

**Soumissions de l'Association canadienne des libertés civiles / Submissions from the
Canadian Civil Liberties Associations**

Comité parlementaire sur la sécurité dans les aéroports

(English to follow)

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Il y a quatre visions, ou philosophies, qui animent présentement les débats sur la sécurité dans les aéroports :

- a) La vision d'inspiration israélienne qui vise à utiliser des techniques d'identification sur la base du comportement pour assujettir certaines personnes à des enquêtes plus approfondies. Il s'agit d'un modèle de profilage, qui peut s'accompagner à la fois d'un fardeau plus élevé pour certains et plus allégé pour d'autres (régimes de passe-droits qui permettent d'éviter les fils d'attente, programme de passagers privilégiés)
- b) La vision plus technologique de la sécurité qui estime que des techniques de détection de plus en plus raffinées appliquées à l'ensemble des voyageurs est la meilleure garantie de sécurité. Dans cette catégorie, on inclurait l'investissement dans les scanners corporels annoncé en décembre dernier.
- c) Une troisième version mise davantage sur l'aspect aléatoire des recherches – une imprévisibilité des moyens de détection et du choix des personnes assujetties pour éviter une planification quelconque par des terroristes potentiels;
- d) Un quatrième modèle mise davantage sur l'intelligence et les services de renseignements pour détecter les réseaux terroristes et empêcher que les terroristes se rendent à l'aéroport, ou qu'ils embarquent dans les avions (je fais référence ici au programme d'interdiction de voler [le PPP (passenger protection program)]).

Ma présentation traitera de ces quatre régimes qui ne sont pas mutuellement exclusifs, qui se chevauchent souvent mais qui présentent des enjeux au niveau des libertés civiles.

After reviewing the pros-and cons of each regime and the challenges that they raise from a civil liberties point of view, I will make some recommendations and suggestions for each regime.

a) Pros and cons of the Profiling Model

Many people are sceptical about adopting the Israeli model, pointing out that the level and type of threats differ between Canada and Israel. According to them, threats against Israeli airports would be more frequent (higher level) and focused on one particular political situation, whereas Canada may have a lower level of threat and a more diffuse types of threats: extremists may vary : from jihad to Air India disaster, or other political conflicts. We ought not to design the system with only Sept. 11 2001 in mind.

There are many objections to profiling, behavioural or other. In the Israeli model, it invites workers, after training, to go with their hunches and watch all travellers to identify people that present traits of edginess, nervousness. The workers are invited to act on these hunches to interview or inspect more fully the travellers so identified.

In our view, it would be important if the government intends to move more fully in this context to recognize the potential of racial profiling of the worse kind arising in this context (generalize prejudice directed toward one particular group of people) and the recognition that the system will provide many false positives (people identified as suspect who turn out not to be). This proposal has the potential of disrupting particularly kind of people, young, Arabic looking man, people with fear of flying, with mental illness, etc. It will be important that the implementation of any system be monitored to ensure that it does not wittingly or unwittingly turn into an experience of racial profiling. Racial profiling is not only is inefficient because it leads to too many false positives but it has long-term effects on society: for the people subject to it, for the people performing it and for the people watching it being performed. People subject to racism may internalized their sense of less worth and contribute less to society (they may also become more marginalized); people performing racial profiling are encouraged to display racism that they may carry in the other aspects of their lives and people watching it may again be reinforced in their prejudices. Overall, racial profiling is certainly wrong, unconstitutional but also dangerous in the long run because it demonstrates a trivialization of the seriousness of racism and its consequences.

In CCLA's view, profiling by country of origin or destination is just as reprehensible: it presents the same difficulties of large number of false positives and will have the consequences of discriminating between people born in Canada and people born outside of Canada even when travelling together like a sports team. This is

counterproductive and failing to recognize that prevention of terrorism and its attraction to radicalized youth demands a co-operation with various ethnic communities and leaderships and not marginalization.

For behavioural profiling, if the government is to consider this proposal, we suggest the following minimal safeguards;

- The model must be vetted by the Canadian human rights commission;
- It must be constantly evaluated on its impact on travellers, particularly with respect to race, age and religion;
- It must provide some compensation for the travellers who because of having been wrongly identified, suffer serious inconvenience. (This compensation should ensure that we not dismiss the impact on innocent travellers of the additional security measures. In a way, we should recognize that the costs to certain people is analogous to part of the costs of the entire regime)

b) Pros and cons of the Technological Model

The technological model applies universally and hence does not have the potential drawbacks identified in the profiling model. However, it raises three types of issues:

- Privacy concerns and risks of malfunction and malfeasance
- False positives : the Kelowna pilot of the bodily scanners showed many false positives and this ought to be taken into account in assessing the viability and effectiveness of the machines.
- A false sense of comfort

The technological model has also no end in sight as there is an exponential growth of the security apparatus that could be deployed to detect in more and more intrusive ways the possibility of explosives hidden in various parts of the body.

Suggestions :

- Evaluation as to whether the safeguards are indeed observed (Privacy commissioners directives);
- Constant reminders to passengers of their choices in this manner

c) Pros and cons of the Randomness Model

With constantly varying the random of the testing, there is evidence that this may diffuse potential terrorist actions who are unable to plan. It should continue to be part of the arsenal of measures as it appears that that it has not worked so badly since sept. 2001.

d) Pros and cons of the Intelligence Model

In this context, the question is whether it is better to invest a dollar in intelligence, broadly understood, or in technology or profiling. We understand intelligence spending in its broadest sense to include not only CSIS but also investment in prevention and knowledge on radicalizations, terrorism development, religious sects, etc (social sciences and humanities knowledge to ensure a more comprehensive response to terrorism).

Lead me to my final point on the Passenger Protection Program. In our view, in its current non-legislative administrative form, it is probably unconstitutional. Certainly, it violates minimum standards of procedural justice. In addition, its legitimacy would be much enhanced by a legislative framework. We attach our previous submissions on the reforms required to the Passenger Protection Program. In our view, people wrongfully prevented from flying should have a right to be compensated in order that the true costs of our security apparatus be measured.

Conclusion

All models have shortcomings. In our view, it is important to recognize that protection of the security of Canadians implies a protection of all Canadians and also who we are and aspire to be: a free and democratic society. We should be careful to evaluate and monitor the impact of various measures on civil liberties and the rights of all citizens. Injustice even good intentioned and predicated on a sense of urgency, always brings further injustices. A strong commitment to fairness is after all the only way to uphold the value of human dignity and to respond democratically to terrorism threats.