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INTRODUCTION

SYMPOSIUM: THE SOCIAL COST OF NATIONAL SECURITY

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Following the terrorist attacks of September 11, 2001, the international community committed to work together to fight terrorism using specific strategies – extradition, mutual legal assistance, information sharing, intelligence gathering, and the prevention and suppression of terrorist financing. From a human rights perspective, the protection of individuals and territories against terrorist acts and threats was a duty of every state.

However, what began to emerge internationally was a shift among democratic countries that had primarily been leaders of human rights. A new argument arose that the existing international legal framework was not able to deal with the new threat posed by transnational terrorist networks like *al Qaeda* – and therefore certain norms could no longer be upheld. Unsurprisingly, non-democratic and repressive states not only welcomed this shift by democratic nations, but also began to depict repressive state activity as “counter-terrorist” and therefore beyond scrutiny.

Peremptory norms such as the absolute prohibition against torture, fair trial and due process, and the right to be free from arbitrary detention were suddenly called into question as the US reportedly coopted nations to assist with “extraordinary renditions,”¹ secret prisons and “enhanced

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¹ Human Rights Council, Joint Study on Global Practices in Relation to Secret Detention. 19 February 2010, online: <<http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>>.

interrogations” conducted using techniques that fell within the scope of “torture and cruel, inhuman and degrading treatment.”²

In the Canadian context, the failures to comply with constitutional and international human rights and humanitarian legal safeguards resulted in the alarming cases of the extradition and torture of Maher Arar;³ the prolonged detention at Guantanamo Bay of Omar Khadr;⁴ the detention in Syria and Egypt of 3 Arab Canadians⁵ who were also tortured; the subjection of Abousfian Abdelrazik⁶ to the UN 1267 sanctions regime relating to the detention and stranding of him in Sudan; and – it seems likely – the transfer of Afghan detainees into the hands of torture. On domestic soil, the amassing and sharing of information by intelligence agencies, the blurring of intelligence and evidence, secret information, security certificates and failures of due process and the principles of fundamental justice, profiling and listing, failures towards refugees and asylum seekers, and mass surveillance each proliferated in a manner that CCLA argued at each stage were incompatible with *Charter* rights and Canada’s international legal commitments under human rights and humanitarian law.

These failures to comply with legal safeguards not only undermined the democratic process and commitments to human rights, but arguably did not demonstrably enhance efficiency with respect to security.⁷

² See generally report of the Open Society Network on Extraordinary Renditions; see also generally International Commission of Jurists, *Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights: Assessing Damage Urging Action* (2009), online: <<http://www.un.org/en/sc/ctc/specialmeetings/2011/docs/icj/icj-2009-ejp-report.pdf>>.

³ Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, Report of the Events Relating to Maher Arar (9 July 2013), online: <http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/maher_arar/07-09-13/www.ararcommission.ca/eng/AR_English.pdf>.

⁴ *Canada (Prime Minister) v Omar Khadr*, 2010 SCC 3, [2010] 1 SCR 44.

⁵ Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin, “Executive Summary” (9 March 2010), online: <http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/internal_inquiry/2010-03-09/www.iacobucciinquiry.ca/pdfs/documents/final-report-copy-en.pdf>.

⁶ *Abdelrazik v Canada (Minister of Foreign Affairs)*, 2009 FC 580, [2010] 1 FCR 267.

⁷ Commission of Inquiry into the Investigation of the bombing of Air India Flight 182, *Final Report* (June 2010), online: <http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/air_india/2010-07-23/www.majorcomm.ca/en/reports/finalreport/default.htm>.

Apart from these legal failures, there was an impact that was both pervasive and insidious and continues to pose a grave threat to Canada – this is what we came to view as the “Social Cost of National Security.” The impact in particular upon individuals who were Muslim, or Arab Canadian, or South Asian, went beyond the pre-9/11 xenophobia and racism. Law-abiding and innocent individuals now found themselves viewed as “suspects” and as targets for the anger and frustration felt against the terrorists. Vulnerable groups felt themselves more vulnerable in a climate that seemed increasingly hostile.

In this context, the Canadian Civil Liberties Association was approached by Raja Khouri who had recently created the Canadian Arab Institute, with a proposal to hold a conference that would bring together individuals and experts to consider indeed the social cost of national security in Canada. We were delighted to do so, and were joined as well by the University of Toronto’s International Law and Human Rights Programme who provided the invaluable support of a venue. Our keynote address was given by UN Special Rapporteur on Counter Terrorism, Ben Emmerson QC.

Throughout the day’s events, we sought to answer key questions raised by the impact of counter-terrorism in Canadian society, in particular; what were the real costs of the security agenda and what were the real gains; how have visible minorities and religious minorities been affected and how has life changed for impacted communities; what are the links among information sharing, privacy rights, broader human rights and national security; and what is the role of the media?

Four essays contained in this edition of the *Canadian Bar Review* are contributions by some of the speakers who participated in our conference, “The Social Cost of National Security: Assessing the Impact of Counter-terrorism on Canadian Society,” held at the University of Toronto on October 19, 2012.