



**NATIONAL COUNCIL
OF CANADIAN MUSLIMS**

Your Voice. Your Future.

**PARLIAMENTARY SUBMISSION ON
CANADA'S NATIONAL SECURITY FRAMEWORK**

The Standing Committee on Public Safety and National Security
House of Commons | February 15, 2017

Who we are

Briefly, the National Council of Canadian Muslims (NCCM) is an independent, non-partisan, and non-profit grassroots Canadian Muslim advocacy organization. Its mandate is to protect human rights and civil liberties, challenge discrimination and Islamophobia, build mutual understanding between Canadians, and promote the public interests of Canadian Muslim communities.

We strive to achieve this through our work in community education and outreach, media engagement, anti-discrimination action, public advocacy and coalition building. For over 16 years, the NCCM has participated in major public inquiries, appeared before the Supreme Court of Canada on issues of national importance, and provided advice to security agencies on engaging communities and promoting safety.

Why this debate matters

National security is important to all of us. Canadian Muslims are committed to national security because terrorism is harmful to everyone. In fact, globally the overwhelming majority of victims of extremist violence have been Muslims. We support national security efforts to make our communities safer.

Canadian Muslims also expect their basic freedoms to be respected, a constitutional right. Our concern is that sometimes those freedoms are sacrificed at the *expense* of national security, and because of negative stereotypes, assumptions, and overbroad powers, Muslim communities feel disproportionately affected, as if their rights and freedoms were lesser than other Canadians.

National security should not come at the expense of Charter rights and freedoms; rather they share a symbiotic relationship - the loss of one signals the loss of the other. We must acknowledge that some marginalized communities are stigmatized by overbroad laws and the rhetoric of fear and hate, making them feel less secure as opposed to more secure.

National security policy is particularly important for our Muslim communities because of the current political climate. In recent years and months, there has been a surge of hate crimes against Canadian Muslims and a growing climate of Islamophobia. Every time Islam or Muslims are associated with violence or threats to Canadian society or the political discourse disparages or vilifies Muslims, the social impact of these negative associations is felt. A devastating example of this is the hateful attack at the Islamic Culture Centre of Quebec City that claimed the lives of six Canadian Muslims. Promoting security for all Canadians must include protecting Canadian Muslims and other targeted minorities against discrimination and hate crimes by some elements within society.

Canadian Muslims pay a higher cost for National Security

Based on what is known about the last 15 years, it appears that the Canadian security establishment does not afford Canadian Muslims the same Charter respect and protection as other Canadians. Through direct and indirect actions, Canadian security agencies have, in many respects, lost the trust and confidence of Canadian Muslim communities.

The disturbing and well-known 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 administering a national security regime prone to error and abuse. The lack of effective oversight over security agencies failed to prevent or remedy the pain and suffering that these men and their families suffered unjustly.

Little has been done to address revelations about errors, lies, unreliability and sloppiness in information gathering and information sharing within the security establishment. The principal recommendations of the Arar Commission Inquiry and others have been unheeded and are not adequately reflected in the *Anti-Terrorism Act, 2015* or addressed in the Government's Green Paper.

The Arar Commission concluded that the "potential for infringement on the human rights of innocent [Muslim and Arab] Canadians" is higher in national security enforcement

due to the stricter scrutiny to which members of these groups are subjected. Thus, any deficiencies in the Act or its enforcement will disproportionately affect Canadian Muslims.

Our Position

It is our submission that the Act marginalize Muslim communities. In March 2015, the NCCM testified before this committee on Bill C-51. The NCCM has taken principled opposition to the Act from the beginning. We echo the view of the overwhelming majority of experts in the field that the Act represents a greater danger to Canadians than is justified in the name of fighting terrorism. We agree with other witnesses that more power to security agencies does not necessarily mean more security for Canadians.

Further, the Government's Green Paper does little to assure Canadian Muslims that our participation in any national security strategy will result in our members and communities being made more secure.

The Green Paper calls for strengthening the security establishment without providing any evidence or reasons to support why this is either necessary or wise. Canadian Muslims are looking for assurances that the government will keep the powers of the security establishment in check through proper review and oversight mechanisms, as well as rigorously applying Charter standards. The risks of abuse are too great, and the record of past abuse too extensive. Canadian Muslims must be treated as citizens, not as suspects.

National security errors not only put innocent people at risk of suspicion and stigma, they also divert resources from focusing on actual threats or engaging in other activities to promote safety and security within Canadian society.

The NCCM believes that the Act is unnecessary to ensure the safety and security of Canadians, while the threat it poses to civil liberties and the equality rights of Canadian Muslims is disproportionate to any purported benefit. Therefore, we are in favour of repeal. In the alternative, the NCCM has specific recommendations on amendments to the Act.

I will first address the ways in which the Act disproportionately undermines Canadian Muslims' basic rights and freedoms.

No-Fly Regime

The NCCM continues to oppose the “no-fly” regime implemented by Bill C-51 and the *Secure Air Travel Act* (SATA). No-fly lists have a devastating impact on those that are wrongly named, and yet this legislation does nothing to ensure the freedom to fly for wrongly designated Canadians. At NCCM, we regularly hear from Canadians who are wrongly designated on no-fly lists without any possibility of meaningful appeal. It is impossible to know if you are on the no-fly list, and there is little to no redress to appeal your name. Although the government has established a Passenger Protect Inquiries Office, this is not an appeal mechanism. The Application for Recourse remains murky and unclear. As such, NCCM supports the proposal requiring the government to fully review all appeals by Canadians on the no-fly list.

The NCCM maintains that no-fly lists have not been demonstrated to achieve greater benefit to security than harm to personal liberty and as such should be reevaluated. The use of no-fly lists should be reduced only to cases where there are very strong grounds to know that an individual poses a danger. Any alternative results in racial profiling and the imposition of discriminatory limits on constitutional mobility rights that are not justifiable. If the no-fly list is to be maintained, at minimum, a listed person should have a meaningful opportunity to appeal and contest their designation.

Information Sharing

The *Security of Canada Information Sharing Act* (“Information Sharing Act”) authorizes government agencies and institutions to disclose information to other government institutions that have jurisdiction or responsibilities in respect to “activities that undermine the security of Canada.” This is broad and difficult to define, and could result in constitutional violations against innocent Canadians, including innocent Canadian Muslims. We believe that the Information Sharing Act should be repealed. Information sharing must be based in policies that

respect personal information and human rights. We cannot normalize extraordinary powers without evidence of effective security enhancement and mitigation of harm to civil liberties.

The NCCM urges the government to implement the recommendations made in the Arar Commission with respect to information sharing by the RCMP, which could also be adapted by other government departments.

Strengthen Review and Oversight: CSIS

The NCCM is particularly concerned with the broad-reaching powers given to CSIS through vague language, for example, to take actions that are “reasonable and proportional.” While the Act purports to enhance national security by strengthening the powers of national security agencies, it does so with minimal oversight and at a high cost to the Charter rights and freedoms of Canadians. This is of particular concern to Canadian Muslims, who are more likely than others to find themselves targeted by national security investigations.

It is also problematic that CSIS gets to decide if they need to apply for a warrant. Such overbroad powers are not demonstrably justified in a free and democratic society. We need meaningful accountability.

The NCCM welcomes the proposal for SIRC to review all, as opposed to some, of the operations performed by CSIS. To better coordinate national security agencies, the NCCM would also recommend that the government form a unified, whole-of-government committee, or “super SIRC,” similar to the Five Eyes intelligence partners. A “super SIRC” could be mandated to review all national security activities in government, including information sharing.

Mandatory Legislative Review

The Act creates extraordinary powers that should be viewed, at best, as a ‘necessary evil’ in a liberal democracy. The revelations from the Arar Commission demonstrate the terrible impact of errors in the use of extraordinary powers. The risks are known; what is needed is

robust oversight and review. The NCCM supports the government's proposal for a full statutory review of the Act every three years, as well as instituting a sunset clause on certain provisions.

Repeal Overbroad Speech and Thought Crimes

The new crimes associated with "terrorist propaganda" are imprecise and overbroad. They create too much enforcement discretion, which puts perfectly lawful and non-violent conduct within the purview of the Criminal Code. This risks criminalizing dissent by chilling or punishing legitimate political and other speech, which attract high levels of Charter protection. It is unclear why new crimes are necessary given existing provisions regarding terrorism in the Criminal Code.

The NCCM also urges the government to repeal the overbroad crimes including "activities that undermine the security of Canada" in the Security of Canada Information Sharing Act, as well as the new offence in the Criminal Code, s.83.221. The language of this offence, as well as the definitions in the Act, do not create new tools for enforcement. Rather, they create new risks for chilling legitimate speech and political activism. These provisions directly undermine the democratic goals that justify counter- terrorism law and policy in the first place.

Conclusions

In the current climate, merely strengthening law enforcement powers is unlikely to yield effective community engagement. Genuine engagement with Canadian Muslims as partners in national security is a necessary prerequisite to any other aspect of counter terrorism or counter radicalization activity. To that end, the NCCM supports the Green Paper's acknowledgement of the utility of community outreach and counter-radicalization efforts, including the creation of the Office of Community Outreach and Counter-radicalization Coordinator. By far the most effective, and least costly, approach to combating radicalization to criminal violence is delivered at the grassroots level within communities.

We respectfully urge this committee to seriously reconsider policies that may in fact be counterproductive to, and undermine the efforts of, those working on the front lines to address the phenomenon of radicalization. The NCCM is willing to partake in public consultations and work with the federal government at the grassroots partnership level to develop and implement a national coordinated strategy for community-based initiatives.