



**NATIONAL
COUNCIL
OF CANADIAN
MUSLIMS**

Your Voice. Your Future.

SUBMISSION ON BILL C-51, THE ANTI-TERRORISM ACT, 2015

House of Commons Committee on Public Safety and National Security

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CONTENTS

About NCCM	3
Executive Summary	4
Analysis	
• Canadian Muslims Pay a Higher Cost for National Security	5
• No-Fly Lists	5
• Sharing Information	6
• Terrorism Propaganda Provisions	7
• Advocating or Promoting Terrorism Offense	7
• CSIS and Violating the <i>Charter</i>	8
• Combating Radicalization to Criminal Violence	9
Conclusion	10

About NCCM

The National Council of Canadian Muslims (NCCM) is an independent, non-partisan, non-profit grassroots organization that is a leading voice for Muslim civic engagement and the promotion of human rights.

Our mandate is to protect the human rights and civil liberties of Canadian Muslims, promote their public interests, build mutual understanding between communities, and confront Islamophobia. We work to achieve this mission through our work in four primary areas including community education and outreach, media engagement, anti-discrimination action, public advocacy and partnering with other social justice and public interest organizations.

The NCCM has testified before several parliamentary committees on important legislation, including previous iterations of the Anti-Terrorism Act; has participated in the Arar Commission, the Air India Inquiry, and the Iacobucci Internal Inquiry; and has appeared before the Supreme Court of Canada on a variety of issues of national importance.

The NCCM regularly provides media commentary on issues affecting Canadian Muslims. It offers frequent seminars and workshops on Islamic practices and issues of religious accommodation, and produces a number of publications, which include guides outlining Islamic religious practices for journalists, employers, educators, and health care providers. The NCCM also distributes a concise “Know Your Rights” pocket guide in both English and French. Our publications are regularly requested by government departments, local and national media outlets, police services, hospitals, schools, businesses, and various non-profit groups.

The NCCM documents and resolves discrimination and bias-related complaints. It produces reports on anti-Muslim sentiment and reports its findings annually to the ODIRH of the Organization for Economic Cooperation and Development (OECD). It has also presented findings at national and international conferences.

The NCCM is federally incorporated and is fully funded and sustained through private donations from Canadians. The NCCM does not accept donations from foreign organizations or governments.

Its current board of directors includes Kashif A. Ahmed, JD (Board Chair), Khalid Elgazzar, LLB (Vice-Chair), Shahina Siddiqui, Aftab Sabir, MBA and Khadija Haffajee.

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The National Council of Canadian Muslims (NCCM)

EXECUTIVE SUMMARY

The National Council of Canadian Muslims (NCCM) supports all measures that effectively enhance security while respecting human rights and civil liberties and the protections afforded under the *Canadian Charter of Rights and Freedoms*.

Bill C-51 drastically expands national security agencies' powers without any meaningful and concomitant increase in oversight, review and redress mechanisms as recommended by the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar conducted by Justice Dennis O'Connor. The proposed legislation requires Canadians to put faith in national security agencies and operations that have been found to deserve no such faith. If we have learned anything from the harrowing experiences of Arar and others it is that what is needed is greater oversight of these agencies. Bill C-51 proposes the opposite: less oversight and more power.

Although events such as the attacks on Parliament Hill and at St-Jean-sur-Richelieu can have the effect of causing the general population to feel fear, the role of government is to act on settled facts and sound policy. It is not sufficiently clear that there is a need for these additional powers, or that the goal of enhancing security will necessarily be achieved, and at what cost. If increased powers are indeed warranted, then they must also be proportional to the stated need, as well as be accompanied by the aforementioned checks and balances. This approach aligns with the well-known maxim of those who work in accountability in the security sector: trust but verify.

NCCM shares virtually all of the concerns expressed by the following organizations and individuals: the British Columbia Civil Liberties Association, the Canadian Civil Liberties Association, Amnesty International Canada, the Canadian Muslim Lawyers Association and national security legal experts like Prof. Craig Forcese and Prof. Kent Roach. Our principal concerns with Bill C-51 are its:

- Lack of independent oversight in national security coupled with increased discretion and powers
- Insufficient judicial review of no-fly lists, which are notoriously prone to error
- Inadequate response to the recommendations of the Arar Commission
- Addition of unnecessarily broad and vague provisions relating to terrorism
- Chill of free expression
- Judicial sanctioning of *Charter* violations

This submission will speak to the concerns of Canadian Muslims that Bill C-51 will be used disproportionately against them and will create a chill on engaging in lawful activity out of fear of suspicion. Group-based scrutiny, direct or indirect, is contrary to the right to equality as guaranteed by section 15 of the *Canadian Charter of Rights and Freedoms*.

Canadian Muslims Pay a Higher Cost for National Security

Members of Canadian Muslim communities have paid a higher price for national security. The Arar Commission warned: “Given the tendency thus far of focusing national security investigations on members of the Arab and Muslim communities, the potential for infringement on the human rights of innocent Canadians within these groups is higher.”¹

Since 9/11 Muslims have been subject to heightened suspicion, which is perpetuated by negative stereotyping and discrimination within Canadian society. As a result, Canadian Muslims pay a higher cost for any public benefit derived from national security measures.

The disturbing cases of Canadians such as Maher Arar, Abdullah Almalki, Ahmad El Maati, Muayyed Nureddin, Abousfian Abdelrazik, and Benammar Benatta speak to this disproportionate cost and the extant pitfalls associated with a lack of effective oversight over security agencies.

With new and broader powers under Bill C-51, the risk of rights infringement increases not only for Canadian Muslims but also for other Canadian communities who may be subject to security scrutiny. National security is not enhanced when vulnerable communities of Canadians are made to feel less secure by overreaching law enforcement with no avenues for redress for abuses and errors.

No-Fly Lists

The *Charter of Rights and Freedoms* guarantees Canadians the right to move and travel freely within the country and abroad. At NCCM, we regularly hear from Canadian Muslims who have been wrongly designated on no-fly lists. The impact that this has on them, their families and often their business or professional interests, can be devastating. In a globalized world, it is not surprising that for many people, being unable to get on an airplane will have life altering and highly prejudicial consequences.

Bill C-51 allows for some judicial review of the no-fly lists, but a major shortfall is that the listed person is not granted standing at a judicial review hearing. Furthermore, special advocates, who are security-cleared to handle such national security-sensitive information, are not given the ability to see or challenge the information on no-fly lists. No-fly lists are well-known to be prone to error. Such a system cannot stand constitutional scrutiny without, at minimum, an opportunity for meaningful review.

Too many Canadian Muslims have essentially been banned from international travel, considered, as one author put it, “Too guilty to fly, too innocent to charge”.² This humiliation comes at great personal and material cost to those affected.

¹ Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, “Report of the Events Relating to Maher Arar” (Her Majesty the Queen in Right of Canada, 2006) at 324, online: Government of Canada <http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/maher_arar/07-09-13/www.ararcommission.ca/eng/AR_English.pdf> [“Arar Commission Report”].

² <http://www.palestinechronicle.com/faisal-kutty-too-guilty-to-fly-too-innocent-to-charge/?print=pdf>

Sharing Information

Part 1 of Bill C-51 enacts the *Security of Canada Information Sharing Act*, which authorizes government agencies and institutions to disclose information to other government institutions that have jurisdiction or responsibilities in respect of “activities that undermine the security of Canada.”

The definition of “activities that undermine the security of Canada” is defined very broadly to include activities that undermine “the sovereignty, security or territorial integrity of Canada or the lives or the security of the people of Canada”. This is so broad that it is likely to lead to unnecessary intrusions into the private lives of Canadians.

Consider the case of Maher Arar, a citizen who was illegally transferred to Syria in 2002, where he was tortured for nearly a year. It was later revealed that false assumptions about his purported “associations” had turned him, an innocent man, into a suspected terrorist. Information disclosed in the course of a public inquiry implicated Canadian officials in the shoddy intelligence work that generated misinformation causing the ordeal. The lack of any institutional checks or oversight meant that the RCMP’s mistakes were discovered much too late. Mr. Arar was later cleared of any association with terrorism, and received a multi-million dollar settlement and an official apology from the Prime Minister.

The Arar Commission made several recommendations with respect to information sharing and the RCMP. These are applicable to any government agency participating in information sharing, and include:³

- The RCMP should ensure that, whenever it provides information to other departments and agencies, whether foreign and domestic, it does so in accordance with clearly established policies respecting screening for relevance, reliability and accuracy and with relevant laws respecting personal information and human rights.
- The RCMP should never share information in a national security investigation without attaching written caveats in accordance with existing policy. The RCMP should review existing caveats to ensure that each precisely states which institutions are entitled to have access to the information subject to the caveat and what use the institution may make of that information. Caveats should also generally set out an efficient procedure for recipients to seek any changes to the permitted distribution and use of the information.
- The RCMP’s information-sharing practices and arrangements should be subject to review by an independent, arms-length review body.

Bill C-51 fails to endorse or respond to these recommendations. This is an error if the goal is to try to prevent further wrongs committed by government against innocent Canadian Muslims such as Maher Arar and others.

³ Arar Commission Report at 334-342.

Terrorism Propaganda Provisions

Bill C-51 adds a provision to the *Criminal Code* that would allow for the seizure and deletion from the Internet of “terrorist propaganda”. It is unclear how this provision is necessary given the other terrorist provisions of the *Criminal Code*, which includes facilitating, participating, instructing, harbouring and financing terrorism.

It is also of note that the term “terrorist propaganda” has been added to a customs tariff in Bill C-51. This tariff would allow customs officials to seize and retain obscene material and hate propaganda at the border. Past experience has shown that this kind of discretion in the hands of customs officials is dangerously susceptible to abuse, and there is no process for independent review. This will chill speech as Canadian Muslims may worry about how their books will be perceived. Worse, it could lead to targeted censorship of Canadian Muslims. The Supreme Court of Canada has previously found customs officials to have discriminatorily targeted a gay and lesbian bookstore when enforcing the ban on obscene material.⁴ There is good reason for Canadian Muslims to fear that they will be discriminatorily scrutinized for “terrorist propaganda”.

Advocating or Promoting Terrorism Offence

Bill C-51 adds a new Criminal Code offence, s.83.221:

Every person who, by communicating statements, knowingly advocates or promotes the commission of terrorism offences in general - other than an offence under this section - while knowing that any of those offences will be committed or being reckless as to whether any of those offences may be committed, is guilty of an indictable offence and is liable to imprisonment for a term of not more than five years.

This provision is broad and vague and will likely lead to a chilling effect on constitutionally protected free expression. This has wide reaching implications for a broad spectrum of Canadians, and in particular for Muslim communities.

National Security experts Kent Roach and Craig Forcese write in a paper entitled “Bill C-51 Backgrounder #1: The New Advocating or Promoting Terrorism Offence”; online <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2560006> at page 25:

It is also difficult to deny that since 9/11 the burden of an expression-based offence will fall disproportionately on Muslim communities. An already difficult social and political climate will become more difficult, potentially undermining considerably the promising counter-violent extremism programs being developed by the RCMP. It is exactly these programs that the research suggests may be the ultimate solution to the

⁴ *Little Sisters Book and Art Emporium v Canada (Minister of Justice)* [2000] 2 SCR 1120

violent extremism problem.

As an aside, we hasten to add that while the impact on the Muslim community is obvious, there is no end to the causes whose advocates might be captured by this new offence. We will inevitably be asked if the bill could reach Quebec sovereigntists, Indigenous activists or environmental protesters. The answer is that it could reach any and all of these causes, so long as the highly imprecise and uncertain elements of the crime, discussed above, are met. (For example, statements that all true Aboriginal warriors or environmentalists should be prepared to attack pipelines, or that it is time to support a group with the same aims and methods of the FLQ could run afoul of the proposed offence. This speech may be reprehensible, but we think that the deleterious consequences that may flow from such attitudes is already sufficiently regulated by existing terrorism offences.)

The language of C-51 is so broad it will almost certainly cast a chill over members of Canadian Muslim communities, many of whom have fled authoritarian countries where people are punished for their opinions. Rather than risk being accused of extremism, individuals will stay quiet. And more distressing, rather than debating opposing and even controversial views and risk being associated with tainted individuals, those who could be on the vanguard of challenging extremist ideology will be scared into silence. The silencing effect will be damaging to values of openness, free exchange of ideas, and free association.

CSIS and Violating the Charter

Bill C-51 enables CSIS to take measures within or outside of Canada to reduce threats to the security of Canada. Furthermore, these measures may be permitted to be contrary to the *Charter* or Canadian law provided a Federal Court warrant is granted.

This is gravely concerning for a number of reasons. In the criminal context, warrants are granted to prevent *Charter* violations not grant them. Furthermore, as has already been stated, CSIS has in the past misled the Federal Court in attempting to obtain warrants.⁵ Expanding CSIS's powers to warrants that violate *Charter* rights is highly disconcerting.

Given the already higher cost paid by Muslim communities for national security, authorizing CSIS to take measures contrary to the *Charter* to reduce threats is completely unacceptable, and goes beyond CSIS's intelligence-gathering mandate.

Furthermore, given the secret and confidential nature of national security proceedings it makes it difficult for the public and civil liberties organizations such as the NCCM to track the potentially higher cost paid by society and certain communities within society for national security. Expanding CSIS's powers without investing in its over-taxed review body is a grave concern.

⁵ *X (Re)*, 2014 FCA 249.

Combating Radicalization to Criminal Violence

Bill C-51 antagonizes Canadians rather than invest in them. As the former Chair of the Senate Committee on National Security and Defence, Senator Colin Kenny, recently wrote on how to most effectively combat the threat of violent extremism: “A robust counter-terrorism response isn't always the ideal approach, either. If possible, it's safer, faster and less expensive to dissuade at-risk individuals from going further down the path of extremism before they commit a crime. This dissuasion is often more effectively delivered by people within their communities.”⁶

Canadian Muslim communities across the country have indeed been at the forefront in confronting radicalization to criminal violence, and continue to work to try to address this issue through various projects and initiatives including for example the OWNIT conference held in Calgary last year, the United Against Terrorism guide produced by the Islamic Social Services Association (ISSA) in conjunction with the NCCM, and the Hayat Canada project started by Christianne Boudreau, the mother of a Canadian who was tragically radicalized to criminal violence and killed overseas. But challenging this phenomenon is a Canadian issue, it is not a Muslim issue.

To date, the work done has been more of a patchwork, rather than a coordinated and supported national effort that recognizes the multi-faceted nature of this problem. The tireless and good faith efforts of communities and community leaders in addressing the threat of radicalization to criminal violence should be supported, not only financially, but also by way of specialized resource support. To date, communities have navigated this complex issue with little or no expertise in areas like counselling, de-radicalization/re-purposing initiatives, social media messaging, etc.

In order to make a good faith anti-terrorism effort, the federal government needs to focus combating radicalization to criminal violence from a grassroots partnership level. The temptation to create more powers of enforcement and arrest to make the general population feel safer can be appealing. But this is a slippery slope in a liberal democracy: government cannot simply spy and arrest the way out of this problem. It takes more than laws (even good ones) to effectively address the contemporary challenges to national security.

⁶ Kenny, Colin, “Ten signs that someone is becoming radicalized to violence”, online: <
<http://colinkenny.ca/en/p106133>>.

Conclusion

The NCCM maintains that existing laws are sufficient for ensuring the goals stated behind Bill C-51. The proposed law drastically expands powers that are exercised almost entirely behind a cloak of secrecy and impunity.

The government has failed to demonstrate a connection between the measures proposed and a compelling need that would justify the measures, not to mention the harm that this law is certain to cause to constitutional rights and freedoms. As aforementioned, given the disproportionate impact that previous security measures and legislation have had on Canadian Muslims, it is not unreasonable that they have every reason to fear that they will be the collateral victims in this web of unchecked power and unbridled information sharing, if not the direct targets of unfair scrutiny.

What is needed is investment in society. While there seem to be many factors that contribute to radicalization to criminal violence what appears to be at the root is alienation and a sense of disconnectedness of the individual to their family, community and Canadian society at large.

Bill C-51 fails to deal with the underlying factors that facilitate radicalization to criminal violence. This is consistent with the government's anti-terrorism policy, which is to treat all "jihadi terrorism" as solely rooted in religious ideology, described as "barbaric".

The social causes and personal factors are completely absent from a government approach, which is unduly focused on enforcement. The NCCM recommends abandoning Bill C-51 and urges the government to develop an informed social policy concerning radicalization to criminal violence and a broadly consultative strategy to address the root causes.