DEFENDING CIVIL LIBERTIES

IN AN AGE OF COUNTER-TERRORISM AND NATIONAL SECURITY

International Civil Liberties Monitoring Group

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The International Civil Liberties Monitoring Group

Who we are

The International Civil Liberties Monitoring Group (ICLMG) is a national coalition of Canadian civil society organizations that was established after the rushed 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, humanitarian organizations, as well as groups representing immigrant and refugee communities in Canada.

While we recognize the obligation of states to protect citizens and others on their territories from violence, we regret the way in which most states are interpreting this obligation by restricting democratic freedoms. We do not properly defend democracy, the rule of law and a culture of human rights by abdicating these very principles. Security and freedom are not opposites. Respect for fundamental rights is an essential condition, a vital component of security.

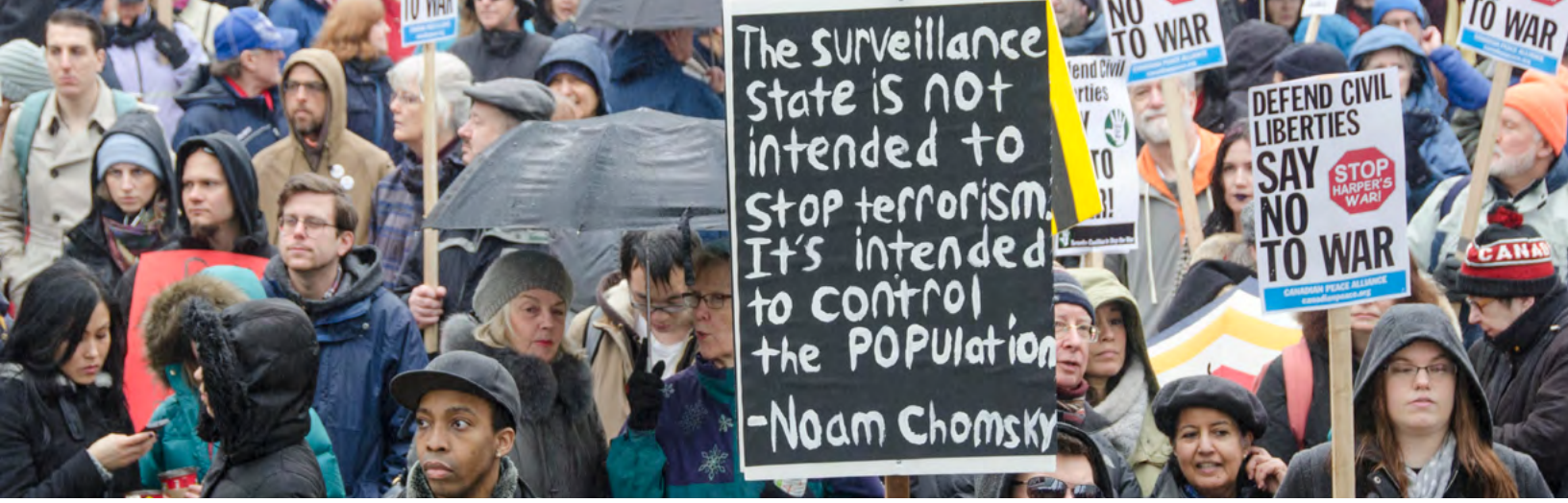
Our mandate is to defend civil liberties and human rights – including in relation to refugee protection, minority groups, political dissent, governance of charities, international cooperation and humanitarian assistance – from the negative impact of anti-terrorism and national security.

We do so by:

- Monitoring the evolution and application of Canada's security and "anti-terrorist" agenda and its impact on civil society organizations and communities
- Disseminating information on the implications of the laws and other anti-terrorist measures to our members, the public, federal MPs as well as to interested and affected organizations and communities, including through the publication of a News Digest twice monthly
- Developing joint and concerted responses to ensure transparency and due process where specific organizations and/or vulnerable communities are affected
- Lobbying and carrying out advocacy work with policy makers, members of Parliament, parliamentary committees, etc., and
- Working with international partners and coalitions, as well as intervening at international bodies such as the United Nations.

ICLMG has provided a forum for reflection, joint analysis and cooperative action in response to Canada's own anti-terrorist measures and their effects, and the risk to persons and groups posed by the burgeoning national security state and its obsession with the control and the movement of people. Finally, further to its mandate, the ICLMG has intervened in individual cases where there have been allegations of serious violation of civil liberties and human rights. The ICLMG has also intervened to contest proposed legislation, regulations and practices that contravene the Canadian Constitution, other Canadian laws and international human rights standards.

Members of the ICLMG coalition at our General Assembly.
Credit: ICLMG



rabble.ca

Twenty years too many

As odd as this might sound, we wish ICLMG would never have had to be created and that we would not need to still exist 20 years after our foundation. We continue to face many long, drawn-out battles and new challenges, along with what we call "national security creep," all of which mean we must keep going.

Since the beginning, we have fought against:

- The *Anti-terrorism Act* of 2001 and its gradual expansion;
- The granting of new powers to Canadian Security Intelligence Service (CSIS) and Communications Security Establishment (CSE) and information-sharing between states;
- State surveillance and racial, religious and political profiling;
- The No Fly List and the Terror Entities List;
- Security certificates, secret trials and specifically the deportation to torture of Mohamed Harkat;
- Laws that undermine rights and due process, including "lawful access," and the *Extradition Act* and its devastating impact on Hassan Diab;
- The criminalization of the provision of humanitarian and international assistance, notably in Afghanistan;
- The myriad more ways in which the global 'War on Terror' has impacted human rights and civil liberties in Canada and internationally – several of which will be touched on in this publication.

Increasingly, Canada is framing the climate crisis and economic instability as primarily national security threats to the state – rather than to the wellbeing of people. As a result, resources needed to address the root of these issues are being misdirected towards the already over-inflated state security apparatus. Furthermore, after heavily contributing to the rise of white supremacism with its own racist anti-terror policies, the state is now positioning its security agencies as best placed to fight racism, including through the expansion of said racist anti-terror tools. This national security creep comes with new dangerous tools such as facial recognition/biometrics, artificial intelligence, mass online surveillance, attacks on encryption, which we have increasingly opposed. As the security state constantly expands what constitutes threats to its existence, we do not expect to close shop any time soon.

Why this publication?

With this publication, we wanted to highlight our work and achievements alongside our members and partners, show what still needs to be done 20 years later and provoke reflections about how to adapt the fight to protect civil liberties from the always expanding definitions of terrorism and national security.

In addition to this publication, we hosted a webinar with amazing panelists entitled *Twenty Years of Fighting for Rights in the War on Terror*. And since we have to exist, we might as well celebrate! In September 2022, we gathered – outside and wearing masks – with many friends, member representatives, partners and colleagues. It was lovely to see them and hear very kind words of appreciation for the coalition's work and its important impact.

Thank you!

We would like to thank publication contributors, members, donors, sponsors, partners and all the people we have worked with over the years. We deeply appreciate each and everyone one of you – your passion, expertise, hard work and support. We literally could not do this work without you.

In solidarity,

Xan Dagenais & Tim McSorley

Tim McSorley is the National Coordinator of the International Civil Liberties Monitoring Group

Xan Dagenais is the Communications and Research Coordinator of the International Civil Liberties Monitoring Group

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The ICLMG's Beginnings and the Commissions of Inquiry

Roch Tassé

In the aftermath of the September 11, 2001 attacks, the United States, and Canada under pressure from its neighbour, rushed into the adoption of a series of anti-terrorism laws and other counter-terrorism measures, notably in the area of border control, air transportation and terrorist listing. That opened the door for the unprecedented deployment of surveillance technologies and data collection on individuals, and enabled practices of social sorting and profiling, virtually putting an end to privacy protection regimes until then viewed as a fundamental right in so-called democracies.

The ICLMG was born out of concerns about the impacts of these laws and measures on civil liberties, human rights, refugee protection, international humanitarian law, racial justice, political dissent and the justice system.

> "Very early on, we also engaged with policy makers and the press, and soon became a credible voice on the Hill. … But while immersed in research and policy work, we were soon confronted with the human face of anti-terrorism, which drove our agenda for the next 20 years."

The coalition was created in May 2002, six months after the adoption of Canada's *Anti-terrorism Act* (ATA) in 2001 to serve as a forum for information-sharing, collective action and the development of common policy positions to protect the rule of law, civil liberties and human rights from attacks in the name of national security. It brought together international development and humanitarian NGOs, unions, professional associations, faith groups, environmental organizations, human rights and civil liberties advocates,

Cover image from the Arar +10 Conference report. Credit: ICLMG

as well as groups representing immigrant and refugee communities in Canada.

A central focus of our work was to analyze legislation, monitor its application and document the impacts of the so-called 'War on Terror' with a view to intervening during the parliamentary review of the ATA scheduled to take place five years after its adoption.

To carry this out, we proactively developed collaborations and alliances with international counterparts. Domestically, we reached out to other civil liberties groups, grassroots organizations, and collaborators in the legal and academic communities. Nurturing relationships and building networks became a feature of the ICLMG's work in the many campaigns waged over the next 20 years. And throughout our journey we ended up collaborating with some of the best

Arar+10 conference, uOttawa. ICLMG/Sebastian Packer

and most committed activists, researchers, jurists and human rights lawyers in Canada.

Very early on, we also engaged with policy makers and the press, and soon became a credible voice on the Hill. The ICLMG appeared before numerous parliamentary committees over the years and has been present in the country's mainstream media to this day.

But while immersed in research and policy work, we were soon confronted with the human face of anti-terrorism, which drove our agenda for the next 20 years.

In the fall of 2002, we were introduced to Monia Mazigh during a meeting at Amnesty International Canada. The CIA had disappeared her husband and sent him to Syria where he was being tortured under the US rendition program. The case of Maher Arar revealed and confirmed the existence of this infamous program. Over the next year, the ICLMG and its members supported Monia in a relentless campaign for his repatriation, against efforts by CSIS and the RCMP to block his return to Canada.

Then, in December 2002, a security certificate was issued against Mohamed Harkat. His case, along with that of four other men, marked the beginning of many of the ICLMG's interventions on the issue of 'secret trials' and deportation to torture. These and more individual cases will be discussed in the following texts.

2004: The O'Connor Commission

Following the return of Maher Arar to Canada, in the fall of 2003, the ICLMG lobbied and mobilized support for a public inquiry into the events leading to his rendition. In January 2004, the Liberal government established a Commission of Inquiry to look into the actions of Canadian officials in connection with the Arar case. Presided by Justice Denis O'Connor, the Commission was also mandated to make recommendations with respect to oversight and review of the RCMP's national security activities.

The ICLMG was granted intervener status by the Commission and for the next two years we monitored the entire process, attending almost all of the hearings. During the proceedings, the ICLMG was invited by Justice O'Connor to participate in a roundtable discussion on oversight and review of national security operations. In their final submission to the Commission, our lawyers, Warren Allmand and Me Denis Barrette, proposed a detailed model for a complaint and review mechanism.

In its final report in September 2006, the Commission exonerated Maher Arar and found that Canadian officials had given the United States false information about him. Justice O'Connor also recommended the creation of an integrated oversight and complaint mechanism for all Canadian intelligence and security agencies. The model recommended differed from the one put forward by the ICLMG, but incorporated many of its elements.

2007: The Iacobucci Commission

During the course of the Arar Inquiry, we found out that three other Canadian men, Abdullah Almalki, Ahmad Abou-Elmaati and Muayed Nureddin, had also been detained and tortured in Syria and Egypt with the complicity of Canadian officials. The ICLMG and the group of friendly interveners submitted a recommendation to Justice O'Connor for the creation of a second inquiry into these cases, which he included in his final report.

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Abdullah Almalki speaking at the Arar+10 conference, uOttawa. ICLMG/Sebastian Packer

As a result, the government established the Iacobucci Inquiry in 2007 to review the nature of Canadian intelligence-sharing with other countries, including the US, Syria and Egypt. The Commission also sought to determine if Canadian officials were complicit in the alleged abuse.

Once again the ICLMG sought and obtained intervener status, but much of the work of the Commission was behind closed doors with few opportunities to intervene. Nevertheless Justice Iacobucci concluded that while the Canadian government was not directly responsible for the torture of Almalki, Elmaati and Nureddin, their mistreatment arose indirectly from the actions of Canadian officials, likely as a result of erroneous information-sharing.

2009: Motion in support of O'Connor recommendations presented in the House of Commons

Following the two inquiries, the ICLMG and Amnesty International Canada played a lead role in lobbying MPs to support the implementation of the O'Connor recommendations. In December 2009, all members of Parliament, with the exception of Conservative MPs, voted in favour of a motion in support of these recommendations. The motion also called for the government to apologize to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin. The Conservative government chose to ignore the O'Connor recommendations and the men had to wait until 2017 to receive an apology.

2014: The Arar+10 Conference

We persevered. In 2014, in collaboration with Amnesty International Canada and the University of Ottawa Human Rights Research and Education Centre, the ICLMG organized a high profile symposium to mark the 10th anniversary of the Arar Inquiry. The event reunited key actors of the commissions, including Justices O'Connor and Iacobucci, as well as Justice Major who had presided over the Inquiry into the Air India bombing. The three justices discussed the state of national security and human rights, and the implementation – or lack thereof – of the recommendations they had made to prevent human rights abuses from happening again.

Held in the aftermath of the October 22 shooting on Parliament Hill, the event generated huge media coverage and revived public attention on the need for oversight as the Harper government was getting ready to grant yet more powers to national security agencies with the introduction of Bill C-51, the *Anti-terrorism Act* of 2015.

It took another five years for the Liberal government, following a national consultation during which the ICLMG's members contributed significant input, to finally establish the National Security and Intelligence Review Agency (NSIRA) in June 2019 as part of Bill C-59; a failed attempt to 'fix' Bill C-51. The agency is an overarching review body that can examine all Canadian national security activities, regardless of agencies or departments, pretty much along the lines of the model put forward by the ICLMG, at the O'Connor Commission, 13 years before.

A chapter that started the day we met Monia Mazigh in 2002 was finally closed. But it was far from the last chapter in the ICLMG's story.

Roch Tassé is a human rights and social justice activist, and past National Coordinator of ICLMG.

Fighting Anti-terrorism Legislation

Dominique Peschard

I have been assigned the formidable task of presenting 20 years of ICLMG work on anti-terrorism legislation in less than 1,000 words. It is impossible in such a short text to even simply enumerate all the interventions on a multitude of legislative pieces, so I will focus on some key interventions which illustrate the principles that have guided the work of the ICLMG throughout the years.

The first major intervention, which set the tone for all subsequent ICLMG positions, was the report, entitled "In the shadow of the law", submitted by the ICLMG in March 2003 in response to Justice Canada's first annual report on the application of the *Anti-terrorism Act* (ATA), also known as Bill C-36. The report underlined a series of major concerns with the 'War on Terror' initiated after 9/11:

- The introduction of the new crime of terrorism in the *Criminal Code*. The ICLMG rightly pointed out that terrorist acts were already crimes and that the broad and imprecise definition of what constituted "terrorism, facilitating terrorism and financing terrorism" could target a series of activities of political dissent having nothing to do with terrorism.
- The use of the national security argument to deprive people of their freedoms and of the right to know the "evidence" held against them. Other articles in this publication provide several examples of the denial of the right to due process and a fair trial.
- The association of terrorism with Islam. This led to the racial profiling of an entire community.
- The surveillance powers granted to police and security agencies and the constitution of vast data banks with no possibility to correct errors.

Rally on Parliament Hill against Bill C-51. Credit: Obert Madondo

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Ottawa protest against Bill C-51. Credit: The Communist Party of Canada

- The information sharing agreements with the US with no control over what the information would be used for.
- The lack of control and accountability over the use of these new extraordinary powers.

The report concluded by emphasizing that security is not achieved by limiting freedoms; on the contrary, freedoms are what guarantees our security.

Later, during the 2006 parliamentary review of the ATA, the ICLMG played a crucial role in the final position adopted by the NDP and the Bloc Québécois, and was instrumental in the drafting of two minority reports tabled in Parliament by these opposition parties. The minority reports called for the repeal of the ATA.

A protracted struggle took place between 2006 and 2011 when a minority Conservative government tried to re-introduce the two clauses (investigative hearings and preventive detention) which had expired as a result of a sunset clause in the ATA. The campaign and lobbying of the opposition parties against the reintroduction of these clauses was successful… until the Conservatives won a majority in 2011.

The Conservative government used the pretext of the murders of two Canadian servicemen by two isolated individuals in the fall of 2014 to introduce and adopt Bill C-51, the *Anti-terrorism Act, 2015*; the most important piece of anti-terrorism legislation since the 2001 ATA. Among other things, C-51 enacted a broad information-sharing regime between government departments, increased the time a person could be detained before appearing before a judge, and gave CSIS the power to commit covert illegal acts. The ICLMG played a very active role in a broad coalition of organizations opposed to C-51 which succeeded in raising awareness and mobilizing a significant part of the population against the bill.

With the Liberals back in power in 2015, the ICLMG, along with several other organizations, undertook a campaign for the repeal of C-51. But the government ignored the numerous voices asking for the repeal, and chose instead to present and adopt yet another anti-terrorist piece of legislation, Bill C-59, the *National Security Act, 2017*. Not only did C-59 not fix the problems posed by C-51, it raised more concerns, for example, granting the Communications Security Establishment – Canada's NSA – the power to carry out defensive and offensive cyber activities at home and abroad. Nevertheless, C-59 was a partial victory. The ICLMG had campaigned relentlessly since 2006 for the implementation of a review mechanism for all national security bodies proposed by Justice O'Connor in his second report following the Commission of Inquiry Into the Actions of Canadian Officials in Relation to Maher Arar. The government finally responded to this demand by creating the National Security and Intelligence Review Agency.

Over the years, the ICLMG has systematically intervened before parliamentary committees to challenge legislative attacks on rights and freedoms and, more broadly, to inform MPs of the dangers of the measures they were asked to adopt. The ICLMG has also worked actively, alone and in coalitions, to keep the public informed on these issues. As a result, the public today is more critical and wary of new surveillance or security measures which infringe on civil liberties and human rights.

Dominique Peschard has been a co-chair of the ICLMG since 2012 and president of La Ligue des droits et libertés (LDL) from 2007 to 2015. He is currently a member of the LDL committee "Population surveillance, artificial intelligence and human rights."

A Victory for Humanitarian Assistance!

Tim McSorley & Xan Dagenais

Since the ICLMG's creation, we have warned of the negative impact of counter-terrorism laws on the delivery of international assistance, especially to populations in regions where entities deemed by the Canadian government to be terrorist groups are active. When the Taliban regained control of Afghanistan in 2021, the Canadian government refused to give assurances that organizations providing international assistance, including humanitarian organizations, would not be prosecuted. This forced many to stop their vital work in the country. With a humanitarian crisis unfolding in Afghanistan, civil society pressured the government to amend the law to create a straightforward pathway to provide international assistance again. Unfortunately, but unsurprisingly, the government instead introduced Bill C-41 which aimed to create a complex authorization regime for organizations to provide international assistance in zones controlled by groups considered "terrorist entities" by Canada.

Thanks to concerted pressure from civil society groups, including the ICLMG, the bill was amended to create, for the first time, an exemption in Canada's laws on countering terrorist financing for the provision of humanitarian assistance. While this was a clear win, there are lingering questions around how the government is interpreting the exemption.

At the same time, this exemption does not apply to Canadian international assistance organizations that carry out vital activities, but which are not exclusively humanitarian in nature, including in regards to provision of health services, defense of human rights, efforts towards peacebuilding and support towards earning a livelihood. These organizations are now subject to an unclear, burdensome and invasive authorization process in order to carry out their work in Afghanistan.

Among other concerns, this new regime places the onus on these groups to prove they do not violate vaguely defined security assessment rules. These rules allow the Minister of Public Safety to deny an authorization based solely on whether any individual involved in a project, including international partners, has undefined "links" to terrorism or has ever been simply investigated on terrorism grounds.

The ICLMG has documented time and again how such vague rules result in harmful impacts, including: "guilt by association" based only on unsupported allegations; political interference or ministerial discretion based on political expediency; and the promulgation of both systemic and individual bias and racism.

We also remain concerned that an exemption regime does not address the central problem: that Canada's overly-broad counter-terrorism laws allowed for this situation to occur in the first place. While an exemption regime may provide a route forward, it avoids how counter-terrorism laws create areas and entities that are considered 'no-go,' and continue to primarily and unjustly impact majority-Muslim countries and regions. We renew our call for the government to fundamentally revisit its approach on counter-terrorism laws and their enforcement.

Although the bill received royal assent in June 2023, and despite assurances from the government that they would take quick action, the authorization regime has yet to be launched at the time of writing in April 2024, leaving millions of people without much needed assistance.

Tim McSorley is the National Coordinator of the International Civil Liberties Monitoring Group

Xan Dagenais is the Communications and Research Coordinator of the International Civil Liberties Monitoring Group

The Dangerous Seductions of the 'Anti-Racist' Racist State

Azeezah Kanji

As white supremacist 'extremism' becomes a subject of increasing national security concern, the contradictions of using a racist state apparatus to address racism continue to intensify. As feminist scholars have taught,[1] there is almost nothing that can't be turned into a weapon against us. This includes 'anti-racism' in the hands of the settler colonial state, which continues to reproduce the white supremacism situated at its heart – whether by the condemned violence of an 'extremist' hate attack, or the condoned violence of police and military killings, torture complicity, and genocidal erasure of Indigenous sovereignty.

Now, proposed online harms legislation[2] and protest restrictions[3] have been promulgated in the name of containing white supremacism; yet, as we know[4] from both the long-term and recent history of speech policing in Canada, such powers are likely to be used in practice first and foremost to target Indigenous, Palestinian, Black, and Muslim justice activism. Similarly, Canadian politicians across the political spectrum have[5] embraced[6] the use of counter-terrorism to combat 'right-wing extremism,' further entrenching legal instruments wielded primarily[7] against Muslims in the name of protecting Muslims. For example, when the Proud Boys were listed as a 'terrorist entity' in February 2021, nine more[8] Muslim-identified groups were also quietly appended at the same time – exacerbating the list's overwhelming Muslim-centrism under cover of anti-racism.

One of the newly added 'terrorist' groups is Kashmiri, operating in the context of the Indian state's massive and abusive[9] military occupation: Kashmir boasts[10] the highest ratio of soldiers to occupied civilians in the world. Remaining on the list is charity IRFAN, penalized[11] for making medical donations to Gaza; even as the terror of 'medical apartheid'[12] and destruction[13] of vital medical facilities inflicted against Palestinians under Israel's occupation persists unchecked. As noted in a joint letter[14] from anti-racism, legal, and human rights experts, co-organized with the ICLMG: "The listing of organizations like the Proud Boys alongside Palestinian and Kashmiri groups […] conflates groups originating under or responding to long-term military occupation, with white supremacists and neo-Nazis, all under the rubric of a broad and inconsistent concept of 'terrorism.'" Such examples highlight not merely the incompleteness but the profound ideological bias of a concept of 'terrorism' that fixates on the violence of those on the undersides of state power, while authorizing the far greater violence of the state itself.

Adding a couple of white supremacist groups to the list of 'terrorist entities,' or criminally charging a few white supremacists as 'terrorists,' does not rectify the counter-terrorism 'colour line.' Rather, it masks it. For instance, Nathaniel Veltman, who deliberately plowed his truck into a Muslim family in London, Ontario, is being prosecuted under 'terrorism' provisions for an act of mass killing already committed – while Muslims, in stark contrast, have been criminalized[15] pre-emptively for acts distant[16] from any death or injury at all. This has produced a situation in which Muslims, responsible for less than 10%[17] of casualties[18] from public political violence in Canada since 9/11, have been subjected to 98%[19] of completed terrorism prosecutions, with many of the cases featuring extensive involvement of state informants, central to conceptualizing and advancing the prosecuted plots.

If Veltman were to have been treated in the same way as a Muslim, he and members of his entire family and community would have been harassed[20] regularly at their schools and workplaces by security agencies, denied[21] security clearances for playing paintball, surveilled[22] in their places of worship, targeted[23] for entrapment while struggling with mental illness, placed[24] preventively under suffocating 'peace bond' conditions without trial, and put[25] on no-fly lists on the basis

of name coincidences and racist stereotypes. Such draconian state powers should not be extended, but dismantled.

And yet, in the very state processes purporting to study and address systemic racism in Canada, the state's own violent operations are persistently omitted. For example, at the federal government's National Summit on Islamophobia, convened in July 2021 in the wake of the London killings, not a single lawyer or legal expert on state Islamophobia was invited as a speaker – despite briefs co-submitted with the ICLMG emphasizing the scope and centrality of state practices in (re)producing Islamophobia as a whole. This pattern continues to be repeated in state 'anti-Islamophobia' initiatives. Predictably, the vast infrastructure of oppressive national security laws and practices is therefore rendered almost entirely invisible, as are the lived experiences of those who have had to bear the heaviest burden of living under them.

Meanwhile, egregiously, some of the same 'national security experts' responsible for legitimizing[26] the demonizing discourse of 'Muslim extremism' – for example, one former CSIS analyst-turned-professor exposed[27] for baking cakes depicting drone deaths and torture; making anti-Muslim atrocities into items of pleasurable consumption – are now, somehow, being treated[28] as authorities[29] on how to fight *anti*-Muslim extremism. And the same Canadian political leadership that sheds tears for Muslims mowed down on a public street or shot dead while in prayer at a mosque, simultaneously maintains policies that brutalize Muslims largely out of sight – increasing[30] military spending, selling[31] arms[32] to states that slaughter Muslims, attempting[33] to deport Muslim refugees to risk of torture, and spending[34] millions of dollars to fight the compensation claims of 'War on Terror' torture survivors in court.

State 'anti-racism' functions not only to obscure the endemic racism of state institutions, but to augment their harmful capacities. In the January 2022 final report[35] of the Minister of National Defence Advisory Panel on Systemic Racism and Discrimination, for instance, remedying the racism and sexism experienced by those serving *within* the armed forces is upheld as essential for sustaining military recruitment. As for the acts of racist and sexist aggression endured by those on the receiving end of Canada's military operations – including torture[36] and rape[37] – they are absent from the report, and remain hidden in the shadows and shoved under the rug. Experience shows how 'diversification' and 'multiculturalization' serve as strategic assets for violent institutions. For example, in the infamous case of John Nuttall and Amanda Korody, the RCMP used[38] Muslim officers to pose as religious authorities, to increase the efficacy of entrapment efforts against psychologically vulnerable, impoverished and marginalized Muslim targets.

Such events elucidate not only the fallacy, but the absurdity, of appealing to the colonial state apparatus as the solution to racism when in fact it lies at the source. At best, it's like trying to empty an ocean by catching some of the waves as they wash up on shore: an exhausting and endless exercise in futility. At worst, it's like cutting off one head of the hydra and feeding it to the others: an illusory victory which only ends up further strengthening the beast.

For tools to combat Islamophobia, visit https://islamophobia-is.com/ and ICLMG resource page: iclmg.ca/resources-against-islamophobia

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Azeezah Kanji is a legal academic and journalist, whose work focuses on anti-colonial approaches to international law, state racial violence, and the 'War on Terror.'

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CSIS, Duty of Candour and Immunity for Illegal Activities

Tim McSorley

The Canadian Security Intelligence Service (CSIS) has a troubling history of skirting the law and engaging in unethical and even unlawful behavior in the course of its work, ranging from their complicity in the rendition, detention and torture of Canadians, harrassing Muslims at school and in their workplace, surveilling environmental activists, or misleading the courts. Recently, there have been key revelations of ways that CSIS continues to engage in this troubling pattern.

Duty of candour and misleading the courts

In the past five years, multiple court rulings and reviews[1] have found that CSIS has misled the courts and withheld important information from judges when applying for warrants, including that information used in support of these warrants was obtained illegally. This is known as breaching its "duty of candour" towards the courts – meaning CSIS has a duty to tell the truth to the courts, but didn't. This is particularly important given that CSIS and government lawyers present information to the courts during hearings that are held in private. There is no one present to oppose the application, nor anyone apart from the judge to question the information being provided in support of these warrants – which is problematic in and of itself.

The most significant of these rulings was issued by Federal Court of Canada Justice Patrick Gleeson, in which the court reviewed multiple instances of CSIS breaching its duty of candour over several years. In an incredibly damning ruling, the Justice wrote, "The circumstances raise fundamental questions relating to respect for the rule of law, the oversight of security intelligence activities and the actions of individual decision-makers."[2] Following this ruling, and another from Justice O'Reilly revealing another breach just two months later, ICLMG wrote to the minister of Public Safety at the time, Bill Blair, demanding that he take immediate action to put an end to this abuse of power and hold the CSIS officers involved accountable.[3] Alongside the letter, we launched an email action that resulted in more than 1,600 messages being sent to the Public Safety and Justice ministers.

This ruling also resulted in an in-depth review by the National Security and Intelligence Review Agency (NSIRA), which found that deep-seated and persistent systemic issues were undermining CSIS' ability to meet its obligations to the courts.

Despite the fact that the number of rulings and the importance of the issues raised necessitate, not just an immediate response from Canada's domestic spy agency, but also accountability, the government has been slow to take clear action. The government's commitment to reforms was significantly undermined when it appealed Justice Gleeson's finding that the agency breached its duty of candour. The appeal decision led to mixed results. Disappointingly, the Federal Court of Appeal agreed with the government, and set aside the finding that CSIS had breached its duty of candour, despite all the evidence in support. At the same time, it upheld the lower court's recommendation that, "a comprehensive external review be initiated to fully identify systemic, governance and cultural shortcomings and failures that resulted in CSIS engaging in operational activity that it has conceded was illegal and the resultant breach of candour."[4]

Instead, the government should clearly demonstrate how CSIS staff and lawyers who misled the courts are being held to account, and what actions they are taking to change the culture at the spy agency that sees the warrant process as "a necessary evil."[5]

MP Salma Zahid (left), ICLMG's National Coordinator Tim McSorley (centre left), and NCCM's CEO Stephen Brown (centre right) and Senior Legal Counsel Karine Devost (right) at a press conference introducing Bill C-331. Credit: Jeffrey Jedras

We also wrote an open letter to Prime Minister Trudeau, in 2021, asking this issue be made a priority in his mandate letter for the previous public safety minister, Marco Mendicino.[6]

Proposed bill from MP Salma Zahid

Liberal MP Salma Zahid has introduced private member's Bill C-331, *An Act to amend the Canadian Security Intelligence Service Act (duty of candour)*. The bill would, among other things, require the Public Safety Minister to annually table in the House of Commons unclassified information on the number of breaches of the duty of candour to the courts, a description of each breach, and any remedial action taken. It would also amend the Oath of Office sworn by the CSIS director and employees to include duties owed to the courts, such as the duty of candour. MP Zahid held public consultations on this issue which informed the language of the bill. We've submitted a written brief to MP Salma Zahid, met with her and her staff, participated in a Ottawa roundtable with her and MP Jenna Sudds, and joined MP Zahid at a press conference announcing the tabling of Bill C-331.[7]

The case of Shamima Begum

In August 2022, the press revealed that the human trafficker, Mohammed al-Rashed, who helped Shamima Begum, a 15-year-old British girl, and two other British girls aged 15 and 16, enter into Daesh (ISIS) controlled territory in Syria in 2015 was a Canadian Security Intelligence Service (CSIS) asset.[8] Following this news, we issued a statement[9] regarding the case of Shamima Begum and CSIS, and wrote to the Prime Minister's office to demand accountability. We also contacted the NSIRA regarding their review of the Shamima Begum case.

Al-Rashed became a CSIS operative following an appeal for asylum at Canada's embassy in Jordan. Instead of granting him asylum, he was approached by a CSIS official, who recruited him to continue his illegal activities in exchange for citizenship.

How is this case linked to CSIS's duty of candour? One of the areas where CSIS misled the courts was in its work with sources who engaged in illegal activity. CSIS withheld this information from the courts, thereby breaching its duty of candour.[10]

At the time in 2015, CSIS did not have clear legal authority to recruit and provide resources to someone engaged in supporting terrorism. That changed, though, with the passage of Bill C-59, the *National Security Act*, in 2019, which brought in rules that allow for CSIS agents and their sources to engage in certain designated unlawful activities.[11] We opposed that change at the time, because it raised deep concerns around what unlawful activities CSIS could be supporting, and we do not believe that the safeguards the government put in place make up for the potential harm these powers can cause.

Regardless of it now being made legal, CSIS still lied to the courts at the time to cover up working with a human smuggler who helped secure passage for dozens of people, including minors, into Daesh territory. Like so much of the legacy of the war on terror, this is a case of impunity for security agencies, while other people face the dire consequences.

But beyond all this, it is imperative that we have an in-depth public conversation about the consistent failures of CSIS to follow the law and to be honest with the courts, and for the impact that Canada's anti-terrorism activities have on human rights, civil liberties and systemic discrimination in Canada and internationally. A key aspect would be a public inquiry into these issues to then ensure accountability of government officials and national security agents, and to prevent such violations from happening again.

You can take action at iclmg.ca/csis-not-above-law

Tim McSorley is the National Coordinator of the International Civil Liberties Monitoring Group

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Confronting the CRA's Prejudiced Audits

Tim McSorley

In June 2021, the ICLMG released *The CRA's Prejudiced Audits: Counter-Terrorism and the Targeting of Muslim Charities in Canada,*[1] a report detailing how a secretive division within the Canada Revenue Agency (CRA) targets Muslim charities in Canada for investigation, audits and even revocation, based on prejudiced and unsupported allegations of a risk of terrorist financing.

The report reveals how, as Canada ramped up attempts to counter terrorist financing after the September 11, 2001 attacks in the United States, the CRA and its Charities Directorate were enlisted to monitor the work of Muslim charities in Canada under the unsupported premise that they pose a significant terror financing risk. This work has been carried out largely in secret, with little to no outside review or public substantiation of the so-called risk posed by Muslim charities, allowing for the profiling and targeting of Muslim charities to go largely unnoticed and unchallenged.

The report demonstrates how the Review and Analysis Division (RAD), a little-known division of the CRA, in conjunction with other departments and agencies, targets Muslim charities:

- The Canadian government's National Risk Assessment (NRA) for terrorism financing in the charitable sector focuses almost exclusively on Muslim charities, and entirely on charities based in racialized communities, with little to no public substantiation of the risk;
- This risk assessment is used to justify surveillance, monitoring and audits of leading Muslim charities on questionable grounds;
- RAD operates largely in secret, in tandem with national security agencies, with little to no accountability and no independent review;
- Between 2008 and 2015, 75% of all charities revoked by RAD following these secretive audits were Muslim charities, harming the sector and impacting the larger Muslim community in Canada. The number of audits and revocations before and after that period are unknown because they have never been made public.

The report recommended the following:

1. That the federal government refer this issue to review by the National Security and Intelligence Review Agency (*NSIRA Act*) in order to examine the CRA's RAD processes overall, and specifically its selecting of Muslim charities for audit, so as to ensure organizations are not being targeted due to racial or religious prejudice;

2. That the Minister of National Revenue declare an immediate moratorium on targeted audits of Muslim charities by RAD until the review has concluded;

3. That the Ministry of Finance revisit the anti-terror regulatory, policy and legislative landscape, particularly the 2015 NRA and its impact, particularly on the Muslim community;[2]

4. That the federal government amend the *NSIRA Act* to allow for complaints from the public regarding the CRA's national security-related activities; and

Graphics for ICLMG's report The CRA's Prejudiced Audits: Counter-Terrorism and the Targeting of Muslim Charities in Canada. Credit: ICLMG/Omar Hafez

5. That NSIRA and the National Security and Intelligence Committee of Parliamentarians (NSICOP) coordinate to carry out regular reviews of the CRA's anti-terrorism activities – including the Charities Directorate and RAD – going forward.

The release of our report, combined with our public launch (recorded online)[3], led to substantial public interest and advocacy work. Our letter writing campaign[4] resulted in more than 2,400 emails sent to government officials calling for action, and we organized a joint letter[5] to the Prime Minister that was signed by more than 130 groups supporting our recommendations. The report made a lot of waves in the media, leading to the publication of more than 75 news articles and op-eds. The Prime Minister was forced to respond immediately with concern, saying he "realized that systemic discrimination exists throughout every institution."[6]

This issue was a key point at the July 2021 National Summit on Islamophobia, and resulted in the Trudeau administration tasking the taxpayers' ombudsperson François Boileau with investigating concerns of charities around systemic discrimination, with a particular focus on Muslim charities and other charities led by people of colour. The ombudsperson was also to examine the revenue agency's efforts to root out discrimination. We raised concerns in the media, and were quoted extensively about worries that the ombudsperson's mandate may be too narrow to examine this system in its entirety.

Although this investigation was not what we had asked for, we were initially optimistic given the government had reacted quickly. We were also in frequent communication with the office of the ombudsperson to offer support, advice and keep up with the investigation. This is why an update on the review in February 2022 left us surprised and disappointed as it did not even mention Islamophobia once, promised to review 'fairness' overall rather than examine specific concerns and added that the office will not investigate the role of Canada's national security agencies in this issue. We sent an open letter to the Trudeau government sharing these concerns and naming important elements that the review should include moving forward.[7]

In November 2022, the Taxpayers' Ombudsperson testified at the Standing Senate Committee on Human Rights (RIDR) that his office is working with one hand tied behind its back, and that the ensuing report will have gaps, as they cannot access critical information. We responded to this by meeting with the Ombudsperson regarding his revelation, publishing an op-ed[8] on the troubling developments and following up with the ministry of Finance regarding updating risk assessment policies for the charitable sector. In response to the significant concerns raised about the Ombudsperson's investigation, the NSIRA launched its own review of the issue in March 2023 – which was one of our original recommendations in June 2021!

The Ombudsperson's report, published later that same month, reflected the concerns he expressed at the Senate. Despite his diligence, it did not address the central concerns we had raised. We responded by calling on the government, once again, to suspend the work of RAD and ongoing audits until the NSIRA finishes its review and legislative changes are made.[9]

You can read more about this issue and take action at *iclmg.ca/prejudiced-audits*

Tim McSorley is the National Coordinator of the International Civil Liberties Monitoring Group

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Canada's National Security Practices Part of Genocide Against First Nations

Pamela Palmater

Throughout Canada's relatively short history as a state, governments of all political stripes, together with the military, and various law enforcement and intelligence agencies, have treated First Nations as enemies – as threats to national security.[1] From early colonial depictions of "Indians" as dangerous savages[2] to modern-day intelligence assessments of First Nations as extremists,[3] Canada's national security policies have changed little in either purpose or impact. Far from protecting the safety and security of Canadians, national security laws have been designed to "secure" the state's assertion of sovereignty and control over First Nation lands, resources and peoples. In other words, national security laws and policies are about protecting Canada's economic interests in First Nations' lands by any means, including sustained violent acts of genocide.[4] Canada's national security policy can only truly be understood in the context of its ongoing genocide against First Nations and the related economic interests.[5]

While historical acts of genocide included deaths from scalping bounties,[6] starvation policies,[7] forced sterilizations,[8] and Indian residential schools,[9] the genocide continues today under different names: ongoing forced and coerced sterilizations and abortions;[10] discriminatory underfunding of food, water and housing;[11] the foster care system;[12] overincarceration;[13] forced assimilation[14] under the *Indian Act,*[15] deaths caused by racism in healthcare[16] and police killings of First Nations people.[17] These acts were, and are, all part of a comprehensive strategy to weaken First Nations, which includes laws and policies designed to destroy them socially, culturally, politically and legally, in order to "secure permanent access to Indigenous lands and resources for the settler population."[18] To this end, Canada has engaged in a "slow-moving"[19] genocide which "has taken place insidiously and over centuries,"[20] facilitated by a sustained "low-intensity warfare"[21] against First Nations that continues into the present. National security laws, policies and practices over the years helped to keep track of both individuals and potential "hot spots"[22] of collective resistance which might threaten Canada's war efforts against First Nations.[23]

The finding by the National Inquiry into Missing and Murdered Indigenous Women and Girls (National Inquiry) of ongoing genocide was met with both shock and outright denial by some commentators.[24] They simply could not reconcile the political rhetoric with the lived realities of First Nations. Since genocide requires intent, it sounds incredulous when contrasted with Canada's promises of reconciliation with First Nations, based on a nation-to-nation relationship that respects their inherent, Aboriginal and treaty rights. On the surface, it also seems to be in conflict with Canada's vast array of human rights protections at the provincial, national and international levels. However, it is precisely this chasm between stated political objectives and actual state law, policy and practice that betray Canada's ulterior motives. The National Inquiry found that:

> *Canada has displayed a continuous policy, with shifting expressed motives but an ultimately steady intention, to destroy Indigenous peoples physically, biologically, and as social units, thereby fulfilling the required specific intent element.*[25]

The actions of the state's national security apparatus must be understood in light of this policy. Knowing that the state's objective is to secure its economic interests and political power over First Nation lands helps us to understand how and why First Nations have been constructed as a threat.[26] We can also better understand how other laws targeting, controlling, removing and criminalizing First Nations people, work hand in hand with national security laws. The *Indian Act* has a registration formula which guarantees the legislative extinction of 'Indians' (First Nations) over time – effectively removing them from their lands. Hunting, fishing, and

Water Defenders lead a march against Bill C-51 in Toronto. Credit: Kevin Konnyu

timber laws and regulations severely limit First Nations rights to sustain themselves on their lands. We have literally had to "skulk around the forest like criminals" in order to survive.[27] From scalping bounties on our heads to outlawing our cultural practices, the only way to survive centuries of genocide was to be "criminally Indigenous."[28]

The *Criminal Code* directly criminalizes various First Nation economic practices, including the tobacco trade and gaming on reserve as contraband, illicit and illegal.[29] If you add to this the anti-First Nation racism built into law enforcement, especially the RCMP, then it should be no surprise that First Nations people are disproportionately targeted,[30] brutalized, sexually assaulted,[31] arrested, convicted and incarcerated[32] by police forces at crisis levels.[33] Despite Supreme Court of Canada cases, commissions, inquiries and reports calling out the crisis of racism against First Nations at every level of the justice system, it has been allowed to continue, and even to get worse.[34] This is how the First Nation terror threat is manufactured and sustained by the state and its enforcement agencies: by criminalizing what it means to be a First Nations person, whether or not the individual actually poses any safety threat to society. The more arrests, charges, and convictions racked up by the state against First Nations people, the more they become "justified" targets of even more invasive state surveillance, monitoring, and control. Shooting First Nation suspects, incarcerating them, labelling them as dangerous offenders and/or placing them on permanent probation – all of these policies work hand in hand with national security laws.

There is no sign of this ending any time soon. Governments, law enforcement, military, intelligence organizations, and now, even private corporations involved in the extractive industry work together to surveil, control and suppress the rights of First Nations peoples to their lands and resources.[35] There are countless examples of this. The Trans Mountain Corporation hired retired RCMP officers and security operatives while also working directly with the RCMP's Community-Industry Response Group.[36] The RCMP spied on First Nations opposed to Enbridge's Northern Gateway pipeline using unnamed "industry reports".[37] Sharing intelligence on First Nations is a common practice between the RCMP and energy companies.[38]

There is a similar problematic relationship between Coastal GasLink officials and the RCMP working together against First Nations. The RCMP effectively acts like publicly funded, private security for pipeline companies[39] – even authorizing the use of "lethal overwatch" to shoot peaceful, Indigenous land defenders.[40] Despite pleas from the United Nations Committee for the Elimination of Racial Discrimination to remove the RCMP and their weapons from First Nation territories, and halt all major projects until First Nations consent, all the projects continue.[41] National security methods now include collusion with private corporations extracting the wealth from First Nation lands.

In case anyone is still asking why, the fact that the RCMP pension is invested in TC Energy – the parent company of Coastal GasLink – should help answer that question.[42] In fact, Canada's largest public pension plans are heavily invested in the extractive industry and specifically in fossil fuels.[43] The Canadian state and indeed its law enforcement and spy agencies have a vested interest in the ongoing suppression of First Nations peoples, control of their lands and extraction of their resources – all under the guise of national security. If ever there is to be an end to genocide in Canada, it will require a massive overhaul of national security policy, starting with challenging the vested economic and political interests of the policymakers themselves.

Dr. Pamela Palmater is a Mi'kmaw lawyer, professor, and human rights expert from Eel River Bar First Nation.

Online version & sources:
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Canada and Criminalization in the War Over Land and Nature

Jen Moore

Almost five years ago, while working as Latin America Program Coordinator for MiningWatch Canada, I was declared a threat to public order and security in Peru and barred indefinitely from the country. My crime, and that of similarly-accused U.S. documentary filmmaker John Dougherty, was working with Peruvian organizations to show a film critical of Canadian mining company Hudbay to communities affected by its open-pit copper Constancia mine. The film, *Flin Flon Flim Flam*, presents critical testimony on this company's operations from Manitoba to southern Peru.

Our case needs to be understood in the context of social control, repression and criminalization[1] that communities and organizations living and working around the Constancia mine face regularly. Hudbay's mine has given rise to numerous protests over unfulfilled agreements with communities, as well as environmental and social impacts. Community demonstrators have faced police repression and legal persecution at the hands of the Peruvian National Police, who had a security services contract with Hudbay at the time of these events. Such contracts have been common in Peru and are hotly criticized[2] for putting police at the service of private interests, contributing to the high incidence of violent repression of legitimate protest, causing injuries and deaths.

Our case is part of a "concerted attack" throughout the Americas on environment and land defenders, "aimed at disciplining and quashing individuals and groups in diverse countries in the hemisphere where considerable gains have been made to stop or slow the accelerated expansion of this industry and the serious social and environmental impacts which it entails," as MiningWatch and ICLMG wrote in the 2015 report *In the National Interest?*.[3] This report examines how the law has been progressively turned against defenders to impose a destructive and often unwanted model of mineral extraction on communities and even on whole countries. Using examples from Peru, Mexico, Guatemala, Ecuador and Canada, the report also illustrates how the Canadian government has played a strategic role through aid, diplomacy and trade policy to facilitate the massive expansion of Canadian mining interests in the region. Canada is exporting abroad the same extractive industry dependence that the Canadian settler colonial state was founded on and continues to perpetuate.

Even before we arrived in Peru in April 2017, we were defamed in the press as trying to "sabotage" Hudbay's operations. During community screenings, police and Hudbay representatives questioned local community members about our presence, while police surveilled our movements. Following a screening in the city of Cusco, we were detained for four hours by more than 15 migration officers and plain clothes police who claimed they needed to verify our travel documents, but who sought to interrogate us instead.

The next day, Saturday, the Ministry of Interior issued a public communiqué declaring us to be a threat to public order, accusing us of inciting communities to violent protest against Hudbay's mine, and stating that the company's permits were in order. On advice from our lawyers that we were in danger of the authorities cooking up false charges and that we could continue the legal process from afar, we left Peru. On Sunday, Migration Services banned us from the country indefinitely. We never had the opportunity to defend ourselves and only became aware of this decision months later.

Peruvian courts have since found that these actions constituted grave violations of my rights, and that the decision to ban my re-entry to Peru is illegal and arbitrary. A 2019 decision further found that police and the Ministry of the Interior acted with bias as a result of the security contract between Hudbay and national police.

Poster for the movie Flin Flon Flim Flam. Credit: Investigative MEDIA

Despite this, and despite being a Canadian citizen and human rights defender working at the time for an organization that enjoys generous support of prominent human rights and legal organizations in both countries, Canadian officials utterly failed to provide meaningful support, going as far as to make false and misleading statements to UN bodies.

Canadian cooperation in the cover up for Hudbay

A new report from the Justice and Corporate Accountability Project (JCAP)[4] analyzes hundreds of pages of government records obtained through access to information requests about Canada's response before, during and after our detention. The report weighs up the response of Canadian officials to their own guidelines for supporting human rights defenders, *Voices at Risk*, and finds that the government failed miserably.

While MiningWatch's appeals to Canadian officials – with support from many other organizations – received no reply, Canadian officials were obliged to reply to correspondence signed by four United Nations and three regional human rights bodies.

The UN letter expressed concern for my safety and sought information about Hudbay's potential involvement in our criminalization. After a three-month delay, Canadian officials responded, avoiding the UN's question about how it had implemented, or not, the *Voices at Risk* policy. Regarding the company's role, they stated they were "not aware of any evidence that Hudbay Minerals was involved in the actions of Peruvian authorities in detaining and questioning Ms. Moore." But this was both misleading and false.

In all of my communications with Canadian officials, including detailed letters endorsed by many other organizations, I provided information on how Hudbay personnel had questioned community members prior to our detention and on the company's contract with police, which we believed – and which Peruvian courts have found since – led to biased police actions against John and I. Embassy officials also reviewed social media posts by Peruvian organizations making similar claims. On this basis and according to its own policies, Canadian officials should have exercised due diligence, but there is no evidence that they did. In addition, Duane McMullen, then Director General of Trade Operations and Trade Strategy for GAC, received an email from a Hudbay employee three days after our detention. This person expressed support for our criminalization by Peru, and this should have raised a red flag, but Canadian officials reported none of this in their response to the UN. JCAP concludes, "By protecting Hudbay and withholding the information referred to here, Canada not only failed to cooperate with the Special Rapporteur, it also undermined the Rapporteur's ability to fulfill its mandate and take steps to protect a Canadian [human rights defender]."

Overall, the failures were numerous and systemic. They provide further evidence of how Canada's clientelistic relationship with the mining industry corrupts its ability not only to fulfill its human rights obligations, but to hear the calls of environment and land defenders to abandon the extractivist economic model that causes so much harm and puts them in ever greater danger.

Jen Moore is now based in Mexico and an Associate Fellow with the Mining and Trade project at the Institute for Policy Studies.

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Islamophobia and the 'War on Terror'

Monia Mazigh

Immediately after 9/11, in December 2001, Canada passed its first anti-terrorism legislation despite the fact that it wasn't affected by any terrorist attacks at that time.

Never was legislation adopted as quickly as the *Anti-terrorism Act* (ATA) of 2001.

Seen from the outside, the legislation was written to tackle and prevent 'terrorism.' In reality, the ATA targeted mainly Muslim individuals and groups, but also other groups considered by Canadian intelligence agencies to pose a threat to the political, social or economic interests of Canada. Financial and human resources were diverted and increased to spy on Muslims at work, in their places of worship, and on university campuses.

Muslims came to represent the 'Other' who Canadians should fear or suspect to be violent or prone to violence because of their religious beliefs. This was not the result of any empirical or scientific studies. Rather, because the perpetrators of the 9/11 attacks were Muslims, all Muslims became guilty by 'association.'

In 2002, three Canadian Muslim men – Maher Arar, Abdullah Almalki and Ahmad Elmaati – were either rendered or arrested upon their arrival in Syria and Egypt, and later detained and tortured at the request and with the complicity of the Canadian government. A few years later, another Canadian man – Muayyed Nureddin – shared the same tragic fate of being detained, tortured and imprisoned at Canada's request. It took almost a decade before the Canadian government acknowledged its wrongdoing. However, this didn't stop Canada from enforcing the anti-terrorism legislation nor from continuing to arrest and convict Muslims under this legislation. So far, even though there have been several non-Muslim perpetrators of acts that meet the Canadian legal definition of terrorism and have often resulted in many more casualties – such as the Quebec city mosque shooting – Muslim individuals make up nearly all those charged and convicted under anti-terrorism legislation for which the threshold of guilt is lower than for any other criminal acts.

In the last two decades, several Muslim Canadians were detained abroad by oppressive regimes that used anti-terrorism legislation or the so-called "global War on Terror" to justify arresting, imprisoning and silencing political opponents, or individuals opposed to the regime. Canada kept its head in the sand and barely lifted a finger to help these individuals until public campaigns were organized by family, friends and human rights activists to release them.

That was the case of the Canadian citizen Abousfian Abdelrazik who spent about six years in Sudan, both in prison and eventually in the Canadian Embassy in Khartoum. Upon his return, he declared that CSIS had told him, "Sudan will be your Guantanamo." The Canadian government refused to deliver him a Canadian passport. They put up many obstacles for his return home, including threatening to charge anyone who contributed to his plane ticket with financial support of an individual on the UN 1267 terrorist sanctions list (even though Canada had urged the UN to remove Abdelrazik from it). In the end, a group of Canadian citizens defied the government and paid for Abdelrazik's plane ticket. Luckily, no one was charged.

Benamar Benatta is an Algerian refugee who arrived in Canada from the US in 2001 after his visa expired. He claimed refugee status in Canada but because he had been a pilot in the Algerian military, he was racially and religiously profiled. Canadian authorities turned him over to American officials who imprisoned him for five years even after he was cleared of any suspicion of terrorism.

Following the Arab Spring of 2011, Khalid Al Qazzaz, a Muslim permanent resident studying in Toronto, travelled to Egypt to work for the newly-elected Egyptian president. He was arrested and detained by the military following a coup in 2013. His Canadian wife and their four children were barred from travelling back to Canada, their assets were frozen by the Egyptian authorities and Canada did little to press the Egyptian authorities for his safe return. Eventually, he was able to return to Canada following a campaign by family members and civil society groups.

The Canadian businessman, Salim Alaradi, was kidnapped, tortured and arbitrarily detained by the United Arab Emirates in 2014 on account of his trade ties with Libya, and the influence and political interference of the UAE in that country. He was eventually freed and returned to Canada in 2016.

In 2019, Yasser Albaz, another Canadian businessman, was arrested in Egypt and imprisoned without charges until a campaign by his family and friends helped to release him and bring him home in July 2020.

If these men weren't Muslims, would they have been arrested, imprisoned and tortured? If these men weren't Muslims, would Canada have remained silent and reluctant in defending their rights, or worse, been complicit in the abuse of their rights? Just think of the Canadian government's outcry at the arrest of the two Michaels by China in 2018.

Meanwhile in Canada, in 2006, Muslim men were arrested and charged for planning to detonate truck bombs and attack the Canadian Parliament, the CBC headquarters and CSIS offices. The Toronto 18 was a group of eighteen Muslim Canadian men who were arrested and charged under the *Anti-terrorism Act*. Seven pleaded guilty, three adults and one youth were convicted and released after a few years, four adults and two youths were released after the charges against them were stayed, and one youth had his charges dismissed. Despite public knowledge that the group had been infiltrated and enticed to plan those attacks by an informant working for and paid by a CSIS agent, these individuals were portrayed in the media as homegrown terrorists and harshly convicted accordingly.

Then, using and stoking the fresh fear-mongering around Daesh, the former Harper government passed the *Anti-terrorism Act* of 2015, formerly known as the infamous Bill C-51. Once again, this bill violated fundamental rights, especially of Muslim Canadians, particularly through secretive new powers for CSIS, expanding and codifying the No Fly List, and creating vast new information sharing powers.

Over the following years, Muslim Canadians who travelled to military zones controlled by Daesh were automatically labelled terrorists. They have been denied due process and are now being held in indefinite detention, in conditions akin to torture and with little prospect of release, including many children born there.

This is what Islamophobia looked like to me during the past 20 years. We must unite in our resistance and opposition to these unjust and discriminatory laws so we can build a society free of Islamophobia.

Monia Mazigh is an academic, award-winning author and human rights activist. She was the ICLMG National Coordinator in 2015 and 2016. moniamazigh.wordpress.com

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What 20 Years of Injustice has Meant for Us

Sophie Lamarche Harkat

The following piece recounts the lives of Mohamed (Moe) Harkat and Sophie Lamarche Harkat in a nutshell for the past twenty years.

December 10, 2002. International Human Rights Day. A sudden arrest outside our apartment building in broad daylight under some bogus law no one knew about or understood. In the dark about the allegations and secret evidence. A call at my work announcing Moe's arrest and detention. Being on the verge of passing out when I find out it is related to terrorism. My mother remembering the sound of fear and panic in my voice since that day. Being on the front page of every national newspaper, on every radio station and TV channel. Being portrayed as the most evil person on the planet. Being worried I might never see him again. Afraid he could be deported at any time.

The stress of having to find a lawyer, when everyone refuses to take on any case related to terrorism, and having to pay a huge retainer before anything even happens. Detention without charge for 3.5 years. One year in solitary confinement, hundreds of hours waiting to see hubby in isolation, no access to fresh air or the outdoors for six months. No Quran or anything to read for the first few months, one shower a week, no access to a razor. Feeling like a terrorist before your first court appearance because you look like Bin Laden since you are unable to shave. Constant struggles with the prison guards to have our rights respected. Inhuman conditions of detention. Being humiliated, degraded and targeted by the staff, as well as by the media and the court. Never knowing what's coming next. Always in the dark about everything. Never being charged with a crime. Only allegations you cannot defend against. An informant that fails a lie detector test and another that has an affair with the Canadian Security and Intelligence Service (CSIS) agent. Countless hours in court and reading thousands of legal documents. Losing all confidence in the justice system. Years of our lives going to waste. Having to leave my good government job because they are uncomfortable with my becoming a public figure speaking out against my own government and security certificates. Having to move in with my mother again because I'm jobless and broke. Having to pay and borrow thousands of dollars to pay legal fees. Husband kidnapped from the detention centre with some of the worst conditions in Canadian history only to be moved secretly in a private plane accompanied by Royal Canadian Mounted Police (RCMP) agents to Guantanamo North, a prison built in Kitchener specifically for Security Certificate detainees, who were never charged. Portraying it as Fantasy Island because they got to wear their own clothing - no more orange jumpsuits - but they are hours away from their families, denied visits, and forced to endlessly ask for their basic rights to be respected. Their own private jail but with no benefits. No one gave a damn!

After 3.5 years of detention, the best news comes along. Moe is released on bail to his family. One hour after his release, we all regret making that decision while we are sitting around the table discussing our new reality with the Canada Border Services Agency (CBSA) supervisor. Toughest conditions in Canadian history. A GPS bracelet around his ankle that didn't come off for 7.5 years. A huge monitor tied to his belt that complements the bracelet. Surveillance cameras inside the home. Court appointed sureties with him at all times, seven days a week, 24 hours a day. I became a full-time jailer for my own husband. Prisoners of our own home. Not allowed to pass the property line. Reporters jumping the fence to take photos. Moe panicking because they are not ''pre-approved'' to be in contact with him. Curfew on the property, cannot cook on the BBQ alone, must always be tied to a surety's hip. CBSA calling in the middle of the night to check up on him. Reporting by phone to the CBSA. Phone intercepted and mail always monitored. Every visitor and family member (including my 80-year-old grandmother and newborn nephew) must be

Sophie Lamarche Harkat and Moe Harkat. Credit: Justice for Mohamed Harkat

Mohamed Harkat (foreground) and Sophie Lamarche Harkat (centre). Credit: rabble.ca

approved in advance before visiting. Several CBSA vehicles and officers parked in front of our home or in our own private driveway to monitor us. We get two to three pre-approved outings per week for up to four hours, you know… to buy toilet paper, medication, and stuff like that. Every location, street, road needs to be pre-approved in advance, often only to be rejected. Denied a birthday outing because we'll have speeches and that's too political. On a good day, only half a dozen CBSA officers follow us at the grocery store, restaurant, and while we are doing everyday mundane things. Officers sitting in a car for hours in front of my sister's house while we visit the new baby. Nonstop communications on their walkie talkies describing our every move. Surrounded by more security than the Prime Minister. Always dressed up in uniforms with bullet proof vests and carrying weapons… you know in case some senior comes over to say "Hi." This happened and Moe sweated his life away, afraid he was breaching his conditions. CBSA taking notes of every purchase. Attending a pap test with Moe sitting in the corner because he can never be left alone. We must share a public washroom or change room because he can never be left alone.

Being described as ''feisty'' (over a hundred times) during court appearances because I turned back to give them the evil look or was breathing harder than usual. Can't point in their direction as it "jeopardizes their security." Wanting to yell at them so many times but can't take that chance since I'm his main surety and his ''freedom'' depends on it. Unexpected raid at our house, while I'm in the shower, that lasted over six hours with 13 or more CBSA, two Ontario Provincial Police (OPP), three RCMP officers, sniffing dogs (for narcotics, currency, and explosives). House and lives turned upside down just because CBSA could ''lose their powers'' any day. Computer, texts and emails monitored, and the list goes on. Passing on a yellow light is considered a breach as it violates 'good behavior.' Simple U-turns considered suspicious because we are not allowed to use non-approved roads. CBSA officers following us to shows at the National Art Centre or to the movies, and simply enjoying themselves. Impossible for Moe to get a decent job to this day because CBSA agents like to park close by or monitor his every move. Still reporting in person 16 years later. At times, Moe wishes he was back in jail because it would be so much easier on everyone. Three Supreme Court challenges that were a complete let down. Several governments and ministers doing absolutely nothing, putting the file on the back burner or letting the process drag on. So many sleepless nights, we stopped counting.

Putting on hold buying a home because we have so many legal debts and both of us cannot get decent jobs after being demonized in the news for two decades. Putting on hold travelling and discovering the world. Not able to visit or see his mother and brothers for over 35 years. Starting a family late because we do not want them to live under jail-like conditions. Having multiple miscarriages and health scares because we're both getting too old. Never-ending health issues because of the constant stress. Cloud of deportation over our heads that never goes away. Losing family and friends because they prefer to believe the government even if the evidence does not exist or is kept secret. Gaining thousands more supporters and new friends who believe in social justice and in a fair trial. Having doubts in the justice system but continuing to hope. That has been our lives for the past 20 years.

Take action at iclmg.ca/stop-harkat-deportation and justiceforharkat.com

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Sophie Lamarche Harkat turned human rights activist overnight on December 10th, 2002. She has been fighting to save her husband from detention, deportation, to obtain justice and to protect human rights from Canada's security certificate regime and national security apparatus since. They have and continue to live under a cloud of secrecy and deportation for the past 22 years.

Online version & sources:
iclmg.ca/20years

Loss of Human Rights in the 'War on Terror': The Case of Hassan Diab

Roger Clark

We tend to see the 'War on Terror' largely as a 21st-century phenomenon, inextricably linked to 9/11 and the consequent war in Afghanistan. However, I want to reflect on this in light of a deadly bombing outside a synagogue that took place in Paris some 20 years earlier. Following this attack, Hassan Diab became a convenient target and a timely personification of the terrorist threat, particularly as defined by the West. This resulted in the outrageous miscarriage of justice of which Hassan Diab remains the victim today. France decided to initiate a trial driven by political convenience in April 2023, and shockingly – despite evidence to the contrary – convicted Hassan Diab *in absentia* that month.

On August 4, 1978, the *European Convention on the Suppression of Terrorism* entered into force. Essentially, in so doing, the member countries of the Council of Europe strived to reinforce cooperation both internally – through national prevention policies – and internationally – by modifying existing extradition and mutual assistance arrangements. Specifically, member countries declared themselves:

> Aware of the growing concern caused by the increase in acts of terrorism; wishing to take effective measures to ensure that the perpetrators of such acts do not escape prosecution and punishment; *convinced that extradition is a particularly effective measure for achieving this result* (emphasis added).

Unsurprisingly, Canada was already actively bringing its old and outdated extradition legislation into line with that of its European allies. The resulting *Extradition Act* came into force in June 1999. Its flaws and failings are now obvious to all, largely as a result of the experience of those who have been caught up in its 'rubber-stamping' mechanisms.

A bright light in this judicial darkness is the decision in September 2022 by the parliamentary Standing Committee on Justice and Human Rights to "undertake a comprehensive study on Extradition Law reform," seeking recommendations on "how to overhaul the current system." To coin a phrase, "if it's broke, you'd better fix it".

I see as no coincidence that the investigation into the deadly bombing of October 3, 1980, outside the synagogue on rue Copernic in Paris, was suddenly reactivated in 1999. It had lain dormant for almost twenty years. Unsourced and unverified secret intelligence mentioned the name 'Hassan Diab'. Eight years went by before France requested Hassan's arrest and extradition.

Now is neither the time nor place to analyze the five-year legal struggle which ended with Hassan Diab being put on a plane to Paris on November 14, 2014. He spent thirty-eight months in the Fleury-Mérogis prison, mostly in solitary confinement. The two anti-terrorist investigating judges in charge of the case concluded that there was no evidence to justify bringing Hassan to trial. He was unconditionally released and returned to Canada on January 15, 2018. Throughout all this, he was never charged and he was never tried. 15 years later, the nightmare continues with his conviction in France.

I'll close with a brief quote from Justice Robert Maranger's 2011 decision approving Hassan's extradition: "…the case presented by the Republic of France against Mr. Diab is a weak case; the prospects of conviction in the context of a fair trial seem unlikely."

That says it all.

Roger Clark is the former director of Amnesty International (Canada), a longtime activist working for the promotion, protection, and observation of international human rights.

Hassan Diab (centre left) is joined outside parliament by (left to right) lawyer Don Bayne; Rania Tfaily, professor and spouse of Hassan Diab; Alex Neve, then Secretary General of Amnesty International Canada; Hassan Diab Support Committee member Roger Clark; and ICLMG national coordinator Tim McSorley. Credit: Alex Neve

"I'd like to thank the ICLMG for its outstanding work over so many years. Tim and Xan continually earn our collective gratitude for building and growing this essential space where collaboration, partnerships and courage in the defence of human rights can thrive and become more effective."

Roger Clark

More information & ways to take action at justiceforhassandiab.org & iclmg.ca/diab-letter

Online version & sources:
iclmg.ca/20years

An Excess of Democracy and the Case for Hope

Matthew Behrens

After 20 years of working with the ICLMG on issues reflecting Canada's insidious role in perpetrating the worst 21st century human rights abuses, I remain optimistic and hopeful. My faith is built on a key lesson that can never be learned enough: "We do," as the late war resister David Dellinger reminded us, "have more power than we know."

That scares the hell out of secretive state security.

While we're rightfully concerned about each new iteration of repressive legislation and their increasingly elastic definitions of legality and morality, we seldom conclude that agents of state terror push such laws because they're afraid of us inspiring outbreaks of democracy and resistance.

That fear is reflected in huge resources devoted to state security surveillance of social movements. During the early 1980s anti-nuclear and anti-cruise missile resistance, the RCMP was incredulous that spontaneous protests were popping up, and their search for a Soviet cell coordinating the whole movement was as fruitless as it was ridiculous. Fast forward to the pre-pandemic uprisings of 2020, and Jason Kenney, Justin Trudeau and John Horgan parroted the same notion that the Indigenous rights solidarity movement had been "hijacked" by evil outsiders.

The late civil rights leader Ella Baker once reflected that her organizer's job "was getting people to understand that they had something within their power that they could use, and it could only be used if they understood what was happening and how group action could counter violence."

In 1973, direct democracy and participatory politics led the planet's leading power brokers (including members of Pierre Trudeau's cabinet) to form the Trilateral Commission. Their 1975 report, *The Crisis of Democracy*, [1] shivered with the conclusion that the social movements forcing real changes in those tumultuous times resulted from an "excess of democracy" that had to be reined in by the elites' viewpoint that "the effective operation of a democratic political system usually requires some measure of apathy and non-involvement on the part of some individuals and groups."

The Trilateral Commission concluded the dangers to "democracy" as they defined it — smooth functioning of Wall Street and Bay Street — come "not primarily from external threats […] but rather from the internal dynamics of democracy itself in a highly educated, mobilized and participant society. […] The problems of governance in the United States today stem from an excess of democracy. […] Needed, instead, is a greater degree of moderation in democracy."

The fact that state agencies continually push for more secrecy and repressive tools is a testament to how scared they are of small groups of us who call their bluff, and who question their racism, threat exaggerations and incompetence. State security agencies couldn't see a threat when a convoy of white supremacists came to overthrow the government because they were too busy trying to find links to Indigenous land defenders or Muslims or pacifists (they were also sharing information with their white supremacist brethren in the streets).

It's helpful to reflect on our victories, however modest. Security certificates are no longer used because we made it politically impossible to do so: a regime consistently used for decades suddenly dried up. The 2007 *Charkaoui* Supreme Court of Canada decision was a landmark moment in which stigmatized, demonized, racialized, securitized human beings finally had some of their humanity recognized — they had Charter rights like the rest of us. That was the result of years of organizing and sticking to our principles.

Protest against anti-terrorism laws in Edmonton, Alberta. Credit: Unknown

A few years after *Charkaoui*, the head of CSIS lamented our role in turning these men into "folk heroes." While this campaign showed we can seriously restrain state power, it also revealed how the hydra drew a few more heads, employing security certificate precedents to systematically integrate secret hearings into the inadmissibility stream for refugees and immigrants.

When we organized an anti-torture caravan in 2008 to support Abdullah Almalki, Ahmad El Maati and Muayyed Nureddin, the RCMP went into overdrive. Given that the state monitors our phones, they knew one of the men was unsure about joining. The night before we started, he learned his mother had been called in by secret police overseas and asked why her son might join the caravan. This act of intimidation angered him so much that he joined for a remarkably healing event as a whole community of non-targeted people provided loving support during the weeks we spent on the road. Later, we learned the RCMP opened a major surveillance and investigation project on the caravan labeled "Criminal Act by Terrorists."[2]

Labeling our work as "terrorist" is a reminder that, despite government, RCMP and CSIS assurances that they would never consider protests to be terrorism under Canada's anti-terrorism laws, this remains standard operating procedure[3] inside Canada's state security agencies, as it has been since long before Confederation. Those assurances didn't stop the RCMP from monitoring Indigenous rights groups, like Idle No More, as alleged security threats under Project Sitka.[4] Indeed, this equation of protest with terrorism is so ingrained within state security culture that no one even thought to redact the phrase from the caravan surveillance documents.

Ultimately, ICLMG and member groups show that principled resistance and a refusal to compromise on what's right makes a difference. Far too many organizations still deal out members of the communities they are supposed to represent in the Good Muslim/Bad Muslim dichotomy. But the refusal to be afraid has marked ICLMG with Roch, Monia, and now with Xan and Tim.

I fondly recall an introductory meeting with someone who had borne the brunt of a decade of horrific terrorism slander as they related their case to Tim and Xan. Neither batted an extra eyelash. They listened, they asked questions, and they asked what they could do to help. We can learn a lot from that.

Matthew Behrens is a writer and social justice advocate who works with the targets of state security repression.

Online version & sources:
iclmg.ca/20years

The Fight for the Return of Canadians Detained in Northeast Syria

Justin Mohammed

For the past four years, dozens of Canadian citizens – about half of whom are children – have been arbitrarily detained in Northeast Syria. Most have been living in squalid camps, in conditions that the *United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism* has found to constitute torture, cruel, inhuman, and degrading treatment or punishment. Their plight has, until very recently, gone under the radar of the Canadian public, media and political leaders. In stark contrast to others, such as Michael Kovrig and Michael Spavor who have become household names due to the laudable efforts of the Government of Canada to bring them home from China, the Canadians detained in Northeast Syria have been stonewalled with a multitude of justifications about why Canada cannot repatriate them.

From the moment that the ICLMG became aware of this situation, it has steadfastly stood up for the human rights of these citizens. In 2019, a coalition of academics, civil society organizations, and lawyers were convened to discuss how this situation could be addressed, with the ICLMG playing an active role in those conversations. After a year of government advocacy, gathering information from the detainees' relatives, and strategizing on ways to pressure the government into action, this coalition pushed the issue squarely into the public arena in January 2020, writing to Prime Minister Justin Trudeau and demanding that he take action on behalf of these citizens. Human Rights Watch followed up with a landmark report on the Canadian detainees in June 2020, providing a springboard for the ICLMG and others to continue advocacy on these cases. In the first half of 2021, both the House of Commons Foreign Affairs Committee and the Subcommittee on International Human Rights held hearings on the topic, during which Amnesty International, Save the Children, Human Rights Watch and others testified about the pressing need for action.

The first breakthrough came in October 2020, when a five-year-old orphaned girl was finally repatriated to Canada, and since then the ICLMG has played a leading role in sustaining the pressure on the Government of Canada. It spoke out against the secretive consular policy created by Global Affairs Canada that established an entirely separate framework for Canadians detained in Northeast Syria, and in June 2022, the ICLMG hosted a webinar highlighting the parallels of the Canadian detainees' situation with the unlawful detention carried out by the United States at Guantanamo Bay. Since then, a number of the Canadian detainees have been able to return but many remain trapped in Northeast Syria.

With limited action from the Canadian government, in December 2022, lawyers Lawrence Greenspon and Barbara Jackman took the case of the Canadian detainees to the Federal Court of Canada, seeking to force the government into action. Regrettably, the Government of Canada continues to deny that it has any legal responsibility towards this group of Canadians, despite holding the very keys that would put an end to the human rights violations they are suffering on a daily basis. This intransigence indicates that the lessons of commissions and reports of the past, such as the Arar Inquiry, the Iacobucci Inquiry, and the 2018 Auditor General's report on consular services, have not yet been learned. The scandalous treatment of the Canadians detained in Syria is sadly destined to be the next chapter in this shameful history.

Justin Mohammed is the former Program Manager (Campaigns & Advocacy) at Amnesty International Canada, and a former representative for Amnesty on the ICLMG steering committee.

Jack Letts' mother, Sally Lane, and social justice advocate Matthew Behrens at the Supreme Court of Canada. Credit: Free Jack Letts

Canada: Bring Them Home!

Xan Dagenais

On January 20, 2023, Federal Court Justice Henry Brown ruled that Canada must repatriate Canadians illegally and arbitrarily detained in Northeast Syria in conditions United Nations officials have found to be akin to torture. Brown wrote that the government was in breach of section 6 of the *Canadian Charter of Rights and Freedoms* – guaranteeing all Canadians the right to enter, remain in, and exit Canada – and must act "as soon as reasonably possible" to bring Canadians home. Since then, the government has repatriated several Canadian women and children, but not all Canadians.

The Canadian government filed an appeal and, disappointingly, the Federal Court of Appeal overturned the lower court's decision. The families of the Canadians left behind have recently asked the Supreme Court to reconsider its shocking decision not to hear their appeal and play its role as a guarantor of rights and justice, as the government is not doing so of its own accord.

The government continues to have no justification to refuse to repatriate all detained Canadians. It does not allege any of them engaged in or assisted in terrorist activities, and Justice Brown saw no evidence that any detainee had committed offenses contrary to Canadian law.

It remains crucial to send the government a strong message to act quickly. Every day the government fails to bring home these Canadians, it places their lives at risk from disease, malnutrition, violence, and ongoing armed conflicts, including bombing by Turkey's military.

Please take action and share widely: iclmg.ca/repatriate-all-canadians

Xan Dagenais is the Communications and Research Coordinator of the International Civil Liberties Monitoring Group

Kids on Canada's No-Fly List

Khadija Cajee

No-Fly List Kids (NFLK) is a group of Canadians with children or grandchildren whose names were erroneously flagged by Canada's 'No-Fly List' or Passenger Protect Program (PPP) under Canada's *Secure Air Travel Act* (SATA). NFLK's sole interest was to ensure that the *Charter* rights of all Canadians, including those wrongly affected by the PPP, were protected.

In 2016, we discovered that our six-year-old son was considered a high profile passenger under SATA. We tweeted about this, and that tweet thrust us into the national spotlight. Within days, other families started to come forward with stories of their own, some having kids younger than a year old who were impacted by the same situation. Having a common goal of drawing attention and finding a solution to this problem, our group was formed!

We soon discovered that the No-Fly List had been around for about 10 years, was haphazardly put together and relied on airlines, rather than the government, to screen passengers. The momentum necessary to get the government to change the system required the help of many human rights organizations, lawyers and others who had been advocating tirelessly on this issue for almost a decade with little success. One of these organizations was ICLMG.

At the time, airline personnel could not tell passengers that they were on a list. They had to make a phone call to Public Safety Canada to clear the identified passengers, including infants, before they could board the flight. Sometimes, as the kids got older, they were subjected to invasive security checks, passport confiscations and immigration interrogations which were intimidating and very scary. This issue did not only impact kids. While the government refused to say how many people were on the list, research pointed to thousands of innocent people being affected, including veterans, cabinet ministers, Senators, seniors, students, airline pilots and, mostly, just regular people trying to go about their lives.

We leaned on Monia and Tim and the ICLMG team for guidance, advice and support. The research and expertise they had already put into this issue was invaluable in our various engagements with government officials. From little things, like printing fact sheets for our Day on the Hill, to big things, such as accompanying us to high profile meetings with various Ministers and Senators, including the Senate Committee on Human Rights and many others, they were there with and for us in ways we could never repay.

In 2021, a new and fully functional redress system called the Canadian Travel Number was launched. This system places the no-fly screening mechanism fully into the government's control, distinguishes multiple people with the same name from each other and, crucially, allows Public Safety to tell parents or guardians that their child's name is not on the No-Fly List. They are, however, under no obligation to do so, and adults still cannot be informed whether or not they are on the list. A person only learns they are on the list if Public Safety gives the order to deny them boarding their flight, after which they are provided a letter acknowledging they are on the list and how to challenge their listing.

While the optimal solution is for the list to be abolished in its entirety – an opinion we share with the ICLMG – we would not have gotten the above meaningful reforms without the support of this amazing group of people.

Our engagement with the government still continues to this day albeit on a smaller scale. But the advocacy for the civil liberties of all people is still a full-time passion for the team at ICLMG, who continues this relentless pursuit. We have nothing but admiration and gratitude for their work.

Khadija Cajee is the co-founder of No-Fly List Kids and Conquer COVID-19. linkedin.com/in/kcajee

Members of the No-Fly List Kids campaign gather in Ottawa to press members of parliament for a solution. Credit: Karen Ahmed

Fighting to Abolish the No-Fly List

Tim McSorley

ICLMG has opposed Canada's No-Fly List since its inception in 2007. Over time, we have documented the deep problems with this system, including how it lacks a fair appeal process, allows unregulated information-sharing with foreign entities which can lead to human rights abuses, violates fundamental rights, and leads to racial, religious and political profiling.

We've done so through research projects like the Information Clearinghouse on Border Controls and Infringements to Travellers' Rights, which documented the experience of people in Canada dealing with the No-Fly List and other border controls. We have raised the issue in meetings with MPs, ministers and their staff, and highlighted it in multiple legislative briefs to parliament. Our backgrounder on the No-Fly List has consistently been one of the most visited pages on our website. We've also worked alongside impacted individuals, including the No-Fly List Kids and others, to advocate for meaningful changes along with the abolishment of the list.

Despite its nearly 20 year existence, the government has never conducted a review of the efficiency or impact of the No-Fly List. Like taking off our shoes and emptying bottles of water, it has become an accepted norm at airports despite no proof of positive impact, and troves of evidence of negative outcomes. The result is an anti-terrorism power that should simply be abolished, once and for all. *You can read more about the No-Fly List at: iclmg.ca/issues/canadas-no-fly-list*

Tim McSorley is the National Coordinator of the International Civil Liberties Monitoring Group

Upholding the Rights of Asylum Seekers

Janet Dench

The US-Canada Safe Third Country Agreement is about the same age as the ICLMG and has similar roots. In December 2001, in the wake of the 9/11 attacks, the governments of the US and Canada signed a *Smart Border Declaration and Associated 30-Point Action Plan to Enhance the Security of Our Shared Border While Facilitating the Legitimate Flow of People and Goods*. One of the action points was the Safe Third Country Agreement, designed to prevent most people from making a refugee claim at the US-Canada land border. People seeking protection from persecution and making a refugee claim were presented as a threat to security and were not considered to be a "legitimate flow of people".

The Safe Third Country Agreement is based on the principle that refugees should make their claim in whichever of the two countries they first arrive, because both countries are supposedly safe for refugees. Although the agreement works equally in both directions, in effect it is overwhelming about stopping people who are in the US from seeking protection in Canada.

The Canadian Council for Refugees, along with many other refugee rights organizations, and with the support of the ICLMG, has consistently argued that the US is not in fact safe for all refugees. Widespread use of detention, in horrific conditions, violates human rights and makes it extremely difficult for people to advance a refugee claim – they often can't find a lawyer and struggle with basic communication issues when trying to collect evidence to document their fears of persecution. US law requires people to make a refugee claim within a year of arrival in the country – many people don't immediately know how to make a claim or even that it might be relevant to do so in their situation. Women fleeing gender-based persecution frequently find the refugee door closed to them in the US – although the rules have changed several times over the last two decades, at no point has there been consistent and adequate protection for women because of how narrowly the US interprets the definition of refugee.

For all these reasons, the Canadian Council for Refugees, Amnesty International Canada and The Canadian Council of Churches launched a legal challenge of the Safe Third Country Agreement in 2005. The Federal Court upheld the challenge in 2007, but the decision was overturned by the Federal Court of Appeal, and the Supreme Court of Canada declined to hear the appeal.

When the Trump Administration came into power and immediately introduced shocking measures such as the "Muslim ban", many hoped that the Canadian government, which prided itself on welcoming refugees, would finally be forced to conclude that the US could no longer be considered safe for refugees. But, as we later found out through disclosures in litigation, the Canadian government had established no minimum standards below which the government would need to withdraw from the agreement. So the government continued with the fiction that the US was safe for refugees.

The three same organizations therefore initiated another legal challenge in 2017, along with a courageous Salvadoran woman and her children (other individuals later joined their case). This case followed very much the same path as the first time around: the Federal Court upheld our challenge (finding that the conditions in detention in the US violated the *Canadian Charter of Rights and Freedoms*) and then once again the Federal Court of Appeal overturned the decision.

The second time around, however, the Supreme Court agreed to hear the case! Thousands of pages of evidence and argument are now before the Court, which held its hearing in October 2022. As I write, we are awaiting the decision.

A woman with a stroller is intercepted by RCMP crossing into Canada between official points of entry. Credit: Daniel Case/Wikimedia

Meanwhile, in 2022, over 30,000 people crossed into Quebec at Roxham Road – not an official border point. They were arrested and processed. They did not want to cross irregularly – but this used to provide a way they could pursue a refugee claim in Canada, because the Safe Third Country Agreement did not apply in between Ports of Entry – until just recently!

In March 2023, Canada and the US extended the Safe Third Country Agreement to apply between Ports of Entry as well. This will not stop irregular crossings – it will simply make them more irregular, dangerous, and underground. We can expect to see an increased number of people hurt or even dying as they attempt risky routes across the border, including in deep winter. Unscrupulous smugglers will take advantage of the opportunity to make money out of people's desperation.

The fact that the revised agreement requires people not to make a refugee claim within 14 days of entering Canada means that people may be under the control of smugglers for two weeks, vulnerable to abuse, and knowing that if they flee the smugglers they will lose the opportunity to make a refugee claim.

Far from enhancing border security, the agreement makes everyone less secure – it promotes irregular crossing of the border and subjects people seeking safety to much greater risks. The agreement needs to die.

Janet Dench was Executive Director of the Canadian Council for Refugees until December 2022.

Online version & sources:
iclmg.ca/20years

A Victory for Citizenship Equality!

Tim McSorley

The ICLMG was among the first to denounce the *Strengthening Canadian Citizenship Act* (adopted in June 2014, formerly Bill C-24) as unconstitutional and anti-Canadian for discriminating against dual nationals by allowing the removal of citizenship for national security reasons. This law effectively created a two-tiered citizenship regime that discriminated against dual nationals, whether born abroad or in Canada, and naturalized citizens. These Canadians had more limited citizenship rights compared to other Canadians, simply because they or their parents or ancestors were born in another country. ICLMG supported a legal challenge against the law, writing:

> The ICLMG opposed Bill C-24 since it was tabled in Parliament. The Strengthening Canadian Citizenship Act is a step backward for our democracy and rule of law principle. With this new Citizenship Act, Canadians are divided into two classes: those who will keep their Canadian citizenship no matter what and those who can be stripped of their Canadian citizenship if some federal bureaucrats decide so. Thus, if you are born in Canada but you have parents or ancestors from another country, your Canadian citizenship is worth less. It can be revoked not by the court but by the government and this is unacceptable by any democratic standards.

An Act to amend the Citizenship Act and to make consequential amendments to another Act (formerly Bill C-6) was adopted in June 2017 and removed the grounds for the revocation of Canadian citizenship that relate to national security, effectively killing that two-tier citizenship regime.

Tim McSorley is the National Coordinator of the International Civil Liberties Monitoring Group

Information Clearinghouse on Border Controls and Infringements to Travellers' Rights

Patricia Poirier

The International Civil Liberties Monitoring Group launched the Clearinghouse project on June 18, 2008, which marked the first-year anniversary of the coming into effect of the Canadian no-fly list or the Passenger Protect Program. The aim of the project was to investigate the border control practices used to screen travellers at Canadian airports and Canadian-US border crossings, and their impact on the privacy, civil liberties and human rights of individuals living in Canada, whether citizens, landed immigrants or asylum-seekers.

We had been witnessing a growing number of border incidents, as well as a change in the nature of these incidents, coinciding with the implementation of the no-fly list program and the linking in real-time of Canadian and US law enforcement databases and watchlists. The well-documented racial and religious profiling and targeting of Muslims and members of Arab communities was now expanding to other groups, including academics as well as peace, labour and justice activists.

It could be said that the no-fly list program was the most visible initiative resulting directly from the growing efforts to integrate Canadian and US security systems within the framework of the 2001 Smart Border Declaration, and the subsequent 2005 Security and Prosperity Partnership. They included: the Nexus program, the National Risk Assessment Centre, the High-Risk Traveller Identification Initiative and the Integrated Border Enforcement Teams.

In December 2011, Canada and the US unveiled the Beyond the Border agreement and quietly began implementing initiatives towards establishing a North American Security Perimeter. This included expanding trusted traveller programs, as well as enhancing integrated law enforcement and information-sharing cooperation which raised many privacy concerns.

With some of our members and partners – the British Columbia Civil Liberties Association, the Canadian Association of University Teachers, the Canadian Labour Congress, the Canadian Union of Public Employees and the Ligue des droits et libertés – we wanted first-hand information that would inform our advocacy work and bring the issues of surveillance and watchlists to the attention of the public at large. The project combined research, policy analysis and first-hand accounts of travellers who were barred from flying, intercepted or detained. Over a two-year period, we filed access to information requests and met with government as well as with federal and some provincial privacy commissioners and their staff.

We found and analyzed countless reports from both sides of the border regarding the dizzying number of agreements, measures, programs or databases of the Canada Border Services Agency, the Canadian Air Transport Security Authority, the RCMP, Transport Canada and the Canadian Security Intelligence Service. To find out how these different programs and regulations were impacting travellers, we set up a website and a toll-free phone number to allow people to report their encounters with airlines, transport and border officials. The information collected was kept confidential unless participants agreed to be identified. Over 70 stories were thus collected.

We released the 55-page final report[1] in February 2010, on the eve of the opening of the Vancouver Winter Olympics. It was particularly timely as there were several reports of visitors who were questioned and detained upon their arrival at the local airport or at the Canada-US border. Free speech activists were especially targeted, including well-known US broadcaster Amy Goodman. Our report listed the growing array of databases and watchlists used to keep tabs on North American travellers, described how information was collected, sifted, cross-referenced, stored and shared with

Illustration made for Human Rights Watch in 2021. Brian Stauffer

government agencies on both sides of the border, and with other foreign governments.

Since September 11, 2001, identifying, assessing and mitigating risk were central to border management practices. The CBSA had already acknowledged that its goal was to create a "virtual border" that is closest to the possible source of risk, and away from the traditional physical border.

We found that:

- Racial and religious profiling is a fact of life at the Canada-US border
- There was a real potential for abuse and violation of travellers' rights due to the discretionary and arbitrary powers granted to officials of the CBSA
- Most people will never know why they are targeted
- There was no credible redress mechanism for passengers who were repeatedly questioned, detained and sent to secondary screening at the airport, or for individuals "randomly" stopped or turned back at the border
- Many, especially Muslims, said they no longer travelled outside Canada for fear of being targeted and that Maher Arar's ordeal was often on their minds
- The lack of any meaningful redress mechanism exacerbated the potential for abuse and violation of Charter rights, notably the rights to privacy, mobility and equality

The ICLMG recommended a number of actions to the government and members of Parliament, who had virtually ignored the issue of the no-fly list since its inception, including the following:

- The Government should acknowledge that racial and religious profiling is a determining factor in the way individuals are treated and caught by no-fly lists and other watchlists. It must review these unconstitutional practices that violate the *Canadian Charter of Rights and Freedoms.*
- The no-fly list program (which was expanded by the imposition of the US Secure Flight Program on Canadian airlines planned for December 2010), should be reviewed by Parliament in light of the Charter because of a lack of due process and judicial review.
- An independent watchdog should be set up to monitor the Canada Border Services Agency in light of its discretionary and arbitrary powers, and the lack of any accountability mechanism, as recommended by Justice O'Connor in his 2006 inquiry into the case of Maher Arar.
- Parliament should address concerns over privacy and the deployment of biometrics and other technologies targeting travellers.

Finally, our report rightly predicted that the situation would be made worse by the North American Security Perimeter Agreement (released in December 2009) which for all practical purposes established one harmonized border protection and national security regime for all of Canada and the US.

In August 2022, the Federal Court upheld the constitutionality of the no-fly list, saying it did infringe on mobility rights but that the breach was justified. It ruled: "Ensuring safety in air transportation and limiting air travel for terrorist purposes necessarily involves some infringement of mobility rights." We disagree.

ICLMG continues to fight to abolish Canada's no-fly list, end Canadian government compliance with the US Secure Flight program, and establish an independent complaint body for the CBSA.

Patricia Poirier is a former journalist who has been involved with human rights, justice and privacy issues as a researcher and communications consultant in Ottawa, Moscow, Jerusalem and Montreal where she volunteers.

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Without Effective Review, Human Rights Remain Tenuous

Alex Neve

Without transparency and accountability, human rights violations are virtually inevitable. And without meaningful review and oversight, transparency and accountability remain elusive. Nowhere is this more acutely so than in the realm of national security, where secrecy pervades.

That is why it was so crucial that, as part of the mandate of the *Commission of Inquiry in the Actions of Canadian Officials in Relation to Maher Arar*, established in 2004, Justice Dennis O'Connor was tasked with making recommendations for an independent, arm's length review mechanism for the RCMP's national security activities. In his report, issued in December 2006, he succinctly described why that was so important:

> In the national security context, in which much police activity must remain secret for legitimate reasons, the issue of public confidence and trust is especially important. In a free and democratic society, even legitimate claims of secrecy can raise understandable concerns and suspicions. In the national security environment, the public must have confidence that independent and respected people will see what the public cannot see and ask the difficult and informed questions the public cannot ask.[1]

The issue of national security review had arisen early in the campaigning effort to free Maher Arar from unlawful detention in Syria and, after his release, to address the growing concerns about the role played by Canadian police and national security agencies in the human rights violations he had suffered at the hands of US, Jordanian and Syrian officials.

It became abundantly clear that there was nowhere Mr. Arar's family could turn to make a complaint and have it effectively and independently addressed while he was still imprisoned and in need of relief. It was equally clear that there was no body that could investigate after the fact, provide reliable answers in satisfaction of Mr. Arar's right to know, and build public confidence that a similar injustice would not occur again.

As such, the ICLMG and a number of other human rights organizations and advocates found themselves delving into an area they had rarely considered. What national security review or oversight bodies or processes were there in Canada? How effective were they? What were the gaps? And most crucially, what could be done to strengthen national security review and oversight in the country.

Certain themes quickly became clear. First, the mandate and powers of the existing review bodies varied considerably and were deficient in many respects. That was certainly so with what was known at the time as the Commission for Public Complaints against the RCMP (CPC), which had very little power to compel the RCMP to cooperate and comply. Second, there were important gaps, most notably the absence of an independent body reviewing the activities of the Canada Border Services Agency (CBSA), which plays a significant role in national security operations. And third, there was the status quo of agency-specific review bodies – the CPC reviewing the RCMP,[2] the Security Intelligence Review Committee reviewing the Canadian Security Intelligence Service (CSIS), and the Communications Security Establishment Commissioner reviewing the CSE. This resulted in disconnected siloes of review at a time when the agencies themselves were increasingly operating in a coordinated and even integrated manner.

Justice O'Connor recommended a comprehensive overhaul of national security review in the country, including enhanced powers for review bodies, extension of independent review to all agencies involved in national security operations, and establishment of an integrated committee to bring all review bodies together.

The ICLMG made important contributions to the Arar Inquiry, notably in the examination of options for review of the RCMP's national security activities. ICLMG made thoughtful submissions and played a lead role in mobilizing the participation of other human rights organizations. Without a doubt, that involvement had an impact on Justice O'Connor's recommendations.

But the advocacy work was far from over, something that the ICLMG has experienced frequently over these past twenty years. The struggles to uphold human rights in the world of national security are long battles.

Justice O'Connor's report was issued in December 2006, but it was eleven years before the National Security and Intelligence Committee of Parliamentarians (NSICOP) was instituted in 2017, and thirteen years before legislation to establish the National Security and Intelligence Review Agency (NSIRA) was passed in 2019.

Importantly, ICLMG did not relent over those years, and played a central role in keeping the issue of reforming national security review processes on the public, media and political agenda.

One unfinished piece of business has remained, however, as there is still no independent review body to oversee the CBSA. It is a glaring gap when it comes to independent review of law enforcement and national security operations in Canada. On this, also, ICLMG has continued to maintain pressure. Bill C-20[3] is currently before the House of Commons. If passed, it will replace the current Civilian Review and Complaints Commission for the RCMP with a new body, the Public Complaints and Review Commission, that will have a mandate to review both the RCMP and CBSA.

All of this very much remains a work in progress. NSICOP and NSIRA are still relatively new. Bill C-20 is not yet law. But the ICLMG has undeniably played a key role in strengthening national security review in the country.

Meanwhile, individuals and families who have been wronged in the course of Canadian national security operations are still compelled to turn to the courts and to public advocacy campaigns in order to obtain the answers, accountability and redress to which they are entitled. That is currently the case, for example, with respect to Hassan Diab, Abousfian Abdelarazik and approximately 20 Canadians abandoned in detention camps in NE Syria. ICLMG's role in supporting these individuals and their families, and serving as a point of coordination for campaigning by other human rights groups and advocates, has been and continues to be crucial.

Over these past twenty years, there have been notable, albeit far from complete, advances in reinforcing the fundamental principle that human rights should not be sacrificed to national security. Strong, effective and independent review of national security agencies is key to further progress in upholding human rights. The ICLMG has been at the forefront of the gains obtained, and will undoubtedly play an essential role in meeting the many challenges that remain.

Alex Neve is a Senior Fellow at the University of Ottawa's Graduate School of Public and International Affairs and an adjunct professor of international human rights with the faculties of law at Dalhousie University and the University of Ottawa. He was the Secretary General of Amnesty International Canada between 2000 – 2020.

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Facial Recognition Technology: Rights, Risks and Required Regulation

Brenda McPhail

Facial recognition technology (FRT) carries the risk of annihilating our right to anonymity in public and quasi-public spaces. It sounds alarmist. It sounds hyperbolic. But it's neither. It's simply an observation grounded in the promises made by makers of FRT tools themselves. NEC Corporation's NeoFace Watch technology promises the ability to "process multiple camera feeds extracting and matching thousands of faces per minute."[1] Clearview AI's controversial (and, in Canada, illegal[2]) facial recognition software runs against a database of over 30 billion images scraped from the internet.[3]

To understand the dangers, it's essential to understand how facial recognition technologies work. FRT is a type of biometric (that is, body-based) technology that uses artificial intelligence (AI) algorithms and other computational tools to identify individuals through their facial features. FRT functions by extracting biometric information based on key facial characteristics and makes comparisons between live and stored biometric templates in databases. Or more simply, it uses our faces in a technologically-enabled matching process to figure out who we are. Notably, there are a number of studies that indicate that some FRT tools are less accurate on faces that are neither white nor male, leaving everyone who is neither at greater risk of misidentification.[4]

There are different ways this technology may be used. The most extreme version – live facial recognition in the streets of our communities – is not, to the best of our knowledge, currently used by Canadian police; although it has, we know, been tested at Toronto's Pearson airport.[5] But FRT to compare so-called "lawfully collected" images against mug-shot databases is increasingly used by police forces across Canada, largely without notice, meaningful consultation, or effective public oversight or accountability.

And of course, it's not just police or national security forces who want to use it. Facial recognition is emerging in a variety of ways in the private sector, with documented uses ranging from live scanning for alleged shoplifters in the image feed from Canadian Tire security cameras[6] – a story that hit the news when an Indigenous man was wrongfully identified – to checking student identity for online exams, to potentially paying for groceries with a face scan connected to a payment card.[7]

The use of FRT is a human rights issue that goes well beyond privacy concerns. Privacy is an enabling right—think of it as a gateway. Once the privacy gates are thrown open, once we lose control over information about ourselves (particularly something such as our face which is so fundamental and integral to who we are), the use of that information has impacts on other democratic, Charter-protected rights, most particularly freedom of expression, association, and equality rights. When we're watched, and known, we may be less likely to speak up on controversial issues. We may be less likely to gather to protest and stand up for causes we believe in. When we're watched, and known, all the discriminatory impacts of systemic racism, sexism, ableism and socio-economic exclusion built into social systems, particularly security systems, may be exacerbated. FRT makes the surveillant gaze – so often disproportionately directed at those who are racialized or marginalized – more effective, and shifts it from "we saw you" to "we know who you are."

If residents of Canada become unable to move about their communities as just a face in the crowd, that fundamentally changes the nature of the society in which we live. In a rights-respecting democracy, we expect freedom from routine, indiscriminate observation – never mind identification – by the state; an expectation vindicated by rulings at the Supreme Court of Canada.[8] Facial recognition has the potential to disrupt if not eliminate that expectation. So too

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would the presumption of innocence, a core democratic principle, be eroded if FRT were to be used indiscriminately in public spaces. And lest we think the possibility unlikely, something that might only happen in an authoritarian state, our Five Eyes ally, the UK, is actively experimenting with live FRT.[9]

The potentially wide application of FRT, the extensive range of actors who want to use it, and its ability to be secretly implemented using existing security cameras, make it imperative to have the necessary public conversations regarding whether there are uses of FRT that are acceptable in our society. If there are, which ones are we willing to allow, and how should they be regulated to mitigate any risks? The discussion has begun with the recent study and report by the Parliamentary Standing Committee on Access to Information, Privacy and Ethics (ETHI), where the Canadian Civil Liberties Association (CCLA), ICLMG and others made detailed recommendations. The report's 19 recommendations reflect some of our concerns, including a call to implement a federal moratorium on using FRT until a regulatory framework concerning uses, prohibitions, oversight and accountability mechanisms, and privacy protections is democratically debated and put in place.[10]

That's the correct course of action, given what is at stake. In February 2023, the government issued its response to the report, which failed to address the severity of the challenges posed by FRT and artificial intelligence. Civil society is rallying to fill that gap. A coalition of groups and individuals from across Canada, led by CCLA and ICLMG among others, has come together under the banner of the "Right 2 Your Face Coalition," with the goal of crafting impactful advocacy on regulating this dangerous technology and ensuring that a wide range of public-interest perspectives are integrated and promoted before decision-makers. In an open letter, the new coalition highlighted several key concerns with the government's response: it ignores the calls for a federal moratorium on the use of FRT, it fails to assume a leadership role in responsible tech policy, and it relies heavily on the proposed Bill C-27 (the *Digital Charter Implementation Act, 2022*) as the catch-all solution, despite that Bill's failure to adequately protect individuals' privacy rights or to rein in artificial intelligence tools.[11]

Canada needs a rights-based approach to crafting new federal and provincial cross-sector laws for biometric protections, and also needs to update existing laws including the *Canadian Human Rights Act* and the *Privacy Act,* to appropriately govern and, in cases of mass surveillance, prohibit FRT use. There are many examples globally where biometric protective legislation has recently been enacted or is under consideration that provide a template, including a Canadian example, in Quebec.[12] To get it right, the process must begin with proactive consultation with those communities most likely to be disproportionately impacted by the technology.

There is a policy window to act, but it's closing rapidly as FRT gains ground, often quietly and covertly, across the country. People in Canada deserve the freedom to go about their days unidentified. As the ETHI Committee rightly notes in their report: "Without an appropriate [legislative] framework, FRT and other AI tools could cause irreparable harm to some individuals."[13] The risks are obvious. The rights engaged are multiple. The time for a social and political response is now.

Dr. Brenda McPhail does research and advocacy at the junction of privacy and technology, and is the Director of Executive Education for the Master of Public Policy in Digital Society program at McMaster University. Right2yourface.ca

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The ICLMG and Surveillance Studies at Queen's University

David Lyon

The ICLMG was founded in response to the aftermath of 9/11, with its global search for terrorists, facilitated in part by massive surveillance initiatives. During the next few years, what was then known as The Surveillance Project, at Queen's University in Kingston, began a fruitful partnership with the ICLMG, initiated by Roch Tassé, the group's first National Coordinator. The concern with state and especially security surveillance was maintained throughout several major research projects and ensuing publications.

At Queen's, we were excited to be working with an organisation devoted to maintaining civil liberties in Canada and to blowing the whistle when such liberties were undermined through inappropriate surveillance activities. The need for such work was patently clear from 2002 when Canadian telecoms engineer Maher Arar was detained at JFK Airport, New York and then transferred to Syria, where he was held in inhuman conditions, interrogated and tortured. Erroneous surveillance information was at the source of the problem.

Roch Tassé, representing the ICLMG, took part in research projects conducted at Queen's University early on. Workshop contributions by the ICLMG appeared in books such as *Global Surveillance and Policing: Borders Security, Identity*[1] and in articles such as "Airport screening, surveillance and social sorting: Canadian response to 9/11 in context."[2] Other contributions include participation in Colin Bennett and David Lyon's edited *Playing the Identity Card: Surveillance, Security and Identification in Global Perspective*[3] and in Kirstie Ball and Laureen Snider's edited collection, *The Surveillance-Industrial Complex*.[4] The ICLMG collaborated with Queen's University's Surveillance Studies Centre (SSC) which formally opened in 2009.

In 2015, Monia Mazigh, ICLMG's newly appointed National Coordinator, worked with the Queen's SSC on the New Transparency project.[5] In 2016, Tim McSorley, ICLMG's next National Coordinator, became involved as a partner with the Big Data Surveillance (BDS) Project, and presented in a workshop which later became a chapter in the book *Big Data Surveillance and Security Intelligence: The Canadian Case*[6] published in 2021. The chapter, co-authored by Xan Dagenais, ICLMG's Communications and Research Coordinator, is entitled "Confronting Big Data: Popular Resistance to Government Surveillance in Canada since 2001". The ICLMG also presented in the last BDS conference and participated in the final BDS report, which was published in 2022: *Beyond Big Data Surveillance: Freedom and Fairness*.[7]

The Big Data Surveillance project was the culmination of many years of working with partners like the ICLMG and focused on the massive growth in "dataveillance" in every area of life. We explored together the use of massive troves of data that became available as social media users unwittingly offered details of their lives to platforms such as Google, which quickly realized there was a profit to be made with the data. Today, data is also sought for policing, national security and other government-related purposes, which raises acute civil liberties as well as data justice and digital rights issues. Big Data—now augmented by AI—also plays a significant role in perpetuating social inequalities along familiar lines of class, race and gender.

Our research partnership findings have had a real impact, not only through academic publications and op-eds or media interviews, but also by contributing to the regulation of platform companies, to popular resistance to some of their most negative effects, and to the quest for alternative ways of handling data - not merely data "on" people, but "for" and "with" those whose data is collected, analyzed and acted on. While our research includes international partners, we've always worked to bring home the challenge of today's surveillance to those living in Canada, through freely available and accessible writings.

FLICKR/Kate Kehoe

The most recent report, *Beyond Big Data Surveillance: Freedom and Fairness*, for example, highlights the lopsided nature of information, whereby organizations "know" more and more about us, while we know less and less about what they are doing. The report refers to this as "tangled surveillance", where very complex technologies operate in ways that are obscure to most of us and yet are only met with very weak and inadequate instruments that are unable to limit their negative power. Furthermore, the report indicates which groups are most exposed and vulnerable to "big data surveillance."

But these are just the technical aspects of our partnership between the SSC and the ICLMG. Being involved in common projects, with like-minded people, is what makes this collaboration magical. The SSC is an academic research group; the ICLMG is a politically active coalition of civil liberties organizations. But we share the common goal of understanding and regulating surveillance which is effectively addressed by working together. It is a worthwhile, mutually beneficial relationship to which we each contribute and for which both parties are grateful. We would each be poorer without the other.

While our respective members do academic and advocacy work, together we work towards the same goals with complementary tactics, and this is what makes the partnership so meaningful and so fulfilling. So thank you, Roch, Monia and Tim—along with those who have worked with you at ICLMG—for being willing to partner with us at the SSC. Our work has been all the more grounded for what you've taught us, and we believe that your work has been enhanced by the results of our research.

Best wishes for the next 20 years!

David Lyon is Professor Emeritus of Sociology and Law at Queen's University, Kingston, and author of many books, most recently Surveillance: A Very Short Introduction (Oxford 2024).

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COVID, Surveillance and Defending Privacy Rights

Xan Dagenais

When the COVID-19 pandemic hit, we were all in shock. The news that the government was working on the COVID Alert app, an application that would track our infection status and who we had been in contact with, immediately triggered alarm bells among civil society. We are all too familiar with the government reacting too quickly to a crisis and adopting new laws or measures that infringe on people's freedoms and human rights. And once those are in place, it's much harder to backtrack, especially when those laws and measures give more power to the state and its agencies.

We therefore had to react quickly, especially since, to our knowledge, no other civil liberties organization was looking at the COVID app. After meeting with the Director of the Privacy Management Division of Health Canada to discuss our concerns, we were able to secure a commitment from the government that the COVID app would not collect personal information, and that national security agencies would not be involved in COVID surveillance or have access to COVID information.

We also co-wrote a statement listing seven principles to ensure that government efforts to combat COVID-19, particularly when considering any kind of enhanced digital surveillance or data collection, respected privacy, and we met with the Justice Minister to discuss them. We then created a video and launched a letter-writing campaign in support of the joint statement, and thanks to a subsequent joint open letter, the federal government delayed the release of the national contact tracing app until the Privacy Commissioner had examined and approved it. Finally, we joined 300 organizations and individuals to call on all levels of government to strengthen human rights oversight amid the pandemic.

Xan Dagenais is the Communications and Research Coordinator of the International Civil Liberties Monitoring Group

Mobilizing Against Surveillance on the International Scene

Maureen Webb

2005: ICAMS campaign

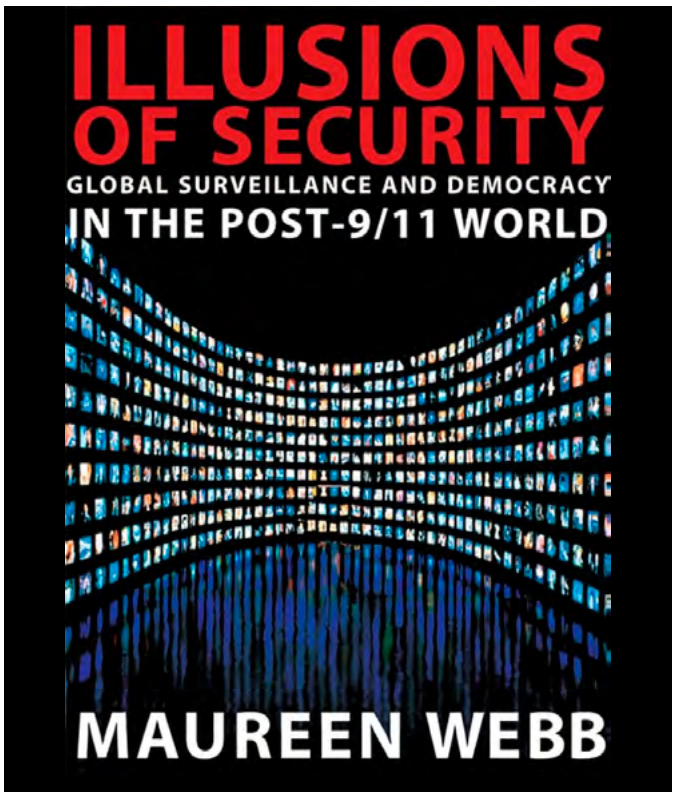
In 2005, ICLMG organized an Ottawa summit of NGOs from around the world to explore concerns about governments' increasingly globalized 'War on Terror' measures.

Due largely to the relationships that then-ICLMG national coordinator Roch Tassé and Brian Murphy, an ICLMG steering committee member, had built over the years, we were able to get big players, including the EU's Statewatch, Walden Bello and his group Focus on the Global South, the American Civil Liberties Union, the US Center for Constitutional Rights, and the Quebec Ligue des droits et libertés, to come to Ottawa for four days and to engage in in-depth discussions about what was going on in our respective jurisdictions.

We saw governments bringing in similar measures, working in a coordinated, lockstep fashion, and through opaque, unaccountable supranational bodies to bring in measures without any democratic debate at the national level. And, we felt the dots in this pattern – this new dark turn in global governance – had to be connected, understood and countered on an international scale by an international coalition of local civil society groups.

I think that the work done that week was pivotal because, coming together from our respective countries, we were able to see the 'War on Terror' for what it was: an anti-democratic coordinated power grab, laying the ground for the erosion of national sovereignty and nationally guaranteed constitutional rights for decades to come.

You could say, the global surveillance/industrial complex developed their playbook and infrastructure during the years of the war on terror and successfully convinced populations to turn these on "the Other" (at that time, Muslims and, in many countries, political opponents). And, over the past three years, this same surveillance/industrial complex has been experimenting on turning a similar playbook and infrastructure on "the rest of us" – with well-along-the-way plans for making digital ID and central bank digital currency the foundation of a new economy – and has had chilling success in getting people to acquiesce to the kind of "nudge" and "social credit" systems that will turn our democracies into heavily gated and controlled surveillance societies. While many have been overlooking these developments, those of us who've been in the trenches fighting national security surveillance overreach for the past twenty years will readily recognize the emerging regime's antecedents and its dangers.[1]



Illusions of Security by Maureen Webb. City Lights Publishers

Vicente Méndez

During the four days of the Summit, we conceived and agreed to collaborate on an international campaign against mass surveillance (ICAMS) for which Ben Hayes of Statewatch and I wrote the core analysis.

Co-sponsored by the organizations at the Summit, the campaign was launched simultaneously in San Francisco, Ottawa and London in April 2005. It was then presented at the World Social Forum in Porto Alegre. Nearly 300 civil society organizations signed on to the campaign's Manifesto within the following year.

The people who were involved in the 2005 Summit became close colleagues, collaborators, and trusted advisors to ICLMG. Many of them were back in Ottawa a few years later for a colloquium of international experts organized by ICLMG and the University of Ottawa Faculty of Law to draft the *Ottawa Principles* – a codification of the main areas of international law relevant to government counter-terrorism measures. One of the lessons learned from the 2005 Summit initiative was that there is no substitute for in-person, working relationships. Bringing representatives from each of those groups to Ottawa was an investment that paid off for years to come.

2006: International Conference of Privacy Commissioners

In 2006, Roch Tassé and Patricia Poirier organized the Civil Society Forum that ran parallel to the International Conference of Privacy Commissioners in Montreal. The Forum's recommendations picked up on the content of the ICAMS campaign Manifesto and, in 2009, the Manifesto was largely adopted at the civil society proceedings of the International Privacy Commissioners' Conference in Madrid, and reformulated as the *Madrid Declaration of Global Privacy Standards for a Global World*.

2007: Illusions of Security

Between 2005 and 2006, I wrote a book based on the analysis of the ICAMS campaign, *Illusions of Security: Global Surveillance and Democracy in the Post-9-11 World*, published in 2007 by San Francisco's City Lights press, to further influence policy and raise public awareness on 'War on Terror' surveillance issues.

Media included interviews with Democracy Now!, CBC's The National with Peter Mansbridge, BBC's World Service, Chicago Public Radio, Air America, the Ottawa Citizen, Montreal Gazette, Mexican TV, Barcelona's el Periodico, the Winnipeg Free Press, and even Playboy magazine. Venues I spoke in included the Chicago Council on Global Affairs, the World Affairs Council of California, Canadian Association for Security and Intelligence Studies International Conference (with CSIS, FBI, CIA, and MI5 attending), the International Investigative Journalists conference, film festivals, and numerous universities – to give you an idea of the reach.

Much of what was predicted about global surveillance in the 2005 ICAMS campaign and my 2007 book came true and was confirmed in the 2013 Snowden leaks. And, be aware: surveillance technology has made quantum leaps since the time of Snowden's revelations, making these digital ID systems we've been seeing during the pandemic and in recent global governance plans, in my view, the civil liberties fight of the century.

Maureen Webb is a constitutional and human rights lawyer and the author of Coding Democracy (MIT Press, 2020) and Illusions of Security (City Lights, 2007). mitpress.mit.edu/author/maureen-webb-28478 & ubc.academia.edu/MaureenWebb

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Government Proposal to Fight "Online Harms" Presents Dangers of its Own

Tim McSorley

Over the past two decades, many of us have come to rely on online platforms for basic necessities, communication, education and entertainment. Online, we see the good – access to otherwise hard to find information, connecting with loved ones – and the bad. It often combines the harms we know so well, including hate speech, racism, misogyny, homophobia, transphobia, the sexual exploitation of minors, bullying and incitement to violence, with new forms of harassment and abuse that can happen at a much larger scale, and with new ways to distribute harmful and illegal content.

Many social media sites have committed to addressing these harms. But business models that focus on engagement and retention – regardless of the content – have proven ineffective at doing so, with some studies showing that it is in their business interest to continue feeding the most controversial content. When these online platforms do remove content, researchers have documented that it is often those very communities that face harassment that face the most censorship. Governments around the world have also used the excuse of combating hate speech and online harms – such as "terrorist content" – to enact censorship and silence opponents, including human rights defenders.

The Canadian government had been promising to address this issue since 2019, framing it explicitly around fighting "online hate." The government eventually released its proposal to tackle online harms in late July 2021, alongside a public consultation. There were immediate concerns with the consultation taking place in the dead of summer with an imminent election on the horizon. When the election was called a few weeks later, round tables with government officials who could answer questions about the proposal were canceled.

While the government's approach was bad, the proposal itself was worse. As cyber policy researcher Daphne Keller described it, Canada's original proposal was "like a list of the worst ideas around the world – the ones human rights groups… have been fighting in the EU, India, Australia, Singapore, Indonesia, and elsewhere."

ICLMG's central concern with the government's approach has been around the inclusion of "terrorist content." Since 2001, we have seen how the enforcement of anti-terrorism laws has led to the violation of human rights, especially because its definition can be twisted to suit political ends. Yet under the government's initial proposal, social media companies would have been expected to identify "terrorist" content through mass surveillance, act on any content reported by users within 24 hours or face penalties up to millions of dollars, and required to automatically share information with law enforcement and national security agencies, both privatizing and expanding the surveillance and criminalization of internet users. The proposal even put forward new warrant powers for CSIS that would go far beyond addressing "online harms." It was a recipe for racial and political profiling, particularly of Muslims, Indigenous people and other people of color, and for the violation of their rights and freedoms.

In February 2022, the Ministry of Heritage released a "What We Heard" report in which they recognized many of the valid concerns with the government's approach. They announced a new consultation process led by an expert advisory group that would review these concerns and propose advice on what the government's approach should be.

Various groups, including the ICLMG, continued working together to respond to the government's proposals and to develop ideas on how best to fight online harms. We published op-eds and met with government officials and MPs. In March 2023, we helped draft a group position

document on core guiding principles for any future legislation, including "red lines," that was sent to the Minister of Heritage and shared with opposition critics.

Nearly two years after sharing its initial proposal, in late March 2024, the government introduced Bill C-63 to create the *Online Harms Act*. The bill has proven controversial in large part because it also seeks to amend the *Criminal Code* and the Canadian Human Rights Act in ways that raise civil liberties and human rights concerns.

Specifically in regards to online harms, though, the analysis and advocacy of the ICLMG and others has resulted in a much better bill than would have been expected in 2021. In particular:

- While still including seven different categories of harms, it no longer proposes a simple "one-size fits all" approach.
- There is no explicit requirement that would require platforms to monitor all content in order to identify and remove harmful posts.
- The main focus is on the regulation of platforms, in the form of obligations to create and follow online safety plans, and not on policing all users.
- Except for content that sexually victimizes a child, there is no requirement for mandatory reporting of content or users to the RCMP or CSIS.
- There are no proposals to create new CSIS warrant powers.
- There are greater rules around platform accountability, transparency and reporting.

However, there remain serious areas of concern:

- The proposed category of "content that incites violent extremism or terrorism" is, by its nature, overly broad and vague.
- Given there is a nearly identical, and more specific, harm of "content that incites violence," a terrorism-focused harm is unnecessary and redundant.
- While not explicitly requiring platforms to proactively monitor content, it does not disallow such actions either.
- Platforms would be required to preserve data relating to posts alleged to incite violence, violent extremism or terrorism for one year, so that it is available to law enforcement if needed for an investigation.
- The proposed Digital Safety Commission, which would enforce the rules under the *Online Harms Act*, is granted incredibly broad powers with minimal oversight.
- A lack of clarity around hearings and investigations could allow for malicious accusations of posting "terrorist content," and uncertainty around recourse for those whose content is erroneously taken down by platforms.

This is clearly a complex problem, and it is easier to point out flaws than to develop concrete solutions. What appears clear, though, is that empowering private online platforms to carry out greater surveillance and content removal not only fails to address the heart of the issue, but creates more harm. Instead, governments must invest in offline solutions combatting the roots of racism, misogyny, bigotry and hatred. Just as importantly, governments must address the business models of social media platforms that profit from surveillance and use content that causes outrage and division as a way to drive engagement and to retain audiences. So long as there is profit to be made from fuelling these harms, we will never truly address them.

Tim McSorley is the National Coordinator of the International Civil Liberties Monitoring Group

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IN CLOSING

Xan Dagenais & Tim McSorley

We hope this overview of the last 20 years provided a glimpse of the ICLMG's efforts, in collaboration with so many partners, to curb the impact of government measures that seriously infringe on our rights in the name of "national security" and "anti-terrorism." We also hope this publication renewed – or sparked – your commitment to the struggle for the protection and promotion of civil liberties from the negative impact of national security and the "War on Terror."

The concepts of "law and order" and "national security" have been used on the territory now called Canada since European settlers decided that this land was theirs. The RCMP was created – then as the North-West Mounted Police – in large part as a paramilitary force to surveil, control and displace Indigenous people; a role they are still playing to this day.

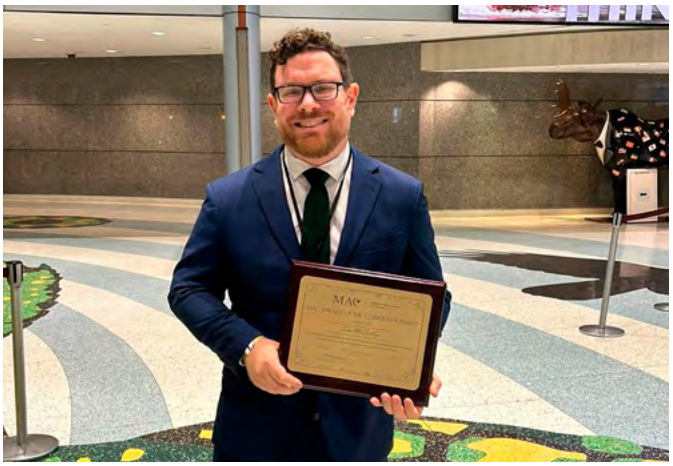
The words "terrorism" and "threats to national security" are powerful. Thanks to years of relentless fear mongering by governments and the media, they elicit automatic condemnation of whoever is stamped with those labels. As a result, these labels have become a very effective tool to discredit and repress any group, movement or person who opposes government policies and actions, and fights for justice and collective liberation.

As our contributors have shown, we cannot simply reform anti-terror laws and the national security apparatus to fix its abuses and the erosion of civil liberties. Given that the *Criminal Code* already covers all violent crimes, there is no need for or benefit to anti-terror and national security laws and tools.

Governments justify their actions in the name of "security" but neglect to deal with the root causes of the violence they purport to address. We need to shift away from national security – the preservation of the sovereignty and the power of the state – and focus on human safety.

The threat to civil liberties has grown over the last 20 years and recent events have led to renewed concern: the genocide in Gaza perpetrated in the name of countering terrorism, as well as the wrongful conflation of support for Palestinian lives and rights with support for hate or terrorism; the expansion of rights-violating anti-terror tools that perpetuate systemic racism, such as the Terrorist Entities List, to "fight racism" in Canada; the dangers posed by emerging new technologies like biometrics, spyware and artificial intelligence; the ever-expanding definition of "national security;" and the endlessly growing powers and resources of national security agencies.

We are witnessing a resurgence in fear-mongering and othering of Muslim, Arab and Chinese communities reminiscent of the early days after 9/11 and during the Cold War. We are also seeing the growing use of anti-terrorism discourse, laws and agencies by authoritarian regimes to silence dissent; they point at the behaviour of liberal "democracies" in the 'War on Terror' and say: "They did it – so can we."



ICLMG's National Coordinator, Tim McSorley, holding the Muslim Association of Canada's Friend of the Community Award received at their 2023 convention. Credit: Bamidele Kojo-McSorley

Vancouver protest against Bill C-51. thewalrus.ca

The struggle to protect civil liberties undertaken 20 years ago is more necessary than ever. We believe our coalition has been instrumental in the fight against the abuses of the national security apparatus but, to do this work, we need all the help we can get.

Want to join the struggle?

Follow the ICLMG on social media, subscribe to the News Digest and check out the Take Action section on our website at *iclmg.ca*.

If you would like to support our work as an individual, you can make one-time or monthly donations at *iclmg.ca/donate*

Organizations are more than welcome to join the ICLMG coalition. Contact us for all details through *iclmg.ca/contact-us*

With your support, we hope we won't need to be around anymore in 20 years.

Thank you!

Online version & sources:
iclmg.ca/20years

Editorial Committee
Xan Dagenais
Tim McSorley

Editors-at-large
Martine Eloy
Dominique Peschard

Translation
Maya Berbery
Claire Lalande
Claire Lapointe

Translation Review
Nathalie Thériault
Xan Dagenais

Layout & Design
Chadi Marouf

Printing
Katasoho.com

Cover credits
Design: Xan Dagenais
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ISBN 978-1-0690186-0-1

Defending civil liberties in Canada since 2002

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