

Law Union of Ontario
Opening Submissions to the Arar Inquiry

In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military industrial complex. The potential for the disastrous rise of misplaced power exists and will persist.

We must never let the weight of this combination endanger our liberties or democratic processes. We should take nothing for granted. Only an alert and knowledgeable citizenry can compel the proper meshing of the huge industrial and military machinery of defense with our peaceful methods and goals so that security and liberty may prosper together.

Dwight D. Eisenhower, 1961

Members of the Law Union have had years of experience in dealing with “National Security” matters. (see application for standing filed by the Law Union) As a result of that experience we have concluded that when the government makes the claim that “national security” is at issue such claims should be scrutinized with a high degree of skepticism. Unlawful activity, illegal activity, deception and male fides on the part of government or its agents have often been associated with tasks carried out in the name of national security or in cases where national security is raised as an issue. We believe the words of Dwight Eisenhower, as he left the presidency of the United States are extremely applicable to so called “national security matters and the national security establishment”, and that this Commission should bear those words in mind as it approaches its investigation of the case of Maher Arar.

A member of the US Congressional Committee doing intelligence oversight expressed it in a somewhat more succinct manner in commenting in relation to reports made to the Committee by intelligence agencies: “They treated us like mushrooms. They kept us in the dark and fed us bullshit”.

In the following material we hope to offer examples of cases and matters that have led us to our concerns about “National Security” claims.

Infringement of Academic Freedom

In the early 1970’s two professors were hired by York University, Gabriel Kolko a “revisionist” American historian from the University of Buffalo and a few years later, Istvan Meszaros from the University of Sussex.

Both of those professors were refused admission to Canada. They received letters stating: “Your admission to Canada is not in the Canadian national interest”. Professor

Kolko was an American who supported the Vietnamese nationalists led by Ho Chi Minh during the war in Vietnam. Professor Meszaros was a Marxist theoretician who, before his career at the University of Sussex in England, had been the Executive Assistant to George Lukacs, the Minister of Education in the Nagy government in Hungary. Professor Meszaros had been hired to head the School of Social and Political Thought at York.

Both professors were refused admission to Canada because of their leftist credentials and beliefs. After significant legal work was done on behalf of those professors, they were admitted to Canada as permanent residents. The government capitulated in the face of opposition because there was no defensible basis for the original assertion of Canadian “national interest” being threatened. Professor Kolko finished out his career at York University. Professor Meszaros was so angry at the treatment meted out to him by the Canadian government that he stayed in Canada for only one and a half years and then returned to Sussex University. It was never subsequently suggested that either man had endangered the national security of Canada.

Use of the Media

In the 1960s, 70s and 80s, the use of the media, by the RCMP through leaks, to advance RCMP interests was common. Peter Moon (jokingly known as Corporal Moon), at the Globe and Mail wrote concerning persons who were under investigation by the RCMP commercial crime section. Peter Worthington, first at the Toronto Telegram and later at the Toronto Sun, wrote concerning matters that were of interest to the RCMP Security Service. Much of the writing was done to discredit individuals who were out of favour with the RCMP where the RCMP did not have sufficient evidence to commence a prosecution or take other legal action.

This type of selective leaking of information has continued to this day. Stuart Bell of the National Post is now one of the persons who fulfill this function for CSIS. Material that Juliet O’Neill of the Ottawa Citizen has written on the Arar case may fall into this category. We would suggest that the Commission closely examine everything that the media has written concerning the Arar case; how it affected Mr. Arar’s fate, whether it was leaked to enhance the reputation of or to protect the security intelligence agencies or to discredit Mr. Arar.

Previous Inquiries into National Security Agencies

Until 1984 “national security” work in Canada was carried out by the RCMP Security Service. The McDonald Commission, and even more so, the Keable Inquiry in Quebec, uncovered a frightening pattern of deception, criminality, violation of civil liberties and abuse of power by the Security Service. It was revealed that in the name of “national security”, the Security Service had maintained files on 800,000 Canadians.

We do not want to rehash the events examined by those two Commissions of Inquiry but we would ask this Commission to bear in mind that the McDonald Commission

concluded that the RCMP was not a competent agency to deal with matters of national security. The result of the McDonald Commission recommendations was that, in 1984 CSIS was set up to handle matters of national security intelligence. The RCMP from that point on, at least theoretically, was out of the national security intelligence business.

After 1984, aside from the Defense Department and CSIS, the other agency that was providing information on national security issues was the Communications Security Establishment (CSE). CSE, together with America's National Security Agency (NSA) and Britain's Government Communications Headquarters (GCHQ), work in conjunction with the Irish, Australian and New Zealand's cipher intelligence agencies to do military, political and economic intelligence by intercepting various forms of telecommunications, telephone calls and e-mails. These combined agencies are reported in the popular media as operating under the name ECHELON.

During the course of the McDonald Commission, the Law Union brought an application in the Federal Court seeking to disqualify the members of the McDonald Commission on the basis that, because of their close affiliation with the Liberal Party of Canada, the members of the Commission were not unbiased in their approach to the Inquiry. We lost that application.

[1978] 2 F.C. 815

In the view of the Law Union, the McDonald Commission did not adequately examine the role of the members of Cabinet in authorizing or turning a blind eye to various illegal activities carried out by the RCMP Security Service. Prior to the appointment of the McDonald Commission, almost all of the records of the disruption operations in English Canada were destroyed. As a result, very little was reported by the McDonald Commission on those disruption operations which were entitled "Checkmate", "Tent Peg" and "Odd Ball".

In 1975 the Cabinet had passed a mandate for the Security Service that included authorization to "counter, deter and prevent" certain activities. In our view the McDonald Commission failed to review adequately the activities carried out under that mandate, and its predecessor mandates.

More Recent CSIS Activity

The fall of the Berlin Wall and the disintegration of the communist governments in the Soviet Union and Eastern Europe resulted in the end of CSIS' preoccupation with leftists. For a period of time after the fall of the Berlin Wall CSIS devoted some of its energies in dealing with issues of industrial espionage. We believe that work was beyond the mandate of CSIS.

In the Security Intelligence Review Committee (SIRC) 1998-1999 Annual Report it was revealed that CSIS had involved itself in the investigation of transnational criminal

activity. It was the view of SIRC that CSIS was incompetent to do that work and that the work was outside the mandate of CSIS.

The 1999-2000 SIRC Report made reference to Project Sidewinder (intelligence gathering about efforts by the Chinese Government and Asian criminal gangs to influence Canadian business and politics) and to a CSIS computer stolen from a car. Both of those matters reflect poorly on the competence of CSIS. SIRC's comments in the Report about Project Sidewinder appear at pages 3 to 9.

A portion of the SIRC Report:“The Committee studied the first draft report and found it to be deeply flawed and unpersuasive in almost all respects. Whole sections employ leaps of logic and non-sequiturs to the point of incoherence; the paper is rich with the language of scare-mongering and conspiracy theory. Exemplifying the report's general lack of rigour are gross syntactical, grammatical and spelling errors too numerous to count”.

Islamic Fundamentalist Threats

The arrest of Ahmed Ressam at the U.S. border in Washington State with a trunk load of explosives destined for the LA airport was a significant event in establishing the reality of the threats of terrorist activities in North America. Based on reports of information obtained from the interrogation of Mr. Ressam, it appears that an Islamic fundamentalist terrorist cell was operating in Montreal. To date, no public information has been made available as to whether CSIS was aware of that cell or had done any effective intelligence work in relation to the activities of the members of that cell.

The events of September 11th, 2001 in New York City, Pennsylvania and Washington significantly changed the intelligence climate in North America. The PATRIOT Act was passed in the United States and Bill C-36, the Anti-Terrorism Act, was passed in Canada. Those pieces of legislation vastly increased the power of security agencies. Bill C-36 returned the RCMP to the national security intelligence field. It also allowed the CSE to monitor electronic communication of Canadians in cases where one side of the communication originates from outside Canada.

Post September 11th, in both Canada and the United States, legislation was passed without any examination of the competence and effectiveness of national security intelligence work that had been done prior to September 11th. In the United States, media reports and the 9/11 Commission have revealed very serious failures in intelligence work that, if properly carried out, might have prevented the events of September 11th, 2001. There were many examples of misguided and erroneous concerns about alleged national security matters. The detention and (mis)treatment of Muslim and Arabic illegal immigrants were part of the U.S. response to the terror attacks of September 11.

In Canada, there was no meaningful attempt by Parliamentarians to review past security intelligence operations, to ascertain whether the new powers given by Bill C-36 were

needed or whether the return of the RCMP to the national security intelligence field was necessary or advisable to deal with the perceived problem.

Ward Elcock, the head of CSIS and Commissioner Zaccaradelli of the RCMP appeared before a Parliamentary Committee. Only one question was asked (by Bill Blaikie) of those men as to the need for the preventative arrest and the investigative hearing provisions of the legislation. Mr. Elcock did not answer that question and Commissioner Zaccaradelli's response was in effect a non-answer. No one else on the Committee sought to ascertain why new legislation was needed or how the security agencies had performed in the past

Law Union Views

Over the years, members of the Law Union have received documents, either anonymously in brown envelopes or as part of legal proceedings, marked "Secret" and "Top Secret". Based on the documents we have received we concluded that the use of those classifications often was to avoid embarrassment to the government and that there was no basis for the secrecy markings.

Certain aspects of the work done by CSIS do not inspire confidence in the effectiveness of that agency. Some examples of this:

1. In the criminal prosecution of a man named Atwal, for an offence of attempted murder of a member of the Punjab Cabinet, a challenge to the CSIS wiretap authorization was made. The Federal Court of Appeal ruled that the affidavit in support of the wiretap authorization must be disclosed after appropriate editing. Rather than have an edited version of the affidavit disclosed, CSIS then indicated that a mistake had been made (we believe a more apt description was that CSIS lied) when preparing the affidavit and obtaining the wiretap authorization. In the final result the prosecutor in the criminal case did not seek to introduce the wiretap communications.

R v Atwal (1987) 36 C.C.C. (3d) 161 (Fed C.A.)

R v Atwal et al (1990) 57 C.C.C. 143 (BCCA)-sentencing appeal

2. CSIS destroyed wiretaps they had collected of suspects in the Air India bombing.

3. It appears that CSIS had agents observing test explosions that were done by people involved in the Air India bombing and never informed the RCMP about those observations.

In a number of cases before the Federal Court and/or SIRC it was the opinion of the Law Union lawyers involved in those cases that CSIS agents were not well informed, or well trained, that they relied on dubious and/or unreliable sources of information and that they did not understand the culture or political dynamics of the community they had under surveillance. CSIS agents, or their counsel, kept secret matters that did not need to be kept secret and withheld information that had been disclosed in other proceedings.

Conclusion

It is because of our understanding of this history that we urge this Inquiry to examine carefully and with a healthy dose of suspicion all material offered by CSIS, the RCMP and the other government officials.

We urge you to compare the treatment of Mr. Arar with the treatment of those other Canadians who were detained, questioned and tortured in Syria and Egypt. We urge you to examine the informations (still sealed)that were used to obtain search warrants in Ontario, one of which was used to seize material belonging to Ahmed El Maati.

We believe that Mr. Arar and the people of Canada need and deserve a thorough and complete inquiry

June 10, 2004