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THE CANADIAN INTELLIGENCE DILEMMA AND THE SECURITISATION OF TERRORISM

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Exercise Solo Flight

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EXERCISE *SOLO FLIGHT* – EXERCICE *SOLO FLIGHT*

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Maj L.J.H. Clifford

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19 terrorists in 6 weeks have been able to command 300 million North Americans to do away with the entirety of their civil liberties that took 700 years to advance from the Magna Carta onward. The terrorists have already won the political and ideological war with one terrorist act. It is mind boggling that we are that weak as a society.

- Rocco Galati

INTRODUCTION

In today's global security environment, Western Liberal Democracies are often confronted with dynamic, complex, and unpredictable national security matters involving threats of transnational terrorism. In the wake of the horrific terrorist attacks that crippled Paris in November 2015, and most recently, the devastating March 2016 attacks in Brussels, it is important to acknowledge that Canada is not immune to similar terrorist activities. These forms of threats emanate from an array of sources which include: home-grown terrorists, cyber terrorists, religious extremists, non-state actors, and terror networks divested of political end-states; many of which are facilitated by an ever growing domestic diaspora.

Canada is currently engaged in a conflict against an adversary that is fundamentally different from pre 9/11 enemies of the State. Prior to 9/11, threats from terrorist activities were viewed as a global problem and did not require the same level of government engagement. The threat of terrorism in Canada has significantly transformed in the last two decades with the advent of technology. Modern-day terrorist organizations operate without borders, rules of engagement, or centres of gravity for conventional security operations to target. These emerging threats are “highly dynamic, increasingly decentralized, religiously inspired movements propelled for the most part by a diverse collection of non-state actors. They operate in some instances openly but more often clandestinely, using unorthodox tactics and weapons.”¹

¹ Paul B. Stares and Mona Yacoubian, “Rethinking the War on Terror: New Approaches to Conflict Prevention and Management in the Post-9/11 World,” in *Leashing the Dogs of War* (Washington, D.C.: United States Institute of Peace Press, 2007), 425.

Transnational terrorist organizations have successfully “ridden the wave of globalization”² and will continue to threaten Canadian national security interests for many years to come.

The post 9/11 period has bared witness to Liberal Democracies such as Canada implementing controversial security policies which empower government security and intelligence agencies to pursue threats that could potentially jeopardize domestic values and national security. This progressive emphasis on tackling transnational terrorism has fundamentally transformed the Canadian security and intelligence enterprise. As a result of these new policies and practices, civil libertarians, legal experts, and Canadians alike are raising legal and ethical concerns about these changes, and the implication on Canadian's individual Rights in accordance with the Canadian Charter of Rights and Freedoms.

The Canadian Government has created a paradox: the national security and intelligence agencies that are tasked with protecting Canadians are constrained by the same society they serve to protect. In light of this paradox, this paper will demonstrate that the Canadian Security and Intelligence enterprise operates within an intelligence dilemma; wherein, the government must balance the provision of collective national security with individual civil liberties, while simultaneously attempting to retain the political support of Canadians for the proposed security and intelligence policies. In order to prove this thesis, this paper will be divided into two parts. The first part: Origin of the Dilemma, will identify key civil liberty concerns associated with the securitisation of terrorism, and address how these concerns affect individual civil liberties. The second part: Why Such a Dilemma? will analyze the delta between the public's perception and the government's interpretation of the threat of terrorism to Canada's national security; the two key factors that drive the balance of the dilemma.

² R.J. Aldrich, “Global Intelligence Co-operation versus Accountability: New Facets to an Old Problem,” *Intelligence and National Security* 24, no. 1 (2009): 26.

ORIGIN OF THE DILEMMA

Canada, like other Western Liberal Democracies has had to transform its counter-terrorism strategy to contend with the ever growing and complex threat of transnational terrorism. It is argued that the Canadian approach to terrorism is reactive in nature as it focuses on the implementation of rigid legislation in order to manage risk instead of defending against the actual threat.³ Given this information, there are several reasons for the Canadian public to question the government's controversial national security policies. This section will investigate some leading civil liberty concerns regarding the Canadian governments approach to national security. Themes that will be discussed include: the securitisation of terrorism, the controversial definition of terrorism activities, freedom of expression under the Canadian Charter of Rights and Freedoms, pre-emptive detention, privacy in the age of meta data, intelligence sharing, and ethics. It is important to note that these are only a few concerns raised by Canadians regarding national security legislation and terrorism, and it is not within the scope of this paper to discuss all root causes of this intelligence dilemma.

Securitisation

Shortly following the September 11th terrorist attacks on the United States, the United Nations Security Council (UNSC) voted unanimously on September 28 2001, to adopted Resolution 1373 titled *Threats to International Peace and Security Caused by Terrorist Acts*. The Resolution was so monumental that the Security Council assembly lasted an astonishing three minutes before adjourning at 10:53 pm.⁴ The dramatic and frightening nature of the 9/11 attacks and the adoption of United Nations Security Council Resolution (UNSCR) 1373 enabled Nation

³ Mikkel, V. Rasmussen, *The risk Society at War: Terror, Technology and Strategy in the Twenty-First Century*, (Cambridge: University Press, 2005), 11.

⁴ United Nations, "Security Council Unanimously Adopts Wide-Ranging Anti-Terrorism Resolution; Calls for Suppressing Financial, Improving International Cooperation," Last Assessed 1 April 2016. Available here.

States to take extreme and decisive action towards terrorism in order to safeguard national security. According to the Copenhagen School, at the Conflict and Peace Institute (COPRI), securitisation is about survival of the state⁵. The philosophy of securitization takes politics beyond “the established rules of the game and frames the threat either as a special kind of politics or as above politics...but is only successful if the relevant audience has been convinced of the existential threat.”⁶

The Canadian government’s initial reaction to the 9/11 terrorist attacks led to the immediate securitization of terrorism. The Canadian government presented the threat of terrorism to citizens as posing an immediate threat to public safety, requiring exceptional measures to be taken. As a result, Canadian security and intelligence agencies benefited considerably; as the enterprise was empowered by the creation of the Anti-Terrorism Act which was granted Royal Assent on December 18, 2001, known as Bill C-36.⁷ The Anti-Terrorism Act was conceived on the premise that the Canadian criminal code was inadequate to deal with threats from terrorism.⁸ Martha Crenshaw, Professor of Global Issues and Democratic Thought at Wesleyan University in Connecticut suggests that the Canadian governments securitisation of terrorism was supported by “the fact that the United States, the world's sole Superpower, not only declared a war on terrorism but intervened militarily in Afghanistan... reinforcing the global perception of terrorism as a source of immediate danger and pervasive insecurity.”⁹ Although most Canadians initially acknowledged the threat of terrorism and supported the government's rapid response to the threat, there remained skepticism with regards to the hasty implementation

⁵ Ralf Emmers, “Securitisation,” in *Contemporary Security Studies* (Oxford: University Press, 2010), 132.

⁶ *Ibid.*, 133.

⁷ Kent Roach, “Counter-Terrorism In and Out of Canada and In and Outside the Anti-Terrorism Act,” *Review of Constitutional Studies* Vol. 16, no. 2 (2012): 250.

⁸ Victo V. Ramraj, Michael Hor and Kent Roach, *Global Anti-Terrorism Law and Policy* (Cambridge: University Press, 2005), 514.

⁹ Martha Crenshaw, “Terrorism and Global Security,” in *Leashing the Dogs of War: Conflict Management in a Divided World* (Washington: Unites States Institute of Peace Press, 2013), 78.

of security measures that authorized acts that were contradiction with the Canadian Charter of Rights and Freedoms. As security is a “socially contrasted concept”¹⁰, the skepticism regarding the securitisation of terrorism remains, as civil libertarians continue to question the legitimacy of the threat of terrorism to Canada's national security.

Definition of Terrorism

Kent Roach a professor of law at the University of Toronto and expert on anti-terrorism law contends that the Anti-Terrorism Act of 2001 attracted much due attention not only as a result of the speed at which the ATA was implemented but also by the broad definition granted to terrorism activities;¹¹ a definition that did not exist in Canada’s Criminal Code before the Anti-terrorism Act. With the implementation of UNSCR 1373, the Security Council “demanded that all nations treat terrorism and terrorism financing as serious crimes, but avoided the thorny issue of the definition of terrorism.”¹² As a result the Canadian Government defined Terrorism Activities as an “act or omission undertaken, for a political, religious, or ideological purpose that is intended to intimidate with respect to security, or to compel a person, government or organization from doing or refraining from doing any act, and that intentionally causes one serious harm.”¹³

Since the implementation of the Canadian government’s definition of terrorist activities, it has been argued that the definition is excessively broad in nature and could potentially lead to misinterpretation by security officials resulting in the targeting of innocent Canadians. Leonard Weinberg, a Foundation Professor Emeritus at the University of Nevada, suggests that many

¹⁰ Ralf Emmers, “Securitisation,” in *Contemporary Security Studies* (Oxford: University Press, 2010), 135.

¹¹ Kent Roach, “Counter-Terrorism In and Out of Canada and In and Outside the Anti-Terrorism Act,” *Review of Constitutional Studies* Vol. 16, no. 2 (2012): 246.

¹² Kent Roach, “Counter-Terrorism In and Out of Canada and In and Outside the Anti-Terrorism Act,” *Review of Constitutional Studies* Vol. 16, no. 2 (2012): 245.

¹³ Public Safety Canada, *Building Resilience Against Terrorism: Canada’s Counter-Terrorism Strategy* (Ottawa: Canada Communications Group, 2015), 2.

factors contribute to the complexity of the definition of terrorism including “the use of the term for political purposes; problems associated with the scope of the term (i.e. identifying where terrorism begins and ends); and issues associated with the analytical characteristics of terrorism.”^{14,15} These concerns are further substantiated by civil libertarians whom believe that the reference to political, religious or ideological motive could elicit profiling.¹⁶ Benjamin Grob-Fitzgibbon, the Associate Director of the International Relations Program at the University of Arkansas contends that western governments such as Canada should avoid generalizing the definition of terrorism. He suggests that the definition of terrorism should not be considered “as a single experience but instead divided into four separate categories: national terrorism, revolutionary terrorism, reactionary terrorism, and religious terrorism.”¹⁷

Canadians are not comfortable with the fact that the government has the ability to target the population based on the current definition of terrorism. Civil libertarian concerns regarding this issue will continue to plague the government's ability to gain support for Anti-Terrorism legislation until the definition of terrorism is revisited, to ensure the protection of individual Canadians rights from undue scrutiny.

Freedom of Expression

Following the two deadly attacks in St-Jean sur Richelieu, Quebec, and in Ottawa, Ontario in October of 2014, the Canadian government passed the Anti-Terrorism Act 2015, known as Bill C-51 which caused outrage within the Canadian public. The Canadian government was accused of using the high-profile murders of two Canadian Soldiers to conduct partisan

¹⁴ Leonard Weinberg, Ami Pedahzur, and Sivan Hirsch-Hoefler, “The Challenges of Conceptualizing Terrorism,” *Terrorism and Political Violence* Vol. 16, no. 4 (Winter 2004): 778.

¹⁵ Department of Justice, “Definitions of Terrorism and the Canadian Context,” Last assessed 13 April 2016. Available here.

¹⁶ House of Commons Canada, “Rights, Limits, Security: A Comprehensive Review of the Anti-Terrorism Act and Related Issues,” Last assessed 13 April 2016. Available here.

¹⁷ Benjamin Grob-Fitzgibbon, “What is Terrorism? Redefining a Phenomenon in Time of War,” *Peace and Change* Vol. 30, no. 2 (April 2005): 231.

politics regarding national security. Craig Forcese, acclaimed author and former president of the Canadian Council on International Law contends that Bill C-51 was passed “unnoticed by most Canadians and was dispensed without much serious debate or scrutiny in Parliament... and in contrast has become a lightning rod for public dispute.”¹⁸ This Bill has raised many concerns among civil libertarians, journalists, and legal experts, as amendments in the Bill are believed to threaten the right of Freedom of Expression for all Canadians. In an interview with the Canadian Broadcasting Corporation (CBC), Tom Henheffer, the executive director for the Canadian Journalist for Free Expression’s (CJFE), states that “C-51 is the biggest threat to constitutional rights in Canada today and... will lead to a massive chill on free expression.”¹⁹ In 2015, the Anti-Terrorism Act was implemented, which amended the Criminal Code of Canada, making it an offence to “knowingly advocating or promoting the commission of terrorism offences in general.”²⁰ Critics of the amendment state that the wording is vague in nature and could be misinterpreted by security officials,²¹ while the leader of the New Democratic Party (NDP), Thomas Mulclair, warns that broad measures in this Bill could lump legal dissent together with terrorism, which causes concern for potential abuse of power.²²

The Canadian government argues that it requires the newly founded authority from Bill C-51 in order to deter the radicalization of Canadian citizens from terrorist organizations such as the Islamic State of Iraq and Syria (ISIS). However, it can also be argued that the wording of the pre-existing legislation had already granted the government the ability to intervene. Forcese and

¹⁸ Craig Forcese and Kent Roach, *False Security: The Radicalization of Canadian Anti-Terrorism* (Toronto: Irwin Law Inc, 2015), 6.

¹⁹ CBC, “C-51, controversial anti-terrorism bill, is now law. So, what changes?,” Last assessed 15 April 2016, Available here.

²⁰ Parliament of Canada, “Bill C-51,” Last Assessed 1 April 2016, Available here.

²¹ Craig Forcese and Kent Roach, *False Security: The Radicalization of Canadian Anti-Terrorism* (Toronto: Irwin Law Inc, 2015), 7.

²² House of Commons Canada, “Rights, Limits, Security: A Comprehensive Review of the Anti-Terrorism Act and Related Issues,” Last assessed 13 April 2016. Available here.

Roach dispute that the criminal code already restricted speech tied to violence or threats of violence prior to Bill C-51. They also state that Bill C-51 was “so carelessly and sweepingly drafted that it embraces all sorts of speech only very distantly linked to (and in no meaningful way correlated with) violence.”²³

The controversy lies with the terminology 'promoting terrorism' and 'terrorism offences in general' found in the legislation. Bill C-51 is highly disputed among free speech advocates, as the vague wording of the amendments could make it illegal for Canadians to comment or debate provocative topics such as terrorism. Julian Richards, co-founder of the Buckingham University Centre for Security and Intelligence Studies (BUCSIS) suggests that “In many ways, these challenges are causing a renewed focus on serious questions about how an intelligence capability in a modern liberal democracy should act, and where its boundaries should rightfully be.”²⁴ Canadians value the freedoms granted to them by the Charter and are not willing to abandon those freedoms that are based on the social and legal foundations of their country in the name of securitisation. The Canadian government will undoubtedly continue to observe challenges pertaining to the right of Freedom of Expression under the Charter of Rights and Freedoms.

Pre-emptive detention

The Anti-Terrorism Act of 2001 facilitated the government’s pursuit of expansive security and surveillance powers but also authorized pre-emptive detention of terrorist suspects in an attempt to prevent and combat terrorism activities. These pre-emptive security measures authorized the temporary detention of individuals in situations where conventional arrest powers did not apply. Although experts in the field such as Craig Forcese argue that pre-emptive

²³ Craig Forcese and Kent Roach, *False Security: The Radicalization of Canadian Anti-Terrorism* (Toronto: Irwin Law Inc, 2015), 11.

²⁴ Julian Richards, “Intelligence Dilemma? Contemporary Counter-terrorism in a Liberal Democracy,” *Intelligence and National Security* 27, No. 5 (October 2012): 761.

detention has saved lives, he also states that “no other development -- with the exception of the use of extreme interrogation techniques -- has been as controversial.”²⁵ Lorne Sossin, Dean of Osgoode Hall Law School supports this statement, where he argues that:

Canada has betrayed its own values by sacrificing civil liberties in exchange for enhancing investigative and detention powers...the very fact that countries such as Canada showed such readiness to jettison fundamental civil liberties in the face of terrorist threats reflected an abnegation of the very values [that] stand so starkly opposed to the logic of terrorism.²⁶

The original detainment powers granted under Bill C-36 authorized the detention of an individual for up to 72 hours. Under Canada’s new Anti-Terrorist Act, Bill C-51, the detention period has been extended up to 7 days while “investigators need only establish that an attack may be carried out”.²⁷ The Anti-Terrorism Bill amended the Criminal Code wording to “widen the net of which police can arrest on suspicion”²⁸. The cleaver wording of the Act also enables the government to detain Canadian citizens without the need to prove that an act of terrorism would be carried out, as long as it is “likely to prevent”²⁹ an act of terrorism from happening. Although these preventative security measures are said to be critical to implementing an innovative institutional and legal framework in order to expose potential security threats to Canada, these expanded powers continue to be highly disputed by the Canadian public. While the federal government continues to assert that it strives to balance “the degree of intrusiveness of an investigation and the rights and freedoms of those being investigated,”³⁰ its actions continue to

²⁵ Craig Forcece, “Preventive Detention Can Save Lives,” Last assessed 17 April 2016, Available here.

²⁶ Department of Justice, “The Views of Canadian Scholars on the Impact of the Anti-Terrorism Act,” Last assessed 17 April 2016, Available here.

²⁷ The Canadian Bar Association, “New Power to Combat Terrorism,” Last assessed 3 April 2016, Available here.

²⁸ CBC, “C-51, controversial anti-terrorism bill, is now law. So, what changes?,” Last assessed 17 April 2016, Available here.

²⁹ The Canadian Bar Association, “New Power to Combat Terrorism,” Last assessed 3 April 2016, Available here.

³⁰ Canadian Security Intelligence Service, “Intelligence Collection and Analysis,” Last assessed 12 April 2016, Available here.

erode the public's trust. Canadians fear the potential abuse of power and are uncomfortable with the fact that the government has the ability to detain individuals on a whim without due process.

Privacy in the Age of Meta Data

In today's digital age, most Canadians own a personal electronic device. As Canadians use their cellular phones and electronic devices they expect that the government will respect their right to privacy. As academics Scott and Hughes argue, security and privacy concerns have never played such a prominent role in the public affairs of western liberal democracies as they do today.³¹ However, with the proliferation of digital communication, the Canadian security and intelligence enterprise has struggled to balance their mandate of collecting intelligence, with society's expectation of individual privacy. Professor Jeffery Roy from the School of Public Administration at Dalhousie University, denotes that the electronic dimensions to national security has grown significantly in both scope and importance leading to fears of accountability over intelligence activities.³²

In 2014, renowned U.S. whistle-blower Edward Snowden leaked extensive details regarding a National Security Agencies (NSA) surveillance program. In this information leak, Snowden implicated Communication Security Establishment Canada (CSEC) of secretly gathering intelligence on “thousands of ordinary passengers”³³ by tracking their wireless devices as they travelled through Canadian airports. The leaked documents also revealed that CSEC “was then able to track the travelers for a week or more as they and their wireless devices showed up in other Wi-Fi hot spots in cities across Canada and U.S. airports.”³⁴ In an interview with the

³¹ L. Scott, R.G. Hugues, “Intelligence in the Twenty-first Century: Change and Continuity or Crisis and Transformation,” *Intelligence and National Security* Vol 24, no. 1 (2009): 1.

³² Jeffrey Roy, “Secrecy, Security and Digital Literacy in an Era of Meta-Data: Why the Canadian Westminster Model Falls Short,” *Intelligence and National Security* Vol 31, no. 1 (2016): 104.

³³ Munk School of Global Affairs, “Snowden documents reveal CSEC used airport Wi-fi to track Canadians,” Last assessed 1 April 2016, Available here.

³⁴ CBC, “CSEC used airport Wi-Fi to track Canadian travelers: Edward Snowden Documents,” Last assessed 16

CBC, Ronald J. Deibert, Director of the Citizen Lab at the Munk School of Global Affairs, University of Toronto stated that “I can't see any circumstance in which this would not be unlawful, under current Canadian law, under our Charter, under CSEC's mandates.”³⁵ Security officials contend that Snowden's security breach, for which he faces charges of espionage; have undoubtedly given the upper hand to several transnational terrorist organizations, endangering the safety and security of millions across the world.³⁶ As a result, the Canadian government modified the regulations with regards to intelligence collection through the Anti-Terrorism Act 2015, further empowering CSEC to collect intelligence data despite their history of shady operations. The ATA empowered the Canadian Minister of National Defence (MND) “to authorize CSE to target foreign entities physically located outside the country which may engage in communications to or from Canada for the sole purpose of obtaining foreign intelligence”³⁷ contingent upon the following provisions:

1. that the interception is directed at foreign entities outside of Canada;
2. that the information cannot be reasonably obtained by other means;
3. that the expected value of the intelligence justifies its collection; and
4. that there are measures in place to protect privacy of Canadians and that private communications are retained only when essential to international affairs, defence or security.³⁸

Although it is illegal for CSEC to intentionally collect data on Canadians, privacy experts point out that the corresponding absence of knowledge and accountability on behalf of the government is troubling as it is unclear as to what data, if any, CSEC is collecting.³⁹ In an effort

April 2016, Available here.

³⁵ CBC, “CSEC used airport Wi-Fi to track Canadian travelers: Edward Snowden Documents,” Last assessed 16 April 2016, Available here.

³⁶ The Telegraph, “Edward Snowden's leaks caused Serious Damage to National Security, Court Heard,” Last accessed 15 April 2016, Available here.

³⁷ Martin Rudner, “Canada's Communications Security Establishment, Signals Intelligence and Counter-Terrorism,” *Intelligence and National Security* Vol. 22, no. 4 (August 2007): 475.

³⁸ *Ibid.*, 476.

³⁹ Jeffrey Roy, “Secrecy, Security and Digital Literacy in an Era of Meta-Data: Why the Canadian Westminster Model Falls Short,” *Intelligence and National Security* Vol 31, no. 1 (2016): 97.

to gain public support, the Canadian government has stipulated that Canadian citizens “need to be informed of the threat in an honest, straightforward manner to foster a deeper understanding of why particular actions are needed...Citizens also have a responsibility to...work with Government. Only when these tasks are shared will a truly resilient Canada be achieved.”⁴⁰ However, these forms of intelligence operations are conducted under strict secrecy, resulting in rising suspicion and the erosion of the public's trust, which further exacerbates the country's intelligence dilemma.

Intelligence Sharing

Effective intelligence operations necessitate joint interdependence with foreign civilian intelligence agencies as well as combined operations with allied countries. While it is argued that the increase in intelligence sharing, and the possession of multiple sources of intelligence data is beneficial for national security, the credibility of the information being shared between allies is highly contested by legal experts and civil libertarians.

In recent years, the Canadian government's effort to modify intelligence sharing agreements among allied partners has been a point of significant contention. Bill C-51 drew broad criticism from civil liberty activists who argued against the sharing of intelligence with partners whom direct oversight cannot be guaranteed.⁴¹ These concerns were legitimized when a Canadian citizen, Maher Arar, a suspected member of Al-Qaeda, was surrendered by the US government to Syria where Arar claimed he was tortured. A government commission later cleared him of all terrorism charges, which proved to be a costly affair for the Canadian government. In an interview with the Canadian Press, Justice Dennis O’Conner, the judge

⁴⁰ Public Safety Canada, *Building Resilience Against Terrorism: Canada’s Counter-Terrorism Strategy* (Ottawa: Canada Communications Group, 2015), 8.

⁴¹ Jim Bronskill, “CSIS Capacity under C-51 to work with foreign partners raises accountability concerns,” The Canadian Press, Last accessed 17 April 2016, Available here.

presiding over the Arar case stated “I am able to say categorically that there is no evidence to indicate that Mr. Arar has committed any offence or that his activities constitute a threat to the security of Canada.”⁴² The commission report on the Arar case was critical of the Royal Canadian Mounted Police (RCMP), in that, the commission revealed that the RCMP failed to follow their own policies with regard to intelligence sharing with outside agencies.⁴³ Canadians expect that the intelligence data collected by Canadian security and intelligence agencies will be accurate in nature and will be safe guarded against potential misuse by foreign governments. These types of incidents involving negligent intelligence sharing not only damages the legitimacy of the security and intelligence community in Canada, but also degrades the public's trust, and fundamentally undermines the principles of democracy which those agencies serve to protect.⁴⁴

Ethics

The underpinning of the current national intelligence dilemma is the ethical manner in which Canadian security and intelligence agencies operate, specifically, how they “maintain their ethical code and values in the face of enhancing their capabilities.”⁴⁵ The Canadian government contends that it strives to maintain an ethical balance between collective security and the individual freedoms; however, the obscure wording of the national security legislation promotes grey areas within law. Vague and generalized terms such as 'promoting terrorism' and 'terrorism activities' are purposely weaved into the law in order to provide ambiguity. Professor Toni Erskine of the Schools of Humanities and Social Sciences at the University of South West

⁴² The Globe and Mail, “How Canada Failed Citizen Maher Arar,” Last assessed 12 April 2016, Available here.

⁴³ Julian N. Falconer and Sunil S. Mathai, “The Anti-Terrorism Act and the Arar Finding: Democracy Protected or Democracy Eroded?,” *National Journal of Constitutional Law* Vol. 21 (2006/2007): 49.

⁴⁴ Jim Bronskill, “CSIS Capacity Under C-51 To Work With Foreign Partners Raises Accountability Concerns,” *The Canadian Press*, Last accessed 17 April 2016, Available here.

⁴⁵ Julian Richards, “Intelligence Dilemma? Contemporary Counter-terrorism in a Liberal Democracy,” *Intelligence and National Security* 27, No. 5 (October 2012): 763.

Australia argues that “intelligence collection does not exist in an amoral realm of necessity, but, rather, is a human endeavour involving choice and deliberation and, therefore, is vulnerable to ethical scrutiny.”⁴⁶ As the terms set out by the Canadian government are open to interpretation, the boundaries of what is deemed ethical by society are put into question, resulting in both the legislation and the legitimacy of the authority being questioned. Ultimately, the unethical conduct by Canadian security and intelligence agencies undermines the very values on which democratic societies are built and must be defended against at all costs.

WHY SUCH A DILEMMA?

Now that some of the key underlining causes of the intelligence dilemma in Canada have been identified, the imbalance between the public's perception and the government's interpretation of the national security threat must be examined. It is the delta between these two perspectives that drives the imbalance in the intelligence dilemma equation.

Given the contentious public reaction to national security legislation, one can argue that the main concern for Canadians is founded around the government's breach of individual Charter Rights and the security and intelligence agencies' unethical collection and dissemination of the data. Martin Rudner, founding director of the Canadian Centre of Intelligence and Security Studies, and national security Professor at Carleton University suggests that although there are causes for concern, the public's perception regarding national security is somewhat irrational, in that there is a sense that domestic intelligence collection and dissemination constitutes as much as a threat to civil rights as does the actual threat of terrorist activities.⁴⁷ The Canadian government's interpretation of the threat to Canada's national security since the terrorist attacks

⁴⁶ Toni Erskine, “As Rays of Light to the Human Soul? Moral Agents and Intelligence Gathering,” *Intelligence and National Security* 19, No.2, (8 September 2010): 359.

⁴⁷ Martin Rudner, “Canada's Communications Security Establishment, Signals Intelligence and Counter-Terrorism,” *Intelligence and National Security* Vol. 22, no. 4 (August 2007): 486.

of 9/11 has been steadfast. The Canadian government has continued to stress that international and domestic extremist groups present a real threat to Canada's national security. However, in a recent study conducted on behalf of the Canadian government by the Environics Research Group concluded that only “52% of Canadians surveyed were concerned about the threat of terrorism in Canada. However, 63% felt that the threat of terrorism had been exaggerated and we (Canadians) should be careful not to overreact.”⁴⁸ The perception that the government has exaggerated the risk of a national security threat combined with the government’s breach of key civil liberties continues to fuel the intelligence dilemma.

Canada's Counter-terrorism Strategy, *Building Resilience Against Terrorism*, clearly states that Islamic-inspired terrorism is the leading threat to Canada's national security. It identifies that a number of illustrious extremist groups are currently operating within Canada,⁴⁹ and terrorism “continues to pose a significant threat to Canada, Canadians and Canadian interests abroad.”⁵⁰ Nevertheless, Rudner asserts that Canadians are ignorant to national security concerns as most believe that they “belong to a just and highly decent society and therefore, simply don't understand why someone would want to attack them.”⁵¹ This flawed rational is reinforced by the fact that Canada is encapsulated by three oceans and the only remaining superpower in the world, the United States of America. Unfortunately, Canada's perceived geographic isolation from transnational crisis, and its proximity to the United States, has ultimately led to passivity towards national security and intelligence in particular.⁵² This passivity towards national security

⁴⁸ Canada, “The *Anti-Terrorism Act* and Security Measures in Canada: Public Views,” Department of Justice, December 2005. Last Accessed 1 April 2016. Available here.

⁴⁹ Public Safety Canada, *Building Resilience Against Terrorism: Canada’s Counter-Terrorism Strategy* (Ottawa: Canada Communications Group, 2015), 6.

⁵⁰ *Ibid.*, 7.

⁵¹ Ottawa Citizen, “Canadians Apathetic About Terrorist Threats,” Canwest News, 4 June 2013. Last Accessed 2 April 2016. Available here.

⁵² Andrew D. Brunatti, “The Architecture of Community: Intelligence Community Management in Australia, Canada and New Zealand,” *Public Policy and Administration* Vol. 28, no. 2 (2012): 135.

combined with the governments military contributions to the wars in Afghanistan, Libya, Syria and Iraq have only heightened the actual threat of terrorist attacks occurring on, or emanating from, Canadian soil.⁵³

Although both parties in the intelligence dilemma present valid arguments to support their positions on individual rights vs securitisation, it is important to note that historically, Canada has experienced numerous threats of terrorism. According to the Minister of Public Safety, a terrorist threat is defined as “a direct attack against Canada or its allies, or the use of Canada to support terrorism elsewhere in the world.”⁵⁴ Incidents such as the devastating attack on Air India in 1985 by Sikh extremists, the Toronto 18 terrorism plot to attack several locations in Ontario, and the domestic Islamic extremist-inspired attacks of October 2014, reinforce the government’s fear of terrorist activities on Canadian soil. According to the University of Maryland Global Terrorism Database, Canada has experienced 70 terrorist attacks since 1970 totalling 350 fatalities (includes 329 fatalities in the Air India bombing).⁵⁵ Over the same time period, the United States suffered 2646 terrorist incidents and the United Kingdom has suffered 4881 terrorist incidents.⁵⁶ While the numbers of Canadian incidents are relatively low compared to the U.S. and the U.K., these statistics distort the reality of the actual threat to the state, and unfortunately shapes the public's perception, further reinforcing the intelligence dilemma.

While the Canadian government continues to state that the threat of terrorism poses a significant threat to Canada, it is imperative to note that a threat to Canadian national security is not only a threat to Canadians domestically, but also a threat that emanates from Canada

⁵³ National Post, “ISIS spokesman calls for more Ottawa-style attacks in Canada,” Last accessed 12 April 2016, Available here.

⁵⁴ Public Safety Canada, *Building Resilience Against Terrorism: Canada’s Counter-Terrorism Strategy* (Ottawa: Canada Communications Group, 2015), 8.

⁵⁵ University of Maryland, “Global Terrorism Database,” Last accessed 22 April 2016, Available here.

⁵⁶ *Ibid.*

targeting its allies such as the United States. This scenario is a key issue that drives the Canadian government's contribution toward North American security. The use of Canada as a logistical and facilitation hub for terrorism, supported by an ever growing diaspora network has been a mounting concern for the State, and foreign security agencies for several years. Just weeks prior to the last terrorist attacks in Quebec and Ottawa in 2014, U.S. Senator, John McCain expressed "great concern that both southern and northern borders were porous and that terrorist could cross into the U.S."⁵⁷ In fact, Brian Jackson a senior physical scientist at the RAND Corporation argues that:

With the possible exception of the United States and the United Kingdom, Canada has played "host" to more international terrorist organizations than any other state in the world. Indeed, in the past decade, "representatives" of Hamas, Palestinian Islamic Jihad, the Groupe Islamique Armé [Armed Islamic Group] (GIA), al Qaeda and its affiliates, the Provisional Irish Republican Army, the Liberation Tigers of Tamil Eelam (LTTE), the Partiya Karkerên Kurdistan [Kurdish Workers' Party] (PKK), Babbar Khalsa, and the Dashmesh Regiment are all known to have entered the country and engaged in a variety of lobbying, fund-raising, and other logistical-support pursuits. It is toward the mitigation of these activities that the bulk of Canada's CT intelligence effort has been, and continues to be, directed—although, as in Australia, it is the threat of al Qaeda–inspired or related Sunni and Shi'a Islamic extremism that remains the main concern.⁵⁸

As the Canadian government is responsible for protecting its citizens and the state's strategic interests, at no point can the government permit a terrorism threat originating from Canada to cross the border into the United States. If a terrorist attack were to occur on Canadian soil, although tragic, it would be expediently and efficiently managed by Canadian security and intelligence enterprise. However, the same cannot be said for a terrorist attack on the United States originating from Canada. The repercussions of this scenario are the gravest threat to Canada's national security as it would cause political friction between Canada and the United

⁵⁷ Business News Network, "Thickened U.S-Canada border could hurt economy," Last assessed 22 April 2016, Available here.

⁵⁸ Brian, A. Jackson, "Chapter 3: Canada," in *Considering the Creation of a Domestic Intelligence Agency in the United States* (Santa Monica: RAND Corporation, 2014), 43-44.

states, potentially devastating the Canadian economy. Luiza Chwialkowska Savage, Washington Bureau Chief for Maclean's Magazine contends that “whenever Americans get scared, Canadians brace for economic repercussions. The attacks of 9/11 led to security policies that critics say resulted in a “thickening” of the border that hampers commerce and trade.⁵⁹ Canada's economic dependence on the United States for foreign trade is astounding! The United States is Canada's largest global trading partner with an estimated \$662 billion USD in goods and services traded in 2015⁶⁰ but, “when security concerns galvanize the national political will, there is a danger that significant collateral damage may be inflicted on a crucially important trading relationship.”⁶¹

Despite ongoing public safety warnings, domestic terrorist attacks, and the potential for economic hardship, most Canadians “still feel that their country rests at the eye of the hurricane: a dominion of calm amidst the surrounding turbulence.”⁶² This skewed perception is a huge apprehension, and in order to rectify this intelligence dilemma, a balance needs to be achieved between the government's securitisation of terrorism and the Canadian public's perception of the threat to national security. It can be argued that a heightened public perception of a national security threat could provide the government with adequate leverage required to conduct intrusive security and intelligence operations on Canadians. This heightened perception would thereby smooth out the public's concerns over the erosion of privacy while gaining support for new terrorism legislation that would otherwise be questioned. On the other hand, although the Canadian Charter of Rights and Freedoms clearly states that the guarantees of the Charter are not

⁵⁹ Macleans, “The Return of Fear on the U.S.-Canada border,” Last accessed 8 April 2016, Available here.

⁶⁰ Office of the United States Trade Representative, “Canada: U.S.-Canada trade Facts,” Last assessed 22 April 2016, Available here.

⁶¹ Brookings, “The Effects of 9/11 on Canadian - U.S. Trade: An Update through 2008,” Last assessed 22 April 2016, Available here.

⁶² Martin Rudner, “Canada's Communications Security Establishment, Signals Intelligence and Counter-Terrorism,” *Intelligence and National Security* Vol. 22, no. 4 (August 2007): 486.

absolute, individual civil liberty concerns will continue to be debated as long as the imbalance in the intelligence dilemma exists.

CONCLUSION

The events of September 11, 2001 and the evolution of technology have dramatically transformed the security and intelligence environment. Operations within this complex field are frequently conducted in secrecy and have historically proven to transpire in ethical grey zones. Ultimately, the aim of any government is to defend against national security threats and to facilitate the economic growth and prosperity of the state through the implementation of security legislation. Despite the Canadian government's continued efforts to convey the threat of transnational terrorism to its citizens, the country's security and intelligence enterprise continues to operate within an intelligence dilemma. The Canadian government is trying to protect its citizens not only from acts of violence emanating from terrorist activities but also from economic hardship resulting from the thickening of the borders by other countries. Unfortunately, the average Canadian does not relate to the economic national security threat related to terrorism, further exacerbating the situation.

It is a challenge for any Western Liberal Democracy to gain support for the securitization of terrorism when the legislation in question hinders the very values that the legislation is designed to protect. The imbalance between the public's perception and the government's interpretation of the national security threat drives the intelligence dilemma. This delta in perception will only continue to grow unless one of two things occur: transparency increases with regards to the government's intent surrounding Anti-Terrorism legislation, or, there is a dramatic change in the Canadian public's perception on the threat to national security. In either event, Canadians need to rectify this issue before a tragic terrorist event occurs on Canadian soil

or worse, one that crosses the southern border that would severely cripple the Canadian economy.

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