INTERVIEW WITH KENT ROACH

Kent Roach

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Are there adverse impacts of perceived linkages among religion, ethnicity/race and/or security/policing issues (e.g. racial profiling)?

Stereotypes associating Muslims with terrorism pose a barrier to equal citizenship. Much national security activity takes place in secret and does not result in adjudication. Many grievances about discriminatory profiling may never be fully considered and could result in resentment and fear in the relevant communities. In addition to offending equality values, discriminatory profiling could adversely affect the integration of various communities within Canadian society. Perceptions of unfair treatment, if not dispelled by independent investigation and appropriate remedial action, may affect the attitudes of many minorities towards the Canadian state and Canadian society.

Discriminatory racial or religious profiling is wrong in principle because it offends Canadian values of equality and individual responsibility. It is also flawed in instrumental and practical terms because it can waste limited investigative resources and it can create fear and resentment in the very communities that could help the police and other officials prevent terrorism and respond to crimes.

How do we respond to links made by some Canadians between immigrants and security concerns?

Although the links made by some Canadians between immigrants and security fears are the result of unfair stereotypes that run counter to the values of equality and individual responsibility, we should recognize that the Canadian state bears some responsibility for such perceptions. Until fairly recently, the Canadian state relied on immigration law as anti-terrorism law. It used, and continues to use, security certificates under immigration law to indeterminately detain five non-citizens suspected of involvement with terrorism. One of the reasons why these cases have dragged on for so long is that both the Supreme Court and the Canadian government has regrettably refused to rule out the option of deporting these men back to countries such as Syria where they face a risk of torture. The Smart Border Agreement between Canada and the United States was oriented towards security issues, but also included a Safe Third Country agreement which deflects to the United States most refugee applicants who reach the United States before coming to Canada. Instead of targeted measures designed to reject the refugee claims of suspected terrorists, the Safe Third Country Agreement takes overinclusive and broad brush measures that will reject thousands of possible refugee applicants each year, without regard to the circumstances and merits of their individual case.

Canadians are starting to recognize that linkages between immigration and security concerns are short-sighted. Although the 1985 bombings of Air India Flight 182 resulting in 331 deaths were motivated by events in India, they were likely committed by Canadian citizens. The 2005 London bombings have confirmed that the threat of Al Qaeda inspired terrorism is not limited to non-citizens. A year before the London bombings, the House of Lords declared that indeterminate detention of non-citizens suspected of terrorism was discriminatory and not rationally connected with the prevention of international terrorism, because it wrongly assumed that the terrorist threat came solely from non-citizens and could be dealt with through deportations. Links that some Canadians may draw between immigration and terrorism are wrong because they offend values of equality and individual responsibility. They are also dangerous because they wrongly assume that the terrorist threat will come only from non-citizens.

What can be done at the federal, provincial and territorial levels to address the issue of racial profiling?

The Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar has made several recommendations that are relevant to discriminatory profiling. It found that the RCMP had provided inaccurate and unfair information about Maher Arar to American officials, including a description of both Mr. Arar and his wife as: "Islamic Extremist individuals suspected of being linked to the Al Qaeda terrorist movement".[1] Three of the Commission's twenty-three recommendations touched on issues relating to multiculturalism. It recommended that national security

investigators receive better training including social context training about Canada's Arab and Muslim communities in order "to avoid relying on stereotypes about race, religion or ethnicity in investigations" and to improve relations and outreach with those communities.[2] Justice O'Connor also recommended that Canadian agencies have "clear written policies" stating that national security investigations "must not be based on racial, religious or ethnic profiling" to respond to:

> an increased risk of racial, religious or ethnic profiling, in the sense that the race, religion or ethnicity of individuals may expose them to investigation. Profiling in this sense would be at odds with the need for equal application of the law without discrimination and with Canada's embrace of multiculturalism. Profiling that relies on stereotypes is also contrary to the need… for relevant, reliable, accurate and precise information in national security investigations. Profiling based on race, religion or ethnicity is the antithesis of good policing or security intelligence work.[3]

The second report of the Arar Commission recommended that enhanced review bodies have a mandate both to hear complaints and conduct self-initiated reviews of the national security activities of not only the RCMP, but also the Canadian Border Services Agency, Citizenship and Immigration Canada, Transport Canada, the Financial Transactions and Reports Analysis Centre and Foreign Affairs. It stressed that review agencies should have access to all the relevant information and should be able to share information and conduct joint reviews in order to deal with increased integration in national security activities.[4] Canada's 2004 National Security Policy recognizes the principle that review should keep pace with the increased intensity and integration of national security activities.

The federal government could amend the Criminal Code to define and prohibit discriminatory profiling. My colleague Sujit Choudhry and I proposed such an amendment to the Anti-Terrorism Act when it was being debated and Irwin Cotler proposed the addition of anti-discrimination clause to the Act, but both proposals were rejected.[5] In the United States, before 9/11 there was bipartisan interest in an act to end racial profiling, but this has unfortunately lost momentum. Such legislation could help define discriminatory profiling and assist in providing remedies for profiling. One of the challenges of combating profiling is that there are few tangible remedies for victims of profiling. Indeed, it is the victims of profiling who are factually guilty of some offence who tend to have the greatest chance of winning a tangible remedy through the exclusion of unconstitutionally obtained evidence.

At the provincial level, increased resources and more institutional creativity and energy need to be applied by human rights commissions and police complaints bodies to discriminatory profiling. There should be increased independent research about both the existence of discriminatory profiling, and perceptions of profiling. Police forces also need to take leadership on this issue, both in terms of training and outreach with the affected communities.

How can government work with all stakeholders to raise awareness about racial profiling and the impact of the heightened security measures?

> The 2004 National Security Policy stated:
> We reject the stigmatization of any community and we do not accept the notion that our diversity or our openness to newcomers needs to be limited to ensure our security… The deep commitment of Canadians to mutual respect and inclusion helps to mitigate extremism in our society… Canadians stand together in reaffirming that the use of violence to pursue political, religious or ideological goals is an affront to our values and must be met with a determined response by Canadians and their governments.[6]

The 2004 National Security Policy created a Cross Cultural Roundtable on Security Issues. Unfortunately, the Roundtable appears not to have a prominent profile in the relevant communities. When representatives from the Roundtable testified before the Special Senate Committee conducting a three year review of the Anti-Terrorism Act, many Senators were quite skeptical about the role and mandate of the Roundtable and its outreach to the community and the affected groups. The Roundtable's goal of promoting "zero tolerance for terrorism and crimes of hate" reflects the orientation of Canada's post 9/11 *Anti-Terrorism Act*, which added many new crimes of terrorism to Canada's Criminal Code. The recognition of post 9/11 rises in hate crimes added a new crime of hate-motivated mischief to religious property and provided enhanced provisions for the deletion of hate propaganda from the internet. To be sure, many minority communities had genuine concerns about hate crimes in the wake of 9/11, but the focus on terrorism and hate crimes is a partial focus even from a security perspective, because Canada's Muslim communities and others have expressed concerns about discriminatory law enforcement practices in the state's anti-terrorism efforts. It is unlikely that outreach to minority communities on security issues will be successful if they do not engage all of the concerns that these communities may have about Canada's security policy, including concerns about discriminatory profiling.

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The Cross Cultural Roundtable has so far only held a few formal meetings and when the Chair of the Roundtable appeared before the Senate Special Committee examining the Anti-Terrorism Act, some Senators expressed

concerns that the Roundtable had not connected with other community groups or become an advocate for those wrongfully profiled. To be successful, the Roundtable will have to establish a reputation for independence and critical distance from government. Although the establishment of the Roundtable constitutes a positive gesture of outreach by the government to minority communities, the ultimate success of the Roundtable as an active and credible presence is in doubt, and enhanced efforts should be made in this regard.

Notes

[1] Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar* (Ottawa: Public Works and Government Services, 2006) at 13. Note that this report is available at http://www.ararcommission.ca/eng/26.htm

[2] Ibid at 327.

[3] Ibid at 355-357.

[4] Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *A New Review Mechanism for the RCMP's National Security Activities* (Ottawa: Public Works and Government Services, 2006) available at http://www.ararcommission.ca/eng/26.htm

[5] Cotler, I. (2001). Thinking outside de box : Foundational principles for a counter-terrorism law and policy. In Daniels, R., Macklem, P., and Roach, K. (Eds.), *The security of freedom.* Toronto: University of Toronto; and Choudhry, S., and Roach, K. (2003). *Racial and ethnic profiling*. 43 Osgoode Hall L.J. 1.

[6] *Securing An Open Society: Canada's National Security Policy* April, 2004 at 2.