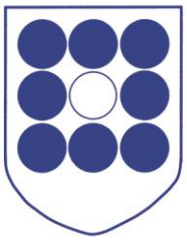
CANADIAN CIVIL LIBERTIES ASSOCIATION



ASSOCIATION CANADIENNE DES LIBERTES CIVILES

CANADIAN CIVIL LIBERTIES ASSOCIATION

REPORT TO THE UN HUMAN RIGHTS COMMITTEE 114 Session, June 2015

Regarding List of Issues to be Considered in relation to the Sixth Periodic Report of Canada (CCPR/C/CAN/Q/6)

Sukanya Pillay
Executive Director and General Counsel
pillay@ccla.org

Brenda McPhail
Director, Privacy, Technology and Surveillance Project
bmcphail@ccla.org

I. CANADIAN CIVIL LIBERTIES ASSOCIATION ("CCLA")

CCLA is grateful to the Members of the UN Human Rights Committee ("Committee") for this opportunity to report on our concerns in connection with review of Canada's sixth periodic report. CCLA's report corresponds directly to the List of Issues set out by the Committee (CAT/C/CAN/Q/6).

CCLA is an independent, non-governmental, non-partisan, non-profit, national organization dedicated to the furtherance of fundamental human rights and civil liberties in Canada.

Founded in 1964, CCLA was constituted to promote respect for and observance of fundamental human rights and civil liberties and to defend and foster the recognition of those rights and liberties. CCLA's major objectives include the promotion and legal protection of individual freedom and dignity against unreasonable invasion by public authority, and compliance with Canadian constitutional and international legal obligations. CCLA has been granted leave to intervene in many important court cases at all levels of courts across the country, including as well the Supreme Court of Canada and the Federal Court of Canada. CCLA regularly makes submissions to Parliamentary committees and other policy consultation processes.

II. CANADA AND THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS ("ICCPR" or "Covenant")

The CCLA commends the State Party for those instances in which it has sought to implement the provisions of the Covenant, and to publicize Canada's commitment to UN human rights treaties, for example, on its Canadian heritage website page regarding Human Rights. The Committee has posed a list of issues in relation to the sixth periodic report of Canada. In this NGO Shadow report, CCLA will restrict its comments to the following issues only:

1. National Security Agencies and Accountability
2. Equality and Non-Discrimination between Men and Women
3. Absolute Prohibition Against Torture, Cruel, Inhuman and Degrading Treatment
4. Non-Refoulement and Amendments to the Immigration and Refugee Protection Act
5. Freedom of Expression and Peaceful Assembly
6. Violence Against Aboriginal Women
7. Truth and Reconciliation Commission of Canada
8. Canada and the Optional Protocol

1. NATIONAL SECURITY AGENCIES AND ACCOUNTABILITY

The Committee has asked for information on legislation measures taken to ensure that national security agencies have effective accountability structures. The Committee has also asked for information on steps taken to comply with the recommendations of the Federal Commission of Inquiry into Actions of Canadian Officials in relation to Maher Arar ("Arar Commission of Inquiry").

The CCLA informs the Committee that there are serious gaps in accountability structures, negatively affecting Canada's national security agencies.

Canada remains alone among its democratic allies in failing to have an effective accountability mechanism for national security at the executive level. There are over at least seventeen national agencies tasked with national security objectives, but only three of these agencies have an independent review mechanism, and none of these three mechanisms are ideal. Further, following 9/11, Canada's national security agencies have been acting in an increasingly integrated manner, but there is no integrated accountability of their actions. These accountability deficits are amplified by the increase in integration and information sharing between Canada's agencies with foreign agencies, as well as with foreign and domestic private actors. The potential for human rights mistakes and failures in security are serious and real.

Recent bills and new legislation have exacerbated these gaps, simultaneously increasing the potential for violations of the Covenant. Further, these new laws conspicuously ignore the recommendations of the Arar Commission of Inquiry, as well as the findings of the Federal Commission of Inquiry presided over by Justice Iacobucci regarding three Arab Canadian men, and the findings of the Federal Air India Commission of Inquiry. It is CCLA's position that many of the new powers and new crimes introduced in new bills and legislation are not necessary, and will not bring demonstrable security gains, but rather compromises accompanied by rights violations.

CCLA recognizes and supports the government in its duty to ensure effective information sharing domestically and with foreign allies in countering terrorism, and CCLA recognizes the vital necessity of information sharing in this regard. However, it is our view that information sharing that is not anchored in human rights privacy principles will not advance security, but to the contrary, will result in mistakes and security failures.

(A) NEW LEGISLATION EXACERBATING ACCOUNTABILITY GAPS

The CCLA recognizes and supports the duty of Canada to protect national security and public safety and to cooperate with allies in the global counter-terror effort. Indeed, CCLA recognizes and supports that tools such as information sharing are

indispensable in countering terror. However, it is our view that when human rights protections including those guaranteed by the Covenant are rejected as obstacles to security, there is a danger both to human life, as well as to effective security. In our view, respect for human rights legal obligations is a prerequisite for effective security.

Bill C-51, the *Anti-Terrorism Act 2015* ("Bill C-51"), introduced on January 30, 2015[1], is omnibus legislation that creates new laws, creates new powers and new crimes, and amends existing laws, without ensuring that the new powers are necessary or proportional, and without ensuring commensurate accountability for new powers. The government has repeatedly claimed that the Bill is necessary in light of the tragic death of Warrant Officer Patrice Vincent in St-Jean-sur-Richelieu, Québec, and the attack on Parliament Hill in October 2014 which resulted in the tragic death of Corporal Nathan Cirillo. Yet apart from the ongoing conflation of the tragic events with the need for Bill C-51, the government has yet to clearly demonstrate why Bill C-51 is necessary, or even where the existing laws or powers had a deficiency which resulted in these tragedies. To the contrary, Canada's existing laws had resulted in thwarting terrorist plots and in successfully convicting and sentencing terrorist actors.

(i) Accountability Failures in *Information Sharing* among National Security Agencies, Government Departments, Foreign Governments, and Foreign and Domestic Private Actors

The Bill creates the *Security of Canada Information Sharing Act* ("SCISA") which permits information sharing regarding "any activity that undermines the security of Canada", an exceptionally overbroad category that goes beyond terrorist activities. In SCISA, information can be shared among 17 listed government agencies, who may potentially share it further among all government departments, with foreign governments, and with foreign and domestic private actors.[2]

Through the SCISA, the sheer volume, scope, and scale of information sharing has exploded. Nowhere are the human rights safeguards pertaining to necessity, proportionality, minimal impairment, use, dissemination, access, retention, and destruction found. Nor are there any enforceable provisions regarding caveats, which were recommended by the Arar Commission of Inquiry Report and, in sharing with foreign agencies, caveats were to be reduced to writing. To the contrary, the SCISA fails to incorporate or even to reference the detailed recommendations and observations of three Federal Commissions of Inquiry which examined in detail national security failures due to flawed or mistakenly withheld information-sharing. In particular, the policy recommendations of the Arar Commission provided a roadmap for effective review through creation of legislative gateways that would penetrate the existing accountability

[1] The Bill was amended in March 2015, and is expected to pass into law in June 2015. It is currently being debated in the Canadian Senate.

[2] Bill C-51, Part I, *Security of Canada Information Sharing Act*, s. 6.

silos among agencies. The Arar Commission observed that Canada's national security agencies were operating in an increasingly integrated fashion and that this called for an integrated review process – this is wholly absent from Bill C-51. Instead, new accountability gaps are created, and existing accountability gaps are exacerbated. As we know from the cases of Mssrs Arar, Almalki, El-Maati, Nureddin, Abdelrazik, Almrei, Benatta – information sharing mistakes in the national security context can be devastating, ruinous, and deadly while accomplishing nothing for security.

The government has claimed that the Privacy Commissioner of Canada and the Auditor General can ensure accountability, but this is not accurate. The Privacy Commissioner and Auditor General are limited in mandates and resources, and will have neither the ability nor the necessary access to review the vast networks through which information can be shared.

(ii) Accountability Concerns and Canadian Security Intelligence Service (CSIS)

(a) Imposed Change in Powers and Mandate of CSIS

The CCLA is also concerned by the Bill C-51 amendments to the *Canadian Security Intelligence Service Act* which transform CSIS from a recipient and analyst of intelligence, into an agency with powers to act (i.e. to engage in "disruption", a term not defined in C-51) domestically and in foreign jurisdictions. There are no limits on the activities of CSIS other than to refrain from acts that would 'obstruct justice, cause bodily harm, or violate sexual integrity of individuals'. However, these confines leave a very large sphere within which CSIS *can* act. The civilian review mechanism of CSIS, the SIRC, has previously expressed its concerns over the actions of CSIS with respect to disruption activities, and Bill C-51 throws open the gates to CSIS's unrestricted activities and jurisdictions. There has been no proper debate or assessment about the powers of CSIS such as ought to be required in a democratic nation. Further, the concerns are exacerbated given that domestic surveillance and corresponding CSIS training, is a discrete skill-set far removed from that which would be required by Canadian officials acting overseas and engaging domestically or internationally in disruption activities.

It is important to recall that the CSIS was created in the wake of the McDonald Commission, which was struck following the 'dirty tricks' revelations of the Royal Canadian Mounted Police in the 1970s. The McDonald Commission recommended separating law enforcement from intelligence. CSIS, by its prescribing statute, was restricted in its mandate to gather and analyze intelligence regarding activities which posed a [terrorist] threat to [national security]. Bill C-51 radically alters CSIS's powers.

Further, the Air India Inquiry[3] determined that due to mistrust and tensions, the CSIS had improperly withheld information from the RCMP – had that information been properly shared, it could have prevented the terrorist bomb explosion of Flight 182 that killed all 329 aboard. Bill C-51's expansions of CSIS's powers may unintentionally create more mistrust between CSIS and the RCMP, and accordingly, more mistakes and consequent threats to Canada's security.

Additionally, the blurring of intelligence and evidence, anticipated by expanding the powers and jurisdictions of CSIS, may unwittingly prevent successful prosecutions by barring relevant information from being introduced or relied upon as evidence in terrorist trials.

(b) Warrant Provision which Contemplates Rights Violations

CCLA is also seriously concerned that Bill C-51 amends the CSIS Act to permit the CSIS to seek a warrant, on an *in camera*, *ex parte* basis, from a Federal Court judge to carry out activities which otherwise would violate the *Canadian Charter of Rights and Freedoms*. Such a provision is in direct violation of Canada's commitment to constitutional supremacy, rule of law, and independence of the judiciary.[4] Further, the rights and freedoms protected in the *Charter* are also found in the Covenant.

(c) CSIS Can Act without regard to International Laws or Foreign Domestic Law

CCLA is seriously concerned that amendments in Bill C-51, and Bill C-44,[5] will authorize CSIS to act domestically and internationally, 'without regard to international law' or 'foreign domestic law'. In our view, this undermines Canada's legal obligations to uphold, protect, and implement international law – including of course the Covenant – and it undermines and reverses Canada's past commitments to comity. Indeed a relatively recent Supreme Court of Canada case, *R v. Hape*[6] (2007), held that while comity is to be adhered to, comity ends where violations of international law begin –

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[3] Justice John Major presiding over the Air India Inquiry into the fatal bombing of Air India Flight 182 in 1985, found that serious errors in how information was collected, shared or withheld, between CSIS and the RCMP contributed to failures of intelligence in preventing the bombing.

[4] The government at Senate hearings in April, stated the existing warrant process merely enables government activity that would otherwise be in violation of the *Charter* – in our view this is an entirely wrong and dangerous interpretation of the warrant process. Warrants are only allowed regarding the section 8 Charter right "to be free from unreasonable search and seizure" – a warrant ensures that a Judge has been convinced that the requested search or seizure in question is not one that would be "unreasonable", but rather reasonable and accordingly constitutionally compliant. None of the other provisions of the Charter -- for example the rights to due process, liberty, or to be free from arbitrary detention or cruel and unusual punishment – are equivocal nor subject to the warrant process.

[5] Bill C-44, an *Act to Amend the Canadian Intelligence Services Act and the Strengthening of Canadian Citizenship Act*, introduced in October 2014, received Royal Assent in 2015.

[6] *R. v. Hape,* 2007 SCC 26.

Bills C-51 and C-44 appear to operate in a sphere devoid of regard to international obligations and precedence. CCLA is further concerned that this is the wrong signal to send to foreign allies, and undermines respect for the international legal framework which in our view, is essential to global counter-terror efforts and international peace and security.

(d) Exacerbating Accountability Failures

Bills C-51 and C-44 create new powers for CSIS and new jurisdictions within which CSIS can operate, but do nothing to ensure any increase or commensurate accountability. The review functions of the SIRC, the civil body that reviews CSIS activity, have been commendable within the scope of their mandate and resources. However, SIRC simply does not have the resources to adequately review all CSIS activity, creating a serious accountability gap that will only be exacerbated by Bills C-51 and C-44. As previously mentioned, there is no integrated review of the increasing integrated operations of CSIS with other domestic agencies, to say nothing of their operations with foreign agencies.

(B) ACCOUNTABILITY GAPS UNDER EXISTING LEGISLATION

(i) Accountability Concerns and the Communications and Security Establishment (CSE)

The CSE, with a budget of CDN $538 million in 2015-16, is mandated to collect and analyze signals intelligence. The CSE has operated for decades without being in the public eye. Canadians are increasingly concerned over the absence of efficient accountability mechanisms for the CSE, catalyzed by two recent events.

In Fall 2013, a Federal Court Judge wrote a scathing decision condemning CSIS's lack of 'good faith and candour', because in seeking a warrant for overseas operations, CSIS failed to disclose that in its operations it and the CSE would be tasking their Five Eyes partners to surveil Canadians abroad.[7] Further, a series of revelations by Edward Snowden have revealed that the CSE has been allegedly engaged in mass surveillance of Canadians, including during a project to track the wireless devices of those who connected to Wi-Fi at a major Canadian airport for some time after they left the terminal,[8] and through the Levitation program, which was capable of surveilling 10-15 million uploads and downloads from free websites daily.[9]

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[7] This case is currently being appealed by the government to the Supreme Court of Canada.

[8] Greg Weston, Glenn Greenwald, Ryan Gallagher, CBC News, January 30, 2014. Available: http://www.cbc.ca/news/politics/csec-used-airport-wi-fi-to-track-canadian-travellers-edward-snowden-documents-1.2517881

[9] A. Hildebrandt, M. Pereira & D. Seglins. (2015). "CSE's Levitation project: Expert says spy agencies 'drowning in data' and unable to follow leads." CBC News. Available:

The Communications Security Establishment is reviewed by the CSE Commissioner, who is a supernumerary or retired judge of a superior court. The Commissioner's functions under the *National Defence Act* include review to ensure compliance with the law, investigating complaints against the CSE, and informing the Minister of any incidences of non-compliance with the law. This includes verifying that CSE takes sufficient measures to protect the privacy of Canadians. However the CCLA has expressed its concerns that questioning "lawfulness" of CSE activities has been a matter of statutory interpretation of the *National Defence Act* -- compliance with an arguably outdated, broadly-worded statute does not ensure compliance with human rights principles. It is the position of CCLA that the CSE must carry out its functions and operations with a commitment to upholding fundamental privacy rights and principles including necessity and proportionality. The capabilities of modern technologies which allow mass surveillances and mass capture, storage and uses of personal identifying information of innocent law-abiding Canadians, should not be permitted to override fundamental human rights principles.

In particular, CCLA highlights the deficiencies in CSE accountability as follows:

- The Office of the CSE Commissioner is a review body, not an oversight body, and there is no independent oversight of CSE activities.
- CSE does not have meaningful public accountability, meaning that it does not officially report to Parliament. The Office of the CSE Commissioner delivers its review report in classified form to the Minister of Defense, with a redacted version delivered to Parliament.
- As is the case with SIRC, the CSE Commissioner's office is small in relation to the size of the organisation it reviews. The Commissioner has a staff of 11. Also like SIRC, the CSE Commissioner has recently gone on record, in his 2015-2016 Report on Plans and Priorities, as expressing concern about the adequacy of his resources in relation to his workload and responsibilities.
- The CSE Commissioner reviews a selection of CSE activities based on, as one Commissioner wrote in 2004, "our assessment of where the risks of unlawful activity are likely to be greatest."[10] There have been occasions on which the Commissioner has indicated that he was unable to determine compliance based on the records available, because of missing information or inadequate recordkeeping.[11]
- Finally, the Commissioner does not make legal determinations, nor does he act in place of a court of law; what this means is that he judges CSE's actions on the

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http://www.cbc.ca/news/canada/cse-s-levitation-project-expert-says-spy-agencies-drowning-in-data-and-unable-to-follow-leads-1.2934942

[10] Office of the Communications Security Establishment Commissioner (2004). "2003-2004 Annual Report." Available: http://www.ocsec-bccst.gc.ca/ann-rpt/2003-2004/activit_e.php#4

[11] Office of the Communications Security Establishment Commissioner (2013). "2012-2013 Annual Report." Available: http://www.ocsec-bccst.gc.ca/ann-rpt/2012-2013/7_e.php#tc-tm_7_1

basis of their interpretation of the law, not his own. Or as one Commissioner stated:

- "With respect to my reviews of CSE activities carried out under ministerial authorization, I note that I concluded on their lawfulness in light of the Department of Justice interpretation of the applicable legislative provisions."[12]

(ii) Accountability Concerns and the Canadian Border Services Agency ("CBSA")

The CCLA is seriously concerned about the insufficient accountability structures of the CBSA, an agency carrying out national security functions.

Our first concern relates to the absence of a complaints and independent review mechanism. The CBSA is an agency that enjoys sweeping powers including law enforcement powers. CBSA officers can arrest, with or without warrants, permanent residents or foreigners if they believe these individuals pose a threat to public safety, or are illegally in the country -- i.e. inadmissible. CBSA also has the power to detain foreigners and permanent residents, including asylum seekers. The CBSA also works closely with the RCMP and CSIS in information sharing that the CBSA may rely upon in determining who may be a threat or who may be illegally in the country and therefore inadmissible. Indeed, as Justice O'Connor noted, the CBSA "prevents entry by people not legally allowed into Canada (inadmissible persons), collects intelligence, and detects, arrests, detains and removes people who are in Canada illegally."[13] In this regard we respectfully inform the Committee that the CBSA also engages in information collection and dissemination with foreign agencies, with impact upon the actions (decisions, conclusions, investigations, apprehensions) of individuals within its jurisdiction.

These wide powers of the CBSA are highly intrusive and coercive, and have the impact to seriously, adversely and deleteriously affect the lives of individuals. They are also sweeping powers which must be subject to independent review in order to ensure they comply with Canadian constitutional safeguards, and also the relevant legal obligations binding upon Canada pursuant to international law including the Covenant.

Justice O'Connor recommended in his second report pursuant to the auspices of the Arar Commission of Inquiry, in recommendation 9, that **there should be an independent review, including complaints investigation and self-initiated review** of the CBSA (law enforcement powers, arrest, detention, removal, intelligence etc) as part of an

[12] Office of the Communications Security Establishment Commissioner (2006). "2005-2006 Annual Report."Available: Office of the Communications Security Establishment Commissioner (2013). "2012-2013 Annual Report."

[13] Dennis O'Connor, (2006). *A New Review Mechanism for the RCMP's National Security Activities: Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar*. p. 562

Independent Complaints and National Security Review Agency ("ICRA").[14] The CCLA strongly recommends that Justice O'Connor's recommendations be implemented without delay – we have been arguing for this for years and are very concerned that nine years after these recommendations were made – there has been no movement on CBSA review. The CCLA cannot underscore enough the importance in a free and democratic society, of the principles of accountability and transparency, secured through independent review, of power – or more to the point, the dangers posed to human rights and dignity – including to life, to liberty, to security of the person -- by unchecked power.

The CCLA repeats its submissions, made in other forums, that there should be an Independent Review of the intelligence activities of the CBSA. We are particularly concerned that the CBSA passes on information that has formed the basis of security certificates, and believe that a review process of intelligence gathering and sharing is vital.

Review with respect to assessment of refugee claims is also vital.

Detention

Pursuant to the *Immigration and Refugee Protection Act* ("IRPA"), the CBSA is responsible for detention and the conditions of detention even when detention occurs at corrections facilities.

The CCLA is seriously concerned by the treatment of individuals held in Immigration Holding Centres – including the barbed wire fences, the separation of families, the detention of children and the separation of children from one parent – even the proposed options of placing children in foster care is problematic when the parent – far from being a threat to a child – may actually be a comfort to the child who has just experienced the trauma of persecution and fleeing persecution, only to arrive in Canada to face family separation and/or detention.

The CCLA is also seriously concerned about the conditions of correctional facilities. We have no doubt that this Committee is aware of the hunger strike at Lindsey. We also point out that as a matter of international refugee law, refugees are not to be detained with criminals, yet we understand that this is happening in some correctional facilities.

We are also seriously concerned by reports that refugee claimants who are detained and who are experiencing mental health issues, are being segregated for prolonged periods, and/or that adequate mental health treatment is not available to them. The CCLA has a long- standing record of speaking out against the deleterious consequences of segregation for any individual, and particularly for individuals experiencing mental health issues. We are aware of a disturbing example of a criminally inadmissible person in detention who

[14] Dennis O'Connor (2006). *A New Review Mechanism for the RCMP's National Security Activities: Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar*. p. 562

suffered severe mental health issues and had deteriorated to being "catatonic" and consuming his own waste – it took a team of lawyer and a psychiatrist to have this individual removed from the prison and into a psychiatric hospital. One lawyer told me "I frequently represent people in detention under the (IRPA) who suffer serious mental health issues". The CCLA is seriously concerned about the conditions of detention for all individuals, and in particular the treatment of those with mental health issues – as the scope of this hearing examines CBSA practices, we recommend that something must be done about detention conditions and special attention for those requiring mental health intervention.

Detention and Barriers to Access to Justice

The CCLA is also concerned about the reports of individuals who have been detained for years under the authority of Section 54 of IRPA. We believe that such prolonged and indefinite detention is non-compliant with principles of due process and *habeas corpus*. We understand that many of the people who are detained pursuant to s. 54 are disenfranchised and must rely upon Legal Aid for representation – however, while the Legal Aid system for example here in Ontario, may provide representation for one detention review, counsel will only appear at one detention review yet the complexities of the case require several detention reviews – in such cases we understand that the detained individual has little chance of being released.

We are also concerned that the CBSA can transfer individuals – refugee claimants or the criminally inadmissible – away from their counsel – for example, transferring an individual from a correctional facility near Ottawa, to Toronto. This makes it very difficult for counsel to continue to represent the individual in his or her detention reviews. We are aware of circumstances in which counsel was in one city appearing by teleconference, the individual detainee was in a correctional facility appearing by videoconference, and the CBSA and IRB officers were in yet a third place – and counsel could not hear the responses of his client. The CCLA is concerned that such circumstances present a serious barrier to access to justice.

Discretion and Inadmissibility Reports

Section 44(1) of the IRPA enables a CBSA officer "who is of the opinion" that a permanent resident or foreign national is inadmissible, to prepare a report and send it to the Minister to determine admissibility. There is also concern over discretion on application of conditions of detention in s. 44(3), particularly given the circumstances of many indigent and disenfranchised persons.

The CCLA is seriously concerned about the broad discretion inherent in this provision. There is no oversight and there are no independent review mechanisms in place – broad discretion is prone to abuse and misuse. In this case, abusive processes can result in individuals being questionably targeted, and of course the impact upon an individual who is facing deportation is immense. Taken in totality with the many powers of CBSA including, as stated at the outset the unchecked intelligence gathering and sharing powers,

the potential for abuse and deleterious consequences to an individual is immense, and we argue must be subject to review.

(iii) Accountability Concerns and the Royal Canadian Mounted Police ("RCMP")

CCLA is concerned that there continues to be inadequate review and oversight of the RCMP. Below we briefly summarise the nature of the oversight body as legislated, and the specific issues arising in relation to the function of the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police.

On March 6th, 2013, Bill C-42 was passed, which made amendments to the RCMP Act to strengthen the Royal Canadian Mounted Police review and complaints mechanism and to implement a framework to handle investigations of serious incidents involving RCMP employees.[15] The Act also modernized the agency's discipline, grievance and human resource management processes for employees, in response to several alleged incidents of sexual harassment and assault. Reflecting the recommendations made by Justice O'Connor, the Standing Committee on Public Safety and National Security, David Brown (tasked in 2007 with investigating allegations concerning the management of RCMP pension and insurance plans), The Privacy Commissioner of Canada, and numerous other committees, scholars, organizations, and stakeholders, the Act established a new complaints commission, the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (CRCC), to allow for more effective oversight of the RCMP's activities. It provides the CRCC with investigative powers and access to information in the control or possession of the RCMP, the authority to conduct joint complaint investigations with other police complaints bodies, and the authority to undertake policy reviews of the Royal Canadian Mounted Police.[16] It also establishes a mechanism to improve the transparency and accountability of investigations of serious incidents (death or serious injury) involving members of the RCMP, including the power to refer the investigations to provincial investigative bodies when possible and to appoint independent civilian observers to assess the impartiality of the investigations when they are carried out by the Royal Canadian Mounted Police or another police service.[17]

CCLA highlights the deficiencies of the oversight provisions in this legislation as follows:

1. The new commission is different than the oversight mechanism proposed by Justice O'Connor in his policy review report. Whereas Justice O'Connor had stated that the proposed review body should have the power to conduct a

[15] *An Act to amend the Royal Canadian Mounted Police Act and to make related and consequential amendments to other Acts*: http://openparliament.ca/bills/41-1/C-42/.
[16] Ibid.
[17] Ibid.

"systematic review of activities of the RCMP concerning national security" and David Brown stated that it should have the power to consider any "incident or aspect of the activities of the RCMP", the new Commission is only endowed with the power to review "specified activities of the Force".[18] It is not clear whether "specified activities" are as broad as recommended by O'Connor or Brown. For example, it is not clear whether the Commission can review information sharing activities with Canadian and foreign organisations, as Justice O'Connor recommends.

2. The amendments do not implement three of the recommendations of the O'Connor policy review, namely that the new commission be able to examine the compliance of the RCMP's activities with "international obligations" and "the standards of propriety expected in Canadian society"; have the power, on the request of the Governor in Council, to conduct reviews of the activities relating to the national security of one or more federal departments, agencies, employees and contractors; and review the national security activities of the Canada Border Services Agency.

3. Subsection 45.34(2) of the revised RCMP Act prescribes prerequisites for the exercise of the Commission's review power that will limit the scope of the civilian review to which the RCMP is subject. Among these limitations is the fact that the Commission must have the necessary resources to conduct a review of specified activities, the process of dealing with complaints must not be compromised by the review, and a federal or provincial entity similar to the Commission may not have reviewed or investigated an issue similar to that which the Commission proposes to review, which would severely limit any investigations pertaining to the integrated nature of national security and intelligence activities of various agencies and departments. Only if all of these requirements have been met and notice has been provided to the Minister setting out the rationale for conducting the review, can the Commission proceed with its investigation.

4. The amendments expand the circumstances under which hearings may be held in private, including a catch-all provision that provides the Commission with a broad discretionary power to hold *in camera* proceedings if privileged information will likely be revealed during the hearing or if "it is otherwise required by the circumstances of the case".[19] In addition, the amendments permit the Commission to hold an *ex parte in camera* hearing in the absence of one of the parties in order to protect sensitive information. Thus, while the Commission is granted supremacy and exclusive jurisdiction to conduct investigations into certain activities of the RCMP, it has been provided with wider discretion to conduct its

[18] Lyne Casavant and Dominique Valiquet, "Bill C-42: An Act to amend the Royal Canadian Mounted Police Act and to make related and consequential amendments to other Acts", The Library of Parliament, Publication No. 41-1-C42-E, September 10, 2012 (Revised 7 November 2012).

[19] *Royal Canadian Mounted Police Act,* R.S.C., 1985, c. R-10, s. 45.1(2)(d).

reviews in secret. Moreover, the revised RCMP Act does not incorporate Justice O'Connor's suggestion to allow the commission to appoint an independent counsel to determine the need to maintain the confidentiality of certain information and hear representations made on behalf of the excluded parties, thus ensuring a proper balance between the need for confidentiality and transparency. The conclusions issued by the commission following an investigation are not subject to appeal or review by any court and they do not specifically mention the right to seek judicial review under the *Federal Courts Act*.[20]

2. NON-DISCRIMINATION, EQUALITY BETWEEN MEN AND WOMEN (ARTS. 2, 3, 4)

Please indicate any measures taken to promote effective implementation of legislation and policies on gender equality.

In the area of women's reproductive rights and gender equality, CCLA notes that the province of New Brunswick has in the past year removed certain barriers to access to abortion services, by amending a regulation[21] whose requirements had included that two physicians must certify that the procedure is medically required, and it must be performed by a specialist. The amended regulation eliminates the above requirements, and requires instead that the abortion be performed in a hospital facility approved by the jurisdiction in which the hospital facility is located. In addition, the province has recently announced its commitment to women's rights and the province's obligations, and its intentions to further improve access to this form of medical care.

In the province of Prince Edward Island, however, surgical abortion services continue to be unavailable, and women must leave the province in order to secure this medical care. An offer by doctors to fly-in in order to provide surgical abortion care in-province was unsuccessful.

In addition, the federal government recently announced that it would be removing taxes on feminine hygiene products. Critics had called for such measures, arguing that the tax was a form of gender-based discrimination.

CCLA also wishes to bring the following issue to the attention of the Committee:

[20] Casevant and Valiquet, p. 19.

[21] New Brunswick B.B. Reg. 84-20, Sch. 2.

Equality – Citizenship

CCLA is concerned that Bill C-24,[22] in particular in combination with C-44,[23] enable the stripping of Canadian citizenship in certain circumstances for individuals with dual citizenship, or those who may have dual citizenship (e.g. through a parent's country of origin). CCLA is concerned about implications for equality and creating two tiers of citizens, implications for statelessness in some cases, and the seeming reintroduction of the punishment of exile which we would argue has no place in a modern democratic state.

3. PROHIBITION OF TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT

(A) INFORMATION SHARING AND TORTURE

The Committee has asked for information on steps taken to modify the 2011 Ministerial Direction to Canada's national security and intelligence agencies on information sharing with foreign entities.

Unveiled Directives in 2011, from the Minister of Public Safety to the Canadian Security Intelligence Service, indicated that the Government was willing to allow use or sharing of torture-tainted information in certain circumstances. The Directives also indicated that the Government was willing to share information with foreign entities in certain circumstances, even if there was a known risk of torture abroad to an individual as a result of the receipt of same information.

The CCLA is very concerned that these Ministerial Directives run afoul of Canada's obligations in international law including the Covenant, and the *jus cogens* absolute prohibition against torture. The Directives are also inconsistent with the findings and recommendations of the Arar Commission of Inquiry, and the Almalki, El-Maati and Nureddin Commission ("Iacobucci Commission") which both dealt with issues of information sharing practices and mistakes which caused, or contributed to, the detention and torture of four Arab-Canadian men overseas.

The CCLA is not aware of any steps taken to modify these 2011 Directives. To the contrary, the CCLA is concerned that the massive increase in information sharing of Bill C-51 (*supra*) without heed to any of the accountability requirements of the Arar and Iacobucci commissions, and the contemplated "increased information sharing and pooling" of the US-Canada Security Perimeter, are indicative of the premium placed on

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[22] *An Act to amend the Citizenship Act and to make consequential amendments to other Acts (Strengthening Canadian Citizenship Act).*

[23] *An Act to amend the Canadian Security Intelligence Service Act and other Acts (Protection of Canada from Terrorists Act).*

information sharing without any legal requirement for the safeguards demonstrated as so necessary by the Arar and Iacobucci Commissions within the past decade.

CCLA argues that Canada must comply with its obligations in *international law*, and in domestic law pursuant to the *Criminal Code* and the *Charter of Rights and Freedoms*, to ensure that information procured from torture is never used as evidence in any proceedings, and must never be used to deprive an individual of his or her liberty. CCLA also calls upon Canada to comply with Policy Recommendation 14 of the Report of the Federal Commission of Inquiry into the Events Relating to Maher Arar: "*Information should never be provided to a foreign country where there is a credible risk that it will cause or contribute to the use of torture. Policies should include specific directions aimed at eliminating any possible Canadian complicity in torture, avoiding the risk of other human rights abuses and ensuring accountability*."

(B) MEASURES TAKEN TO ENSURE INVESTIGATION BY INDEPENDENT BODIES FOLLOWING ALLEGATIONS OF ILL-TREATMENT OR EXCESSIVE FORCE BY POLICE, PARTICULARLY REGARDING POLICE USE OF FORCE REGARDING QUEBEC STUDENT PROTESTS 2012

Although most Canadian law enforcement agencies have some form of oversight, there continue to be obstacles to timely and meaningful accountability for police misconduct. Accountability processes may take many years to run their course. Moreover, criminal prosecutions against law enforcement officials for using excessive force are relatively rare.

Encouragingly, a growing number of provinces in Canada have independent units charged with investigating incidents where police were involved in a death or serious injury.[24] These units generally have the authority to lay or recommend criminal charges against police officers, where appropriate. The province of Quebec is working to establish a civilian body, the *Bureau des enquêtes indépendantes*, to investigate incidents involving police. However, this unit is not yet operational. Moreover, Quebec has not responded to calls to establish a public inquiry into police conduct during the 2012 student strike.

[24] The oldest such body in Canada is Ontario's Special Investigations Unit (SIU), created in 1990 – a civilian-run agency that conducts criminal investigations into all police-involved deaths and serious injuries in the province, in addition to allegations of sexual assault involving police officers. There are similar units in the provinces of Nova Scotia (the Serious Incident Response Team); Alberta (the Alberta Serious Incident Response Team); and British Columbia (the Independent Investigations Office). Manitoba has announced the creation of an Independent Investigation Unit, and has appointed an executive director, although the unit is not yet operational. See also Amber Hildebrandt, "Sammy Yatim shooting a lesson for new police watchdogs," CBC News (22 August 2013), online at: http://www.cbc.ca/1.1397590.

In Ontario, accountability efforts following the rights violations that occurred during the Toronto G20 Summit are still ongoing – five full years after the Summit itself. Currently, disciplinary charges are pending against Superintendent David Mark Fenton, a commander with the Toronto Police Service who allegedly gave unlawful orders to detain and arrest protesters during the Summit. In another case, an officer with the Toronto Police Service was convicted of assault with a weapon for using excessive force during the arrest of a protester during the Summit. The officer in question, Constable Andalib-Goortani, is the only law enforcement officer who has been convicted of a criminal offence following the G20 protests.

(C) CONDUCTED ENERGY WEAPONS

The Committee has asked for information on steps taken to amend the Guidelines for the Use of Conducted Energy Weapons to require that conducted energy devices be used only in situations involving an imminent threat of death or serious injury.

The Guidelines for the Use of Conducted Energy Weapons, published by Public Safety Canada, currently do not restrict the use of conducted energy weapons (CEWs) to situations of imminent harm.[25] Rather, the Guidelines merely state that law enforcement officers should "use an appropriate and reasonable level of force, given the totality of the circumstances." This language would authorize CEW use in circumstances falling short of an imminent risk of death or serious injury. The Guidelines do state: "Prior to using a CEW, officers should consider whether de-escalation techniques or other force options have not, or will not, be effective in diffusing the situation."

CEW use has been linked to serious injuries and even deaths in Canada. In July 2013, a coroner's inquest found that CEW deployment was a "contributing factor" in the death of Aron Firman, who died following an incident with Ontario Provincial Police officers.[26] The inquest jury made numerous recommendations calling for greater reporting and study of the use of CEWs. Firman suffered from schizophrenia; his death raises serious concerns about the use of CEWs against individuals with mental health disabilities.
In October 2007, a traveler named Robert Dziekański died at Vancouver International Airport after law enforcement officers used a CEW against him. After being subdued and handcuffed, Dziekański died within minutes. The Braidwood Commission, which investigated Dziekański's death, developed sensible and prudent recommendations for

[25] Guidelines for the Use of Conducted Energy Weapons, Public Safety Canada (modified 11 May 2015), available online at: http://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/gdlns-cndctv-nrg-wpns/index-eng.aspx. Note that Individual provinces and police forces are not required to abide by the Guidelines, but rather may consider them in the development of their individual policies and procedures.
[26] *Firman (Re)*, 2013 CanLII 69541 (ON OCCO).

law enforcement use of CEWs in Canada.[27] The Braidwood standard would restrict the use of conducted energy weapons (CEWs) to situations where "the subject is causing bodily harm or the officer is satisfied, on reasonable grounds, that the subject's behaviour will imminently cause bodily harm." Even then, an officer should not deploy a CEW "unless satisfied, on reasonable grounds, that no lesser force option would be effective, and de-escalation and/or crisis intervention techniques would not be effective."

Unfortunately, different jurisdictions across Canada currently authorize law enforcement to use CEWs in situations that fall short of the Braidwood standard. For instance, in 2013, the Ontario Ministry of Community Safety and Correctional Services authorized expanded CEW deployment amongst police forces in the province. Police services may now decide to equip all classes of officers with CEWs (not simply members of tactical units, hostage rescue teams and containment teams, as was previously the case). However, the use-of-force threshold in Ontario is considerably lower than the Braidwood standard. CEWs are considered "intermediate weapons," and as such, may be used when an individual is displaying "assaultive" behaviour.

Some police services do have more stringent requirements for CEW use. For instance, an RCMP Operational Manual provides that CEWs must only be used "when a subject is causing bodily harm, or the member believes on reasonable grounds, that the subject will imminently cause bodily harm as determined by the member's assessment of the totality of the circumstances."[28]

(D) SEGREGATION/SOLITARY CONFINEMENT IN PRISONS

CCLA is seriously concerned about the overuse of solitary confinement (often called "segregation" in Canadian law) in Canadian jails, particularly regarding mentally ill persons, and failures of review processes that compound the potential for abuse. In January 2015, CCLA brought a constitutional claim before the Ontario Superior Court, challenging the federal legislation that permits solitary confinement (*Corrections and Conditional Release Act*). It is CCLA's position that prolonged solitary confinement constitutes a violation of the right to be free from torture and cruel, inhuman and degrading treatment.

CCLA was a party in the Inquest into the death of Ashley Smith, a mentally ill young woman subjected to repeated segregation who died by her own hands in prison, under the watch of correctional officers. The Inquest jury returned a verdict of homicide, and made a series of detailed recommendations. However, In December 2014, the Correctional

[27] Braidwood Commission of Inquiry on Conducted Energy Weapon Use, *Restoring Public Confidence: Restricting the Use of Conducted Energy Weapons in British Columbia* (18 June 2009), page 17.

[28] Royal Canadian Mounted Police (RCMP), Operational Manual – Conducted Energy Weapon (amended 6 February 2012), section 3.1.1, available online at: http://www.rcmp-grc.gc.ca/ccaps-spcca/cew-ai/operations-17-7-eng.htm.

Service of Canada (CSC) released a deeply disappointing response to the findings of the Ashley Smith inquest. CSC rejected many of the jury's key recommendations – including the recommendation that "there should be an absolute prohibition on the practice of placing female inmates in conditions of long-term segregation, clinical seclusion, isolation, or observation." "Long-term" was defined as "any period in excess of 15 days." The government's response also did not address the urgent need for greater independent oversight and meaningful accountability of the Correctional Service of Canada's actions.

CCLA and the federal Office of the Correctional Investigator are concerned that there is an overuse of segregation in Canadian jails to deal with mentally ill persons. This year, the federal government denied the Correctional Investigator's request for reappointment and is currently searching for a replacement.

Previous reforms suggested by the Arbour Commission in 1996 were not implemented. There are also reports of the abusive use of "administrative detentions", which is not subject to any regulatory framework.

Overcrowding in correctional institutions is also a critical concern. Over half of Canada's provincial and territorial prison population on any given day has not been convicted of any crime.[29] Recent reports indicate that double- and triple-bunking in cells built and designed for one person is increasingly common, and new criminal law measures are likely to greatly increase incarcerated populations.[30] The then Public Safety Minister's 2012 comment that "double bunking is appropriate" is particularly concerning, and contrary to Canada's obligations under the UN's Standard Minimum Rules for the Treatment of Prisoners.[31]

CCLA calls for the immediate implementation of the recommendations of the Arbour Commission, investigation by the Federal Government, and a strengthening of oversight mechanisms for prison guards. CCLA is proceeding with its constitutional challenge in the Ontario Superior Court against the federal legislative provisions permitting the practice of segregation.

4. NON-REFOULEMENT AND AMENDMENTS TO THE IMMIGRATION AND REFUGEE PROTECTION ACT ("IRPA")

(A) IRPA AND *NON-REFOULEMENT*

[29] http://www.statcan.gc.ca/pub/85-002-x/2011011/article/11440-eng.htm.
[30] http://www.rcinet.ca/english/daily/reports-2012/15-29_2012-08-28-prison-overcrowding-causing-violence/
[31] http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx

CCLA is concerned that Canada interprets the IRPA as permitting removals, deportation, or extradition, despite the risk of torture. Canada has argued that Parliament did not intend an absolute bar to *non-refoulement*, evidenced by the absence of such language in ss 118(2) of IRPA[32]. The Canadian Supreme Court in *Suresh* acknowledged the *jus cogens* status of the absolute prohibition against torture, the principle of *non-refoulement*, and the abhorrence Canadians felt toward torture; and yet indicated that in certain "exceptional circumstances" deportation to torture may be justified. The deportation component of Security Certificates, and removal of critical safeguards in Bill C-31, all undermine Canada's commitment to the absolute nature of *non-refoulement*. Further, CCLA is concerned that deportation orders may not be subject to an appeal on the merits.

(B) BILLS C-51: AMENDMENTS TO IRPA AND NEW THREATS TO *NON-REFOULEMENT*

Bill C-51 (*supra*) would also amend the *Immigration and Refugee Protection Act* to permit the Ministers of Public Safety and Immigration to determine what information is relevant, and then to have power to withhold even relevant evidence from the Special Advocates in security certificate cases. The CCLA objects to any obstacles to all information being provided to Special Advocates, in order to fulfill liberty rights and fundamental justice (through the Special Advocate) – and objects to the Ministers being able to determine what is relevant and whether they can withhold such relevant information. These changes will significantly prejudice Named Persons by constraining Special Advocates, and may call the constitutional validity of the scheme into question once again.

As the Supreme Court of Canada stated in its unanimous decision in *Charkaoui* – which led to Parliament's creation of the Special Advocate scheme, "the whole point of the principle of [fundamental justice] is that a person whose liberty is in jeopardy must know the case to be met", and the Court went on to say that the national security context cannot be used to "erode the essence" of the section 7 protection, which is meant to provide "meaningful and substantial protection".

CCLA informs the Committee, by way of example, that the Security Certificate against Hassan Almrei was vacated after Mr Almrei served years in detention and house arrest, and only after Special Advocates were able to challenge the evidence against Mr Almrei and to even unveil that CSIS had failed to forward exculpatory evidence.

Named Individuals under Security Certificates are slated for deportation– if relevant evidence is withheld from Special Advocates, their defence of the Named Individuals will be compromised and may result in deportation to risk of torture. In the example

[32] For example, the Supreme Court of Canada in Gavrila and Nemeth, heard appeals of two Convention refugees each challenging extradition on the basis that they feared torture. Canada argued that it had obtained diplomatic assurances, and the wording of ss.118 IRPA did not proscribe all removals to the risk of torture.

given above of Mr Almrei's case, he had a number of hearings (pre-removal risk assessments) where it was determined that he would not be *refouled* because there was a risk of torture, however it was only when Special Advocates were able to access all the evidence against him that the Security Certificate itself was vacated, and Mr Almrei was released as a free man.

(C) BILL C-60 – NEW PROPOSAL AND THREAT TO *NON-REFOULEMENT*

Bill C-60[33] was introduced in the House of Commons on May 12, 2015. If passed, this law will amend the *Immigration and Refugee Protection Act* to deny certain individuals protected person status,[34] and enable their removal from Canada without the opportunity to apply for protection[35] if, on a decision of the Minister, it is decided that they "constitute a danger to the public in Canada", or "should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada."[36]

(D) BILL C-31 – THREATS TO *NON-REFOULEMENT*, LIBERTY AND SECURITY

CCLA is gravely concerned that Canada has passed legislation (Bill C31)[37] which:

- removes certain important safeguards regarding non-refoulement;
- enables excessive Ministerial discretion to label asylum seekers as "designated foreign nationals";
- enables mandatory detentions for "designated foreign nationals" that may result in asylum seekers being detained without review for up to six months
- enables separation of families during detention;
- creates impediments to family reunification with the 5 year moratorium for some refugees to seek Permanent Refugee Status; and
- creates the conditions conducive to violations of the principle of non-refoulement, of habeas corpus, of the right to be free from arbitrary detention, and of the corresponding legal guarantees found in the 1951 Refugee Convention and Optional Protocol; the Covenant, and the UN Convention on the Rights of the Child.

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[33] *An Act to amend the Criminal Records Act, the Corrections and Conditional Release Act, the Immigration and Refugee Protection Act and the International Transfer of Offenders Act.(Short Title: Removal of Serious Foreign Criminals Act).*

[34] *Ibid.,* clause 9.

[35] *Ibid.,* clause 15.

[36] *Ibid.,* clause 9.

[37] *An Act to amend the Immigration and Refugee Protection Act, the Balanced Refugee Reform Act, the Marine Transportation Security Act and the Department of Citizenship and Immigration Act* (*Protecting Canada's Immigration System Act).*

CCLA argues the right to be free from arbitrary detention, and the principle of non-refoulement, must be upheld and are non-derogable rights in international law. CCLA was active in opposing this legislation when it was introduced as a Bill, and made submissions to Parliament arguing that, for the above reasons, the Bill should not pass. We recommend that the offending sections of this legislation be repealed.

CCLA also wishes to bring the following two issues to the attention of the Committee:

Migrant Workers
CCLA is concerned that the Temporary Foreign Worker program creates serious gaps in legal protections wherein these individuals are at a heightened risk of exploitation and human rights abuses including trafficking risks; and lack meaningful access to justice and other remedies.

Health Care for Refugees and Persons with Indeterminate Legal Status
CCLA is concerned that the recent changes to the funding of the federal Health Care envelope for refugees and the lack of funding for persons with indeterminate immigration status will jeopardize their security of the person. Canadian law has failed up to now to recognize a right to healthcare as an aspect of security and dignity of persons. CCLA has written to the Minister of Citizenship and Immigration calling on him to reconsider the cuts to refugee healthcare. CCLA has written to the Minister of Citizenship and Immigration calling on him to reconsider the cuts to refugee healthcare.

5. FREEDOM OF EXPRESSION AND THE RIGHT OF PEACEFUL ASSEMBLY

Please provide information on measures taken at the federal level to reduce restrictions on the right to freedom of peaceful assembly and of association at the provincial and territorial level. Please also comment on: (a) reports indicating that freedom of expression is being restricted by punitive measures against civil society organizations and human rights defenders that promote women's equality, the rights of Palestinians, and environmental protection and corporate social responsibility, and (b) the alleged unlawful restrictions on the right of peaceful assembly, inter alia, over the course of the 2010 G20 protests in Toronto, 2012 Quebec Student protests, and demonstrations by Aboriginal communities.

CCLA is not aware of measures taken at the federal level to reduce restrictions on the rights to freedom of peaceful assembly and association at the provincial and territorial level.

To the contrary, a number of measures taken at the federal level appear, unfortunately, to threaten the robust protection of these freedoms. For example, the federal Government

Operations Centre (GOC), which coordinates the federal government's response to national emergencies and natural disasters, requested that all federal government agencies and departments help the GOC build a comprehensive list of demonstrations across the country. It is unclear why this was considered important to an agency concerned with emergencies and natural disasters. The idea of a federal list or database of protest activities is of clear concern to many Canadians who feel that peaceful protest activities should not be the subject of government surveillance or monitoring. This approach by the federal government does not dissuade the provincial or territorial governments from keeping track of peaceful protest activities, and instead sends a message that protest actions are presumptively a threat to public safety.

(a) CCLA is concerned about the climate for civil society organizations and human rights defenders in Canada on a number of fronts.

- There are reports that the Canada Revenue Agency (CRA) has been engaged in a series of audits of certain charitable organizations, and a suggestion that the audits are targeting organizations that are critical of government. The audits seek to ensure that charities are not violating rules contained in the *Income Tax Act* which limit the extent to which registered charities may engage in political activities. The charitable entities that have been the subject of additional scrutiny by the CRA appear to be primarily those concerned with environmental issues, many of whom have been vocal critics of the government and its policies in this area. Some charitable entities have had their charitable status revoked as a result of the audits, although the rules around political activities are complex and appear to be applied differently to different organizations. This has had a chilling impact on advocacy efforts by those in the charitable sector

- CCLA is also concerned about the implications of a recently signed Memorandum of Understanding (MOU) between the Department of Foreign Affairs, Trade and Development Canada and the Ministry of Foreign Affairs of the State of Israel regarding Public Diplomacy Cooperation. The MOU appears to equate "selective targeting" of Israel with anti-Semitism; the government's Public Safety Minister recently gave a speech at the United Nations in which he stated that Canada would take a "zero tolerance" stance against groups that promote boycotts against Israel. A representative of the Ministry of Public Safety also responded to media questions about this issue by citing Canada's hate speech laws. The government's intentions are unclear, but we remain concerned about the chilling effect that statements like this may have on those who support Palestinian rights or who choose to participate in the boycott, divestment and sanctions (BDS) movement against Israel.

(b) CCLA has expressed concerns on a number of occasions that the right to peaceful protest is being eroded.

CCLA is concerned that the right to peaceful protest, in recent years, is being eroded. CCLA notes that international law requires police to protect and facilitate enjoyment of the right to peaceful protest. The right to peacefully protest is an integral part of a democratic order and is as important as the right to vote. The government and security responses to the exercise of freedom of peaceful assembly is a test of whether a government is a democracy. Violent disruptions of peaceful protests are unacceptable no matter where they occur.

The G20 protests in Toronto during the summer of 2010 saw the use of kettling, mass arrests, and rubber bullets. The federal government refused to conduct a national inquiry into the events of the G20 and various other accountability mechanisms are at different levels of completion. On the whole, however, the accountability framework has been inefficient and many of the G20 complaints remain ongoing, almost five years later. The accountability framework is completely inefficient where complaints for the G20 have not yet been properly addressed. This situation creates a vacuum that does not appear to respect the rule of law as constitutional violations and illegal actions on the part of the authorities remain unpunished. We urge the Committee to ask Canada to provide an account of its policing accountability mechanisms and their efficiency.

In Montreal, student protests in the summer of 2012 and more recently have seen the repeated use of tear gas and excessive use of force against protesters. In March of 2015, protesters in Montreal and Quebec City engaged in large demonstrations to protest the province's spending cuts. Police were quick in many cases to declare these protests "illegal" and shut them down based on municipal bylaws that have questionable constitutional validity. For example, a Montreal protest was declared illegal on the basis that protesters had not provided the police with an itinerary of their demonstration. This is contrary to bylaw P-6, which is the subject of a constitutional challenge that is still pending before the courts of Quebec. Police have used tear gas on protesters and in one case during a protest in Quebec City, a woman was shot in the face with a tear gas canister from an estimated distance of only two metres away. Many protesters were also given tickets (for more than CDN $200/each) for failing to disperse.

Some of the Spring 2015 Quebec student protests were also directed at universities, with some students engaging in a student "strike" and attempting to block other students' access to their classes. One university (Université de Québec à Montréal – UQAM), obtained an injunction against student protesters from blocking other students' access to classes. It appears that some students may have breached this injunction, occupied parts of the university, disrupted classes, and engaged in vandalism. A police riot squad forcefully removed these students from the university.

(c) CCLA is concerned about reported restrictions on the protest activities of aboriginal groups and environmental groups

Aboriginal protests in various parts of the country have also been met with force in some instances, including protests in New Brunswick related to hydraulic fracturing (i.e. fracking) and Aboriginal groups opposed to the Northern Gateway pipeline in British Columbia. In New Brunswick, police enforced an injunction that had been obtained by the corporation engaged in seismic testing. There were reports of protesters being pepper-sprayed and approximately forty arrests were made in one day for a range of offences including threats, intimidation, mischief and breach of the injunction.

Aboriginal protests related to the problem of missing and murdered Aboriginal women have also happened frequently in Canada in recent years and the Idle No More movement has been strong in Canada, with largely peaceful protests taking place across the country in late 2012 and throughout 2013. In many cases, the policing of these protests was appropriate and facilitation of peaceful protest activities occurred.

Protests related to environmental issues are common in Canada, and are increasingly directed not only at government policy-makers, but also at private corporations that are engaged in exploration, resource extraction or development (e.g. pipeline, fracking, etc). Environmental protests are often linked to or related to Aboriginal protests (as discussed above). In these kinds of protests, police involvement may arise in part to enforce civil injunctions obtained by private corporations. For example, protests against the proposed Kinder Morgan Pipeline in Burnaby, British Columbia resulted in over 100 arrests, many for breaching a civil injunction.

(d) Rise in Private Lawsuits to Silence Expression

CCLA has also been concerned about the use of private lawsuits against protesters as a means to silence critical expression, and has promoted the passage of anti-SLAPP legislation at the provincial level. Such legislation has been introduced in Ontario and appears likely to pass by the end of 2015.

6. VIOLENCE AGAINST ABORIGINAL WOMEN

CCLA is extremely concerned about the alarmingly high rates of violence and death reported among Aboriginal women, and the disproportionately high percentages of Aboriginal women incarcerated in Canadian prisons. The Elizabeth Fry Society reports upon the criminalization of Aboriginal Women: although Aboriginal people make up only 3% of the population, over 30% of federally sentenced women are Aboriginal women.[38]

[38] See fact sheets available on Elizabeth Fry website, at http://www.elizabethfry.ca/eweek2011e/factsht.htm. See also the Statistics Canada Report: Violent Victimization of Aboriginal Women in the Canadian Provinces, 2009, Minister of Industry, 2011, available at http://www.statcan.gc.ca/pub/85---002---x/2011001/article/11439---eng.pdf.

Canada must investigate and address the root causes of disproportionately high violence against Aboriginal women, and the disproportionately high incarceration of Aboriginal women. Such investigations must be effective and produce meaningful results that can help Aboriginal persons and the country and the Government to forge the way forward. In particular, CCLA agrees with the recommendations on this issue of CEDAW, which called for ensuring that outstanding cases are investigated and prosecuted; ensuring standardized policing and investigative policies; introducing more awareness campaigns; establishing a National Missing Persons Office; ensuring more systemic disaggregated data collection; and the development of long-term anti-poverty, housing, education, employment and food security strategies aimed at helping women in the Aboriginal community. A National Public Inquiry was also recommended.[39] CCLA also supports recommendations that Canada consider the recommendations of the UN Committee Against Racial Discrimination, the UN Human Rights Committee, and the UN Committee on the Elimination of Discrimination Against Women in this regard. [40] The CEDAW Report noted the call, by stakeholders, for a National Public Inquiry to guide and inform a National Action Plan on violence against Aboriginal women.[41] To this point, the Canadian government has failed to address the issue as a large-scale problem of socio-economic discrimination. The CEDAW moreover found that:

> Action on the ground must be informed by a coordinated master plan based on a consultative process involving those at all levels including the rights holders and must take into account all dimensions of the problem and the cultural, ideological, socio-economic, judicial and political structural barriers that undergird and are at the root of the problem.[42]

Efforts to investigate, remedy, or provide redress to Aboriginal women – including inquiries into murders or disappearances such as the British Columbia inquiry – must provide meaningful participation to the Aboriginal communities and in particular to Aboriginal women.

The CCLA is extremely concerned that there has not been a Federal Inquiry called into the disappearances and deaths of Aboriginal women. CCLA does not accept that the RCMP reports have resolved the issues for Aboriginal communities, for Canadians, for families of the missing and disappeared, for families of victims, or for Aboriginal women as a whole. Nor does CCLA accept that these issues of disappearances, murder and violence must be treated solely as crimes and left in police hands. CCLA requests the Committee to question the State Party on these crucial issues.

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[39] For a full list of recommendations, see *ibid* at pages 47-51.

[40] Regarding CEDAW Concluding Observations implementation, see 2009 Working Group Report – Canada, as suggested by Turkey, the Syrian Arab Republic, Bolivia, Malaysia, Italy, Mexico in 2009. Recommendations 27, 33, 34 and 35.

[41] *Ibid* at page 38.

[42] *Ibid* at page 39.

Recent Incidents

Two more fatal events tragically illustrate the need for a federal inquiry:

On August 17, 2014, Winnipeg police found the body of 15 year-old Aboriginal girl Tina Fontaine in the Red River. She had been reported missing 8 days prior and her death was treated by police as a homicide. The police did not say that Ms. Fontaine had been working as a sex worker, but stated that she was being "exploited" and "taken advantage of."

Manitoba Aboriginal Affairs Minister noted that Ms. Fontaine was only the most recent of several victims over decades of murdered and missing Aboriginal women and stated that the federal government ought to conduct a national public inquiry.[43]

On February 13, 2014, Loretta Saunders, an Inuk woman from Newfoundland, was reported missing. She was completing her thesis on missing and murdered Aboriginal women at Saint Mary's University in Halifax at the time. Ms. Saunders was found dead on the median of a Nova Scotia highway approximately two weeks later. Her two roommates were convicted of murder on April 29, 2015. The judge found they killed her because they were unable to pay her rent for the apartment, which she was subletting to them. [44]

CCLA's Recommendations

CCLA calls for a national inquiry to investigate the murder and disappearances of Aboriginal women. The root causes of violence against Aboriginal women should be addressed. Aboriginal women – and their communities – must be provided opportunities for meaningful participation and direction in such efforts. Inquiries or investigations that do not meaningfully include Aboriginal women and their communities are counter-productive and further the marginalization and in turn, exclusion and disenfranchisement of these vulnerable persons.

7. TRUTH AND RECONCILIATION COMMISSION OF CANADA

The Truth and Reconciliation Commission of Canada ("Commission") was established in 2008 under the terms of the Indian Residential Schools Settlement Agreement, the largest class-action settlement in Canadian history. The agreement budgeted $60 million over five years for the Commission. From June 2010, the

[43] "Tina Fontaine, 15, found in bag in Red River", *CBC News* (17 August 2014) online at: http://www.cbc.ca/news/canada/manitoba/tina-fontaine-15-found-in-bag-in-red-river-1.2739141

[44] "Loretta Saunders murder was 'despicable, horrifying, and cowardly'", *CBC News* (28 April 2015) online at: http://www.cbc.ca/news/canada/nova-scotia/loretta-saunders-murder-was-despicable-horrifying-and-cowardly-1.3052465

Commission received over 6,750 statements from witnesses about their experiences at government-funded and church-run Indian residential schools, including survivors' experiences of physical, sexual, verbal, and emotional abuse. On June 2, 2015, the Commission released an executive summary of its final report.

Indian residential schools were established in the 1870s, with the last school closing in 1996 in Regina, Saskatchewan. An estimated 80,000 former students are still alive of around 150,000 First Nations children who passed through the residential school system. Chair of the Commission, Judge Murray Sinclair, estimated that at least 6,000 Aboriginal children died while in the residential school system. Records were poorly kept or destroyed, however, and the number of reported deaths is 3,201 according to the Commission report.

The report includes 94 recommendations, outlining specific actions to redress the residential school legacy in Canada, improve the plight of Aboriginal peoples, and restore relations between them and other Canadians. The recommendations touch upon several issues, including child welfare, education, language and culture, health, justice, and reconciliation. The recommendations include calling for the adoption by the federal government of the United Nations *Declaration of the Rights of Indigenous Peoples* and for the establishment of a national inquiry into missing and murdered Aboriginal women and girls.

The CCLA requests the Committee to question the State Party about its next steps regarding the 94 recommendations including plans for implementing, and monitoring the implementation of, the recommendations.

8. CANADA AND THE OPTIONAL PROTOCOL

In addition to the foregoing issues, CCLA requests the Committee to question the State Party on its commitment to decisions rendered pursuant to the individual complaint mechanism of the Option Protocol. In particular, CCLA is concerned that notwithstanding this Committee's finding that Canada was the Complainant's "own country", Canada nevertheless deported Jama Warsame to Somalia where he "would face a real risk of harm."[45]

[45] *Jama Warsame v. Canada,* CCPR/C/102/D/1959/2010, UN Human Rights Committee (HRC), (1 September 2011).