

Summer Retrospective

Several news items over the summer have exacerbated existing concerns or raised new ones in various areas related to national security and/or anti-terrorism.

Most disappointing perhaps is the Harper government's ongoing reluctance to repatriate Omar Khadr from Guantanamo Bay, in spite of having agreed to it during the plea bargaining that led to Khadr's conviction in 2010. Under the plea deal, Mr. Khadr has been eligible for transfer to Canada since October 2011. Instead, Public Safety Minister Vic Toews has continued to stall the process, claiming he needs to review more evidence related to psychological evaluations of Khadr before he can make up his mind. This has prompted Khadr's legal team to once again turn to the courts in an attempt to force the federal government to keep the promise it made to let him return to Canada. A number of Canadian court rulings have already been favourable to Omar Khadr, most notably decisions of the Supreme Court of Canada which concluded on two occasions that Canada has violated his rights. Numerous UN human-rights experts have also urged Canada to protect Mr. Khadr's rights, including the *UN Committee against Torture* last June.

Vic Toews made the headlines again in August when the Canadian Press revealed that he had quietly issued directives to the RCMP and the Canadian Border Services Agency (CBSA) giving them the authority to use and share information that was likely extracted through torture. Newly disclosed memos obtained by Canadian Press showed that Minister Toews issued the directives to the RCMP and CBSA in September 2011, shortly after giving similar orders to CSIS, Canada's intelligence service. The directives apply to the use of this information for investigative purposes and to information sharing with foreign government agencies, militaries and international organizations.

The memos mention that "terrorism is the top national security priority" of the government and that it is essential for the RCMP and CBSA to maintain strong relationships with foreign entities and share information with them. They say that in "exceptional circumstances" the RCMP or border agency "may need to share the most complete information in its possession," including information foreign agencies likely obtained through torture, "in order to mitigate a serious risk of loss of life, injury, or substantial damage or destruction of property before it materializes." The instructions were criticized by human rights advocates and opposition MPs as a violation of Canada's obligation under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Vic Toews' "torture memos" are even more troublesome in light of the Canada/US *Joint Statement of Privacy Principles* under the North American perimeter

security plan. The “principles”, released at the end of June, will permit the sharing of personal information gathered at the border with third countries—in some cases without informing the other government until after the fact.

Canada's assistant privacy commissioner, Chantal Bernier, blasted the government in comments to the Canadian Press for “crafting a document that could allow personal details of Canadians to be sent to countries with bad human rights records.” University of Toronto law professor Kent Roach, who served on the research advisory committee for the Maher Arar commission, echoed similar concerns, highlighting the fact that the principles do not meet all the standards laid out by Justice O'Connor who presided over the Arar commission. He also took issue with another principle on oversight. The joint statement says "a public supervisory authority or authorities with effective powers of intervention and enforcement" will supervise the exchange of personal information, which suggests self-policing according to professor Roach.

With regards to surveillance and privacy rights, an intriguing story was published in Salon.com alleging that a US private security firm, Abraxas, has been acquiring the video feeds of both public sector (e.g. mass transit security cameras) and private sector sources (e.g. Google's YouTube, hotel CCTV) in the US, UK and Canada. This video data is then digitally analyzed, indexed, mined, cross-checked with other security feeds and finally re-sold back to private sector clients and law enforcement agencies as a security product known as TrapWire. TrapWire claims to “detect patterns of behavior indicative of pre-operational planning.” Leaked e-mails indicate that major landmarks in Ottawa, Washington DC and London are connected to the system. By piggybacking on privately owned cameras and linking them to government authorities, it would appear that TrapWire violates Canadian privacy laws. Also, if TrapWire's activity does indeed extend to Ottawa, it raises questions about who's on the receiving end of the data flow and whether our government or Homeland Security are spying on Canadians.

The summer also saw continued attacks against environmental NGOs and charities involved in political activities, especially groups opposed to the Northern Gateway pipeline project and other major resource development projects. Among them was a request made to Canada Revenue Agency (CRA) by the Ethical Oil Institute, a pro-Conservative think tank, to audit and repeal the charitable status of the Tides Foundation.

Finally, in the US, we saw increased media coverage critical of the CIA targeted assassination program and the use of drones for military purposes outside war zones. In months ahead, we are likely to see an emerging debate on the use of drones as pressure will mount on Canada to purchase and deploy such devices for military purposes and increased police surveillance.

In light of this succinct retrospective, it is clear that civil liberties are still

vulnerable to the so-called “anti-terrorism agenda” and that civil society must remain vigilant and continue to mobilize in the defense of rights and freedoms. In our next issue, we will review the status of relevant legislation on the agenda when Parliament resumes its activities on September 17.

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