,000, have not faced trial or even been formally charged. There are ongoing efforts to have those who are not citizens of Syria repatriated to their home countries for reintegration and, if deserved, to face trial. Currently more than 40 Canadians, including nearly two dozen children, are in those camps and prisons.

NSIRA and the OPC discovered that when the RCMP originally received the dataset, it was meant to be accompanied by a detailed description of the dataset, including crucial information related to how the information was obtained, and caveats on its use. However, that detailed description apparently never arrived. Months later, the RCMP still went ahead and shared the dataset with DND-CAF proactively — there was no request for the information — without the supporting description of the dataset.

The report finds that because of this failure to share important supporting information, it would be impossible to adequately evaluate the privacy impact on the individuals listed, especially given the fact that it meant that they are linked to a terrorist organization. Therefore, the disclosure was not compliant with SCIDA.

It is extremely troubling that the personal biometric information relating to thousands of individuals was shared without taking every precaution to ensure accuracy and the protection of privacy. This is especially important given the accusations being laid against these individuals, and the already precarious position that they are in. What if some of the information was inaccurate, and led to CAF misidentifying an individual as being a suspected terrorism sympathizer?²⁰

¹⁹ <https://nsira-ossnr.gc.ca/joint-review-of-scida-disclosures-finds-general-compliance-but-some-areas-of-concern>

²⁰ <https://iclmq.ca/rcmp-violates-national-security-disclosure-rules/>

Conclusion

The four areas we have covered are not meant to be exhaustive, but rather serve to demonstrate a pattern of ongoing problematic activities from the RCMP in relation to the force's national security and anti-terrorism activities. It is important to emphasize that these are systemic issues that must be addressed as such:

- racial profiling and Islamophobia,
- supporting ongoing colonialism and violation of Indigenous rights,
- the violation of fundamental rights in the pursuit of new policing powers, including surveillance, and
- lack of transparency and accountability.

We have refrained from giving concrete recommendations here. We hope, though, that the examples provided help to identify areas of the RCMP's work that must be addressed. However, we would recommend that, in a general way, the committee approach its review of the RCMP's work by questioning the fundamental approach our country has thus far adopted in regards to policing. As mentioned in the introduction, we believe our concerns must be evaluated in the context of ongoing questions regarding de-tasking and diverting funds away from policing towards other social measures that better serve and support the health, safety and well-being of people in Canada. We would also add that it is important to question how we fundamentally think of national security, and would argue that instead it is important to refocus on human safety:

All the resources used to surveil and repress people can instead be used to focus on real human safety. With the millions, if not billions saved, we could create initiatives and institutions that foster caring and supportive human connections and communities that would also help prevent hate, oppression and violence in all its forms. This includes providing shelter, food and clothing to everyone, as well as true universal healthcare. We could also build structures that empower people to make decisions affecting their lives, and allow everyone to develop their full potential, in a safe and healthy natural environment in which future generations will thrive. Imagine the possibilities.²¹

²¹ For more on this, please consult: <https://iclmg.ca/we-need-to-ditch-national-security/>

About the ICLMG

The International Civil Liberties Monitoring Group (ICLMG) is a national coalition of Canadian civil society organizations that was established after the adoption of the *Anti-Terrorism Act* of 2001 in order to protect and promote human rights and civil liberties in the context of the so-called “war on terror.” The coalition brings together 45 NGOs, unions, professional associations, faith groups, environmental organizations, human rights and civil liberties advocates, as well as groups representing immigrant and refugee communities in Canada.

Our mandate is to defend the civil liberties and human rights set out in the Canadian Charter of Rights and Freedoms, federal and provincial laws (such as the Canadian Bill of Rights, the *Canadian Human Rights Act*, provincial charters of human rights or privacy legislation), and international human rights instruments (such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

Active in the promotion and defense of rights within their own respective sectors of Canadian society, ICLMG members have come together within this coalition to share their concerns about national and international anti-terrorism legislation, and other national security measures, and their impact on civil liberties, human rights, refugee protection, minority groups, political dissent, governance of charities, international cooperation and humanitarian assistance.