



**NATIONAL
COUNCIL
OF CANADIAN
MUSLIMS**

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**CONSEIL
NATIONAL
DES MUSULMANS
CANADIENS**

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NCCM 2019 FEDERAL ELECTION POLICY GUIDE

SEPTEMBER 2019

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ABOUT NCCM

The National Council of Canadian Muslims (NCCM) is an independent, non-partisan and non-profit organization that protects Canadian human rights and civil liberties, challenges discrimination and Islamophobia, builds mutual understanding, and advocates for the public concerns of Canadian Muslims.



RESEARCH TEAM



Mustafa Farooq is the Executive Director of the National Council of Canadian Muslims (NCCM). A lawyer by profession, Mustafa completed his Juris Doctor at the University of Alberta and Osgoode Hall (York University) and later earned his Master of Laws (LLM) at UC Berkeley in California.

Mustafa was also a visiting scholar at Osgoode Hall Law School researching countering violent extremism policy in Canada. His book entitled *Law, Politics, and Countering Violent Extremism* (Routledge) is forthcoming.



Dr. Nadia Hasan is the Deputy Director of the National Council of Canadian Muslims. She has a PhD in Political Science from York University. Dr. Hasan has a diverse background in teaching, project management and the non-profit sector. Dr. Hasan also has several years of experience working on policy and programs at Canadian think tanks and NGOs and she has taught university courses in South Asian studies, religion and gender.

Her doctoral research focused on Muslim women's organizations and the practice of Islam in Canada and Pakistan.



Sameha Omer is the Director of Legal Affairs for the National Council of Canadian Muslims. She obtained her Juris Doctor from the University of Ottawa. She obtained her M.Sc. from the University of Western Ontario. Prior to joining NCCM, Sameha articulated at a national intellectual property law firm in Ottawa. Following articling, she practiced at an Ottawa-based firm.

She has experience assisting clients with matters before administrative tribunals and has represented clients before the Federal Court of Canada.

EXECUTIVE SUMMARY

The rise of hate in Canada means that we need to take action. NCCM recommends that these actions focus on issues that represent deeply concerning violations of human rights and threaten the civil liberties and security of all Canadians.

The NCCM calls on all political parties to take action on the three following issues:

A. Rise of Hate:

White supremacy and far-right extremist groups are on the rise in Canada and directly threaten the safety of minority communities, including the Muslim community. Since the 2017 attack on the Quebec City mosque, anti-Muslim hate crimes have been on the rise and online hate is creating an environment of fear and division. We call for decisive action to be taken to stem the tide of white supremacy and hate in Canada.

B. Quebec's Bill 21:

Quebec's new law, *An Act Respecting the Laicity of the State*, bans Quebecers from wearing religious symbols in certain public sector positions. The law essentially relegates religious minorities to second-class citizenship. This law is a clear violation of religious freedoms protected under the Canadian constitution. We call for clear and consistent vocal denunciations of Bill 21 from all political parties.

C. National Security:

Revelations of Islamophobia and bias against Muslims inside the Canadian Security and Intelligence Service (CSIS), problematic intelligence sharing and the mistreatment of Muslims, and disingenuous outreach efforts by government, have collectively broken the trust of Canadian Muslims with respect to national security agencies. We call for a recognition that upholding human rights is key to ensuring national security and eradicating Islamophobia and racism within our national security agencies.



RECOMMENDATIONS

Based on our analysis of the three main issues that are raised in this paper (Rise of Hate, Quebec's Bill 21 and National Security), NCCM is making nine recommendations, as summarized below.

A. RISE OF HATE **Recommendation 1:** Forceful rejection of violent white supremacist groups on the campaign trail so that Canadians hear loud and clear that their leaders care about community safety.

Recommendation 2: Commit to reviewing the status of the dangerous white supremacy group, the Three Percenters, as an existing security threat to Canada, and to potentially invoking section 70 of the Criminal Code to limit their operations.

Recommendation 3: Opening the *Canadian Human Rights Act*, RSC 1985, c H-6 [CHRA] to a fulsome legislative review in order to consider how to address the rise of online hate, anti-Semitism, and Islamophobia in balance with the rights of Canadians to engage in legitimate critique necessary for the full functioning of a democratic society.

Recommendation 4: Launch a parliamentary study on regulating social media companies to prevent online hate, the promotion of violence, and the spread of misinformation on social media platforms.

Recommendation 5: Double the number of special grant programs for academics, organizations, entrepreneurs, and NGOs to develop and deliver digital literacy programming for Canadians to mitigate the reach and impact of online hate.

B. BILL 21

Recommendation 6: Condemn Bill 21 during the course of the federal election. Each political leader should host their own press conference clearly condemning Bill 21, and set out how, if they become Prime Minister, they will act substantively to resist this destructive legislation.

C. NATIONAL SECURITY

Recommendation 7: Bring CSIS under federal whistleblower legislation in order to ensure that CSIS agents are permitted to disclose managerial cultures that promote racism, or any other form of discrimination, without fear of reprisal.

Recommendation 8: A fulsome re-examination of legislative immunity for CSIS agents that essentially grant CSIS agents and individuals, at their direction, the ability to break Canadian law in the pursuit of their activities.

Recommendation 9: Legislate a mandatory third-party Diversity, Equity, and Inclusion Audit in CSIS every five years.

A. RISE OF HATE

In May 2019, at the Quebec City mosque, a despicable incident occurred on Canadian soil: an individual, after allegedly making several racist and Islamophobic remarks and demanding that congregants show him their passports, assaulted one of the congregants.

This event took place at the Centre Culturel Islamique de Québec (CCIQ), the same mosque where on January 29, 2017, Alexandre Bissonnette, driven by Islamophobic and anti-immigrant sentiments, opened fire, ending the lives of six Quebec Muslims and injuring numerous others. The same mosque where just a few months after the shooting, someone left a severed pig's head. The same mosque that faced violent online threats, some resulting in criminal convictions. The same mosque whose executives were targeted in an arson attack.

What is perhaps even more disturbing is that in the immediate aftermath of the May 2019 incident at the mosque, several individuals were celebrating the assault in the comment section of news reports.

Quebec Premier Francois Legault appeared to shrug off the full impact of the May 2019 attack. When asked about the repeated attacks and what action can be taken, he stated:

“You will always have, unfortunately, some racist people”.
[1]

1. Colin Harris. “Police investigating possible hate crime at Quebec City mosque,” CBC News. May 26, 2019 <https://www.cbc.ca/news/canada/montreal/man-arrested-quebec-city-mosque-assault-1.5150323>

While the Quebec police eventually admitted that the assault was likely motivated by hate, Quebec's CAQ government refused to do or say anything meaningful. They refused to assign additional police protection to the Quebec City mosque. They refused to acknowledge this incident as a symptom of a larger problem. Instead, they went on the defensive, denying that their ban on religious symbols through Bill 21 has precipitated a divisive politics of fear and hate against religious minorities. Muslims, Jews, and Sikhs who wear religious symbols are not only shunted out of being teachers, prosecutors, or police officers: they have become the punching bags of public discourse.

Therefore, Canada requires coast-to-coast action on the rise of hate.

In 2015, between 80-100 white supremacist groups were spreading hate across Canada. Now, just four years later, experts say that there are close to 300 hate groups. [2] As Barbara Perry, a leading expert on hate groups in Canada, notes, "If this was any other type of crime, we'd be calling it a national crisis." [3] When the Quebec City Mosque attack took place, the House of Commons Heritage Committee called for a national strategy against racism and hate crimes. Their report offered a number of recommendations around training for media and better resources for police to tackle hate crimes. [4] The federal government has been slow to fully implement these recommendations.

2. Alex Boutilier. "Researchers to probe Canada's evolving far-right movements," The Toronto Star. March 6, 2019. <https://www.thestar.com/politics/federal/2019/03/06/researchers-to-probe-canadas-evolving-far-right-movements.html>

3. Marc Kielburger and Craig Kielburger. "Global Voices: Hate is Canada's National Crisis," Canada.com. April 17, 2019. <https://o.canada.com/life/global-voices-hate-is-canadas-national-crisis>

4. Hon. Hedy Fry. Report of the Standing Committee on Canadian Heritage. "Taking Action Against System Racism and Religious Discrimination Including Islamophobia." February 2018. 42nd Parliament, 1st Session. <https://www.ourcommons.ca/Content/Committee/421/CHPC/Reports/RP9315686/chpcrp10/chpcrp10-e.pdf>

Contrast the response to the New Zealand attacks and the Quebec City Mosque attacks.

When the horrific attack in Christchurch took place, the government responded by undertaking a truly national strategy, including passing sweeping changes around gun control legislation.

In Canada, two years after the Quebec City attack, we have yet to fully see the adoption of any of the recommendations in the national strategy against racism and hate crimes.

Therefore, we need all political parties to commit to the recommendations laid out below. The recommendations cover two broad areas relating to the rise of hate: white supremacist groups and online hate.

WHITE SUPREMACIST GROUPS

Overview

On the evening of January 29, 2017, an armed, young, male - Alexandre Bissonnette – entered the Centre Culturel Islamique de Québec (CCIQ) and gunned down six Muslim worshippers and injured several more in a terrorist attack targeting a mosque and the Muslims inside it.

The victims were Ibrahima Barry, Azzedine Soufiane, Aboubaker Thabti, Khaled Belkacemi, Mamadou Tanou Barry, and Abdelkarim Hassane. In an instance of hate and violence, their earthly presence was taken from us in what remains the worst attack on a house of worship on Canadian soil.

This unprecedented attack shattered the sense of safety for many Canadian Muslims. Global events targeting places of worship of religious minorities have intensified this sense of insecurity. These tragic events have also caused great concern among Muslim communities regarding the rise of white supremacy and far-right extremism in Canada and the threat it poses to their well-being.

As documented by disturbing investigative reports and academic studies, the rise of far-right, armed militia groups in Canada who openly espouse a vitriolic anti-Muslim agenda is deeply concerning to NCCM, as well as to Muslim and other minority communities targeted by these hate groups. The rise of anti-immigrant rhetoric abroad and in the United States has emboldened latent hateful ideologies, as evidenced by the stated motivations of the Quebec mosque attacker.

Canadian Muslims have duly noted the fact that Alexandre Bissonnette managed to evade Public Safety suspicion prior to his murderous attack, while scores of innocent Muslims have found themselves subject to CSIS suspicion.

Our communities perceive that Canadian Public Safety agencies are not taking as seriously the threat of far-right extremism and its propensity to produce violence against Muslims and other minorities.[5] The documented rise in hate crimes targeting Canadian Muslims and religious institutions has reinforced this view.[6]

Recent developments under the current government signal the potential for changes in a positive direction. For instance, the government recently included a white supremacist group, Blood & Honour and its armed wing (Combat 18), on the Terrorist Entities List, which was the first time a white supremacy group was included in this list. However, much more work needs to be done to stem the tide of organized, armed and dangerous white supremacist groups in Canada.

Recommendations

We are asking all political parties to commit to the following:

Recommendation 1: Forceful rejection of violent white supremacist groups on the campaign trail so that Canadians hear loud and clear that their leaders care about community safety.

Recommendation 2: All political parties commit to reviewing the Three Percenters as existing security threats to Canada, and to potentially invoking section 70 of the Criminal Code to limit their operations.

5. Jim Bronskill. "CSIS ended investigation of right-wing extremism 10 months before Quebec mosque shooting: report," The Globe and Mail. June 20, 2018. <https://www.theglobeandmail.com/canada/article-csis-ended-investigation-of-right-wing-extremism-10-months-before>

6. Amy Minsky. "Hate crimes against Muslims in Canada increase 253% over four years", Global News. June 13, 2017. <https://globalnews.ca/news/3523535/hate-crimes-canada-muslim>



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Elaboration of recommendations on white supremacist groups:

Recommendation 2: Limit the organizing capacity of the Three Percenters

NCCM is asking that, as a matter of policy, one of the most dangerous and violent white supremacist organizations in Canada, the Three Percenters, be degraded in its organizing capacity.

Originating from the United States in 2008, the Three Percenters (also called the III% or Threepers) began as a militia group which was built around constitutional rights (especially around the Second Amendment) in the United States. Soon, chapters began to form across the United States. Eventually, one of those chapters opened in Alberta, which is now one of the group's largest chapters.



Figure above from III% Alberta Facebook Page (screenshot September 24, 2019):
<https://www.facebook.com/Alta3percentSP/photos/a.552901241575424/6222669527931928/?type=3&theater>

As first reported by Mark Lamoureaux, a reporter for Vice Canada who went undercover with the Three Percenters for eight months, the group became active in Canada after Justin Trudeau became Prime Minister.[7] According to Lamoureaux, the Three Percenters “are now a nationwide anti-Islam, far-right militia that conducts paramilitary style training and prepping in preparation for a (perceived) incoming Islamic invasion of a left-wing government in Canada.”[8]

The Three Percenters’ preoccupation with Islam and Muslims is of particular concern. The group promotes a culture of paranoia, fear, and conspiracy theories within its ranks. They openly express and conduct activities based on their perceived threat of Islam. The group has also made it clear that they have no reservations about using violence to protect themselves from this perceived threat if necessary. It is eerie to note that the group has in the past staked out a Calgary mosque.[9]

7. Mark Lamoreaux. “The Birth of Canada's Armed, Anti-Islamic 'Patriot' Group,” Vice. June 14, 2017. https://www.vice.com/en_ca/article/new9wd/the-birth-of-canadas-armed-anti-islamic-patriot-group

8. Mark Lamoreaux. “Alberta Muslim Council Urges Three Percenters Militia to be Placed on Terror List,” Vice. March 20, 2019. https://www.vice.com/en_ca/article/eve9jj/alberta-muslim-council-urges-three-percenters-militia-to-be-placed-on-terror-list

9. Mark Lamoreaux. “Alberta Muslim Council Urges Three Percenters Militia to be Placed on Terror List,” Vice. March 20, 2019. https://www.vice.com/en_ca/article/eve9jj/alberta-muslim-council-urges-three-percenters-militia-to-be-placed-on-terror-list 1

As Adil Hasan with the Alberta Muslim Public Affairs Council noted: “They are armed. They are training ... The Three Percenters in Alberta have hosted live ammo training with semi-automatic weapons across Alberta, scheduled bomb-making lessons, and showed up at rallies armed with electric batons.”[10]

As Hasan also points out, the Christchurch shooter shares the modus operandi of the Three Percenters – he was radicalized through alt-right Islamophobic discourse and he engaged in weapons training in preparation for a looming, inevitable need for violence against Muslim communities.

Even a cursory look at the Three Percenters’ record in the United States should sound the alarm as this group gains strength in Canada. In 2011, a Three Percenters member was caught plotting to bomb federal buildings in Atlanta. [11] In 2015, five Black Lives Matter protestors were shot by a member of the Three Percenters.[12] In March 2018, one of the three men arrested for bombing a mosque in Minnesota ran a chapter of the Three Percenters.[13]

10 Adil Hasan. “Opinion: Anti-Islamic militia group belongs on federal terror watch list,” Edmonton Journal. March 22, 2019. <https://edmontonjournal.com/opinion/columnists/opinion-anti-islamic-militia-group-belongs-on-federal-terror-watch-list>

11 Mark Lamoreaux. “The Birth of Canada's Armed, Anti-Islamic 'Patriot' Group,” Vice. June 14, 2017. https://www.vice.com/en_ca/article/new9wd/the-birth-of-canadas-armed-anti-islamic-patriot-group

12 Sarah Kaplan. “Minn. man accused in Black Lives Matter shootings reportedly subscribed to ‘sovereign citizen’ subculture,” The Washington Post. December 1, 2015. <https://www.washingtonpost.com/news/morning-mix/wp/2015/12/01/minn-man-accused-of-shooting-black-lives-matter-protesters-reportedly-subscribed-to-sovereign-citizen-subculture/>

13 _____

And members of the Three Percenters were allegedly part of a plot to bomb a Somali refugee complex in Kansas.[14] It is no surprise that many counter-terrorism experts call the Three Percenters the most dangerous extremist group in Canada.[15]

As Barbara Perry notes, ““They're heavily armed, they're trained in military tactics and have very rigorous training. That really worries me.”[16]

THREE PERCENTERS: POSSIBLE CRIMINAL CONTRAVENTIONS

Possible criminal contraventions in Alberta include:

- Bringing electricity staffs to a peaceful rally at City Hall
- Monitoring of mosques
- Paramilitary practice (including live ammo training and bomb production) while explicitly endorsing anti-establishment, Islamophobic ideology

14. Jessica Pressler. 'The Plot to Bomb Garden City, Kansas,' New York Magazine. December 11, 2017. <http://nymag.com/intelligencer/2017/12/a-militias-plot-to-bomb-somali-refugees-in-garden-city-ks.html>

15. Kristy Hunter. "Three Percenters are Canada's 'most dangerous' extremist group, say some experts," CBC News. May 10, 2018. <https://www.cbc.ca/news/canada/three-percenters-canada-1.4647199>

16. Al Donato. "Skinhead: White Nationalism and Right-wing Extremism aren't New to Canada," CBC DOCS POV. July 18, 2019 <https://www.cbc.ca/cbcdocspov/features/white-nationalism-and-right-wing-extremism-arent-new-to-canada>

Possible criminal contraventions outside of Alberta include:

- In 2017, two men threw a pipe bomb into a masjid, and the congregants in a Minnesota masjid narrowly escaped injury or death. The attack was planned by Michael Hari, the leader of a Three Percent Chapter.
- In 2015, Allen “Lance” Scarsella shot five people at a Black Lives Matter protest. Scarsella was affiliated with a number of “sovereign” militias, including the Three Percent.
- In 2017, a Three Percenter member was arrested for plotting to blow up a federal building in Oklahoma.

In light of this record and the growing chorus of experts calling for urgent action against the Three Percenters, the NCCM strongly recommends that the government consider invoking section 70 of the Criminal Code to limit the organizing capacity of the group. While there has been no recent declaration under section 70 of the Code, there is little doubt that we are living in extraordinary circumstances. When an organization is actively drilling and preparing for the apocalyptic moment to target members of the Canadian Muslim community, steps must be taken by the federal government.

Section 70 of the Criminal Code states:[17]

- 70 (1) The Governor in Council may, by proclamation, make orders
- a) to prohibit assemblies, without lawful authority, of persons for the purpose
 - (i) of training or drilling themselves,
 - (ii) of being trained or drilled to the use of arms, or
 - (iii) of practising military exercises; or
 - (b) to prohibit persons when assembled for any purpose from training or drilling themselves or from being trained or drilled.

17. Criminal Code R.S.C., 1985, c. C-46. <https://lois-laws.justice.gc.ca/eng/acts/C-46/page-11.html#h-116152>

General or special order

(2) An order that is made under subsection (1) may be general or may be made applicable to particular places, districts or assemblies to be specified in the order. Punishment

(3) Every one who contravenes an order made under this section is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

In other words, to be listed, an order in council from a cabinet minister must be made to “prohibit assemblies” for the listed purposes. Considering that the Three Percenters engage in “drilling and training in the use of arms,” section 70 is a very clear avenue by which the federal government could prohibit their assembly and activities as such.



Figure above from III% Alberta Facebook Page (screenshot September 24, 2019)

ONLINE HATE

Overview

A key factor in the circulation and strengthening of hate in Canada is the ubiquity of online hate. It is unrelenting, it is vicious, and it is dangerous. The reality of this danger was made clear on January 29, 2017 when Alexandre Bissonnette attacked the CCIQ mosque in Quebec. When Bissonnette was sentenced, online hate featured prominently in the judge's decision. In *R. c. Bissonnette*, 2019 QCCS 354, Justice François Huot indicated at paragraphs 10-12 of the decision that Bissonnette drew upon online sources before committing this horrific attack:

“

[10] ...il consulte assidûment divers sites Internet portant, notamment sur les armes à feu et auteurs d'actes terroristes. À titre d'exemples, il accède, le 27 janvier, au compte Twitter de #Muslimban...

[11] Le lendemain, il fait diverses lectures sur Jaylen Fryberg, l'auteur de la tuerie de Marysville, Elliot Rodger, responsable de la tuerie de masse du 23 mai 2014 à Isla Vista en Californie, Dylann Roof, l'assassin de neuf Afro-Américains lors de la fusillade de l'église de Charleston, l'attaque de San Bernardino et la page Facebook du mouvement FÉMUL (Féministes en mouvement de l'Université Laval).

[12] Dans la matinée du 29 janvier 2017, Bissonnette déjeune en consultant d'autres sites traitant d'attentats djihadistes...18

[Translated to English]

[10] During this same period, he regularly consulted various Internet sites relating, in particular, to firearms and perpetrators of terrorist acts. For example, on Jan. 27, he accessed #Muslimban's Twitter account...

[11] The following day, he made various readings on Jaylen Fryberg, the author of the Marysville slaughter, Elliot Rodger, mass murderer of May 23, 2014 in Isla Vista, California, Dylann Roof, the murderer of nine African Americans during the shooting of the Charleston church, the San Bernardino attack and the Facebook page of the FÉMUL movement (Feminists in Motion at Laval University).

[12] On the morning of January 29, 2017, Bissonnette consulted other sites dealing with jihadist attacks...

There is no clearer indication to us that online hate poses an existential threat to Canadians and to Canadian security. An analysis of his computer records showed that Bissonnette, from December 27, 2016 to January 29, 2017, consulted various sources about Islam on the internet.

While we do not propose that Bissonnette was solely motivated by online hate speech or online racist manifestos, it is clear that Bissonnette consulted these online sources before committing his attack. That is simply part of the evidence on the record.

In Canada, there is little doubt from an empirical perspective that online hate, primarily through social media, but also through blogs, podcasts, websites and the dark web continues to fuel Islamophobia and animosity towards Canadian Muslim populations. Online hate stokes fear and promotes misinformation and anti-Semitism against our friends and allies in the Jewish community as well. The scourge of white supremacy, as well as the “incel” community, has been given a revival and a rebirth by way of the growth of social media, where misinformation and hate pose an existential threat to Canadian security.

In 2016, media research company Cision documented a 600% rise in the amount of intolerant hate speech in social media postings between November 2015 and November 2016. Their study focused on the usage of hashtags like #banmuslims and #siegeheil.[19]

According to a 2019 survey by Leger Marketing, 60% of Canadians report having seen hate speech on social media, and 62% of Quebecers stated that they had seen hateful or racist speech on the internet/social media in relation to Muslims.[20]

There is far more empirical data demonstrating this point than can be adequately condensed into this brief. Barbara Perry and Ryan Scrivern's recent research on how Canadian hate groups utilize online platforms, including social media platforms, demonstrates that white supremacist and online hate groups use online platforms to create an "enabling environment." [21] Groups like the Soldiers of Odin (founded by a neo-Nazi), Pegida Canada, and other organizations routinely use Twitter and Facebook as organizing tools, as well as to continue to spread misinformation and hate about immigrants, feminists, refugees, and the Canadian Muslim community.

19 Nadia Naffi. "Online hate speech in Canada is up 600 percent. What can be done?" Maclean's. November 2, 2017. <https://www.macleans.ca/politics/online-hate-speech-in-canada-is-up-600-percent-what-can-be-done/>

20 Marian Scott. "Most Canadians have seen hate speech on social media: survey," Montreal Gazette. January 27, 2019. <https://montrealgazette.com/news/local-news/hate-speech-targets-muslims>

21 Barbara Perry and Ryan Scrivens, "A Climate for Hate? An Exploration of the Right-Wing Extremist Landscape in Canada," Springer- Critical Criminology. 2018. <https://link.springer.com/article/10.1007%2Fs10612-018-9394-y>.

Examples abound relating to the continued and real-life impact of online hate against local Muslim communities. The Fort McMurray mosque, for instance, has faced numerous threats online for years, including most recently after the New Zealand shootings. Some Facebook users called for the Markaz ul Islam mosque to be burned down and blown up, while another called for the mosque to “have a pig roast”. To our knowledge, while the RCMP did investigate these clear instances of online hate speech, no charges have been laid.

It is clear, given our current environment, that action must be taken in order to ensure that there is a comprehensive, whole-of-society approach to reducing the harms of online hate.

Recommendations

We are recommending that government take action in three key ways in order to combat online hate:

Recommendation 3: Modernizing the *Canadian Human Rights Act*, RSC 1985, c H-6 [CHRA] by opening it for a fulsome legislative review in order to consider how to address the rise of online hate, anti-Semitism, and Islamophobia in balance with the rights of Canadians to engage in legitimate critique necessary for the full functioning of a democratic society.

Recommendation 4: Launch a parliamentary study on regulating social media companies to prevent online hate, the promotion of violence, and the spread of misinformation on social media platforms.

Recommendation 5: Double the number of special grant programs for academics, organizations, entrepreneurs, and NGOs to deliver to develop digital literacy programming for Canadians.

Elaboration of recommendations on online hate:

Recommendation 3: Opening the CHRA for legislative review

The old text of since-repealed section 13 read:

13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination. Interpretation
(2) For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication, but does not apply in respect of a matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking.

Interpretation

(3) For the purposes of this section, no owner or operator of a telecommunication undertaking communicates or causes to be communicated any matter described in subsection (1) by reason only that the facilities of a telecommunication undertaking owned or operated by that person are used by other persons for the transmission of that matter

We take no position on the controversy that led to section 13 eventually being repealed. However, it is clear that many academics, activists, and policy makers believe that section 13 should be revisited by way of legislative amendment to the CHRA.

This is not our position. The case law around section 13 demonstrates that the utilization of this provision was not in line with what we might deem to be best practice. Indeed, despite the controversy around section 13, section 13 complaints constituted a mere 2% of the total number of complaints brought to the Canadian Human Rights Commission. In other words, many affected groups in Canada did not appear to significantly rely on section 13 as they dealt with cases of online hate.

Rather, we recommend that government initiate a comprehensive legislative review of the CHRA. If we examine, for instance, the 181 page report in 2000 from the Canadian Human Rights Act Review Panel, the Review Panel put forward a robust and well considered analysis of the CHRA, which at the time, had not been comprehensively reviewed since 1977.

We believe that the CHRA is due for such a comprehensive review process, especially given the rise of modern forms of hate, violence, and discrimination that have arisen in the last 19 years since the 2000 review. Such a comprehensive review process would not only enable a panel to review the overall impact of a revised section 13, but would be able to review the impact of such a provision in light of the entire Act. In her review of Canadian human rights legislation, Dominique Clément makes much the same point in calling for a renewal of Canadian human rights law.[22]

Engaging in a fulsome review process that looks not only at legal options, but also at furthering the Canadian Human Rights Commission's mandate around education on human rights, is critical. A fulsome review could also engage in consultation with historically disadvantaged communities like the First Nations people, Indigenous communities, and Metis around the CHRA and what change might look like.

Such a review would allow a review panel to engage in consultations and make recommendations around questions such as

1. How do we define 'hate' in the context of the CHRA?
2. How can we ensure that the freedom to engage in legitimate criticism of ideology, state action, and religious praxis is protected for Canadians?
3. Would a revised version of section 13 fit within the broader legislative scheme of the CHRA, given the above considerations?

22 Dominique Clément. "Renewing Human Rights Law in Canada," Osgoode Hall Law Journal. 2017. <https://digitalcommons.osgoode.yorku.ca/ohlj/vol54/iss4/13/>

4. If a revised version of section 13 was considered, to what extent could resources be allocated so that a revised section could be utilized effectively by self-represented litigants (as online hate often targets individuals who may not have the resources or knowledge to mount a fulsome challenge)?

Therefore, we recommend that the government consider a fulsome legislative review of the CHRA to consider how to address the rise of online hate, anti-Semitism, and Islamophobia in balance with the rights of Canadians to engage in legitimate critique necessary for the full functioning of a democratic society. A review is timely, given that the last fulsome review was done in 2000, well before social media companies like Facebook had opened their doors.

Recommendation 4: A Parliamentary Study on Social Media Company Regulation

It is estimated that approximately 84% of Canadians use Facebook, and a majority of Canadians get their news through social media.[23] There is an abundance of empirical data, not duplicated here, to suggest that “fake news” is circulated through a number of social media apps, including Facebook, Twitter, WhatsApp, and other social networks.

From the perspective of NCCM, it is clear that the current state of affairs, where online hate spreads rapidly through social media networks, is not healthy for democracy or safety in Canada. Other jurisdictions have begun to take action on regulating social media companies when it comes to the issue of online hate.

23 CBC, “How does your social media use stack up against other Canadians?” March 9, 2018. <https://www.cbc.ca/radio/spark/388-pokemon-go-for-ecologists-fake-videos-and-more-1.4569277/how-does-your-social-media-use-stack-up-against-other-canadians-1.4569280>.

The German *Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken*, also known as the "Facebook Act" or "NetzDG", requires social networks with more than 2 million registered users in Germany to exercise a local takedown of obviously illegal content within 24 hours of notification, or face a significant financial penalty (up to \$50 million euros). Between January 2018 and June 2018, Facebook removed 362 posts directly after complaints under the legislation.[24]

In Australia, there was a recent criminal code amendment, the Sharing of Abhorrent Violent Material Bill, following the New Zealand Christchurch shooting. The amendment makes it a criminal offence for social media platforms not to remove abhorrent violent material expeditiously.

Contraventions are punishable by 3 years' imprisonment or fines that can reach up to 10% of the platform's annual turnover. In April 2019, the UK government released a 102-page White Paper entitled, "Online Harms". In summary, the White Paper calls for a comprehensive consultation process, as well as creating an independent regulator that will draw up codes of conduct for social media companies, outlining a statutory "duty of care" towards users, with the threat of penalties for non-compliance, including heavy fines.[25]

However, we would not recommend that the government adopt a single model from a particular system. Rather, we recommend that a formal parliamentary study be commenced on the question of regulating social media companies specifically.

24 Marrian Zhou. "Facebook: We've removed hundreds of posts under German hate speech law." CNET. July 27, 2018. <https://www.cnet.com/news/facebook-weve-removed-hundreds-of-posts-under-german-hate-speech-law/>

25 The Rt Hon Sajid Javid and The Rt Hon Jeremy Wright. Department of Digital, Culture, Media, and Sport. "Online Harms White Paper." April 8, 2019 <https://www.gov.uk/government/consultations/online-harms-white-paper>

Such a study would generate the appropriate inquiry it deserves through internal Government of Canada experts. Such a study would also engage external experts, human rights scholars, academics, and industry. The parliamentary study would review how to create a new regulatory system that would include some form of penalizing social media companies for not taking down material that breaches the Criminal Code and human rights legislation. The study would ensure that the new proposed regulatory system is effective, does not limit freedom of expression, and does not overly burden industry.

Therefore, we are recommending that the government consider launching a parliamentary study into the question of regulating social media companies specifically.

Recommendation 5: Prevention and Education

The UN Report of the Special Rapporteur on minority issues in 2015 held that education and building resilience were key elements to combatting online hate targeting minority communities.[26] Many academics and policy makers continue to argue that education and prevention are critical to stemming the growth of online hate.

Working towards “digital literacy” amongst Canadians could ensure that Canadians, young and old, are less likely to be influenced by hate or misinformation online. Given the spread of climate change denial, anti-vaxxer science, and the dangers of foreign influence during electoral periods on social media, designing programs for digital literacy has long-term positive impacts that go well beyond preventing Islamophobia narrowly.

26 Rita Izsák. United Nations Human Rights Council. “Report of the Special Rapporteur on minority issues.” January 5, 2015. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/000/32/PDF/G1500032.pdf?OpenElement>

We recognize that the Government of Canada currently has invested over \$29.5 million in digital literacy efforts in supporting the Government of Canada's Innovation and Skills Plan. However, these efforts are largely geared around bringing all Canadians into the digital age, rather than ensuring that Canadians that are on the Internet have the skills and capabilities to determine legitimate sources of knowledge from “fake news” and online hate.

Our recommendation to the government is to consider doubling a special grant program to develop digital literacy programming. While the Government announced \$5 million in funding for community-led digital and civic literacy programming to address online disinformation and hate speech, we are recommending a far more robust approach. Such a grant would be available to academics, entrepreneurs, anti-racism organizations, and NGOs who have expertise in thinking about digital literacy, democracy, and online hate. It would also allow the government to foster further innovation in Canada to provide grants to psychologists doing research to funding programs directly addressing antisemitic beliefs amongst a given population.



B. QUEBEC'S BILL 21

Bill 21, an *Act Respecting the Laicity of the State* (the “Act”), bans public school teachers, government lawyers, judges, police officers, and individuals in public-sector positions from wearing religious symbols while at work.[27] It essentially prevents Jews, Muslims, and Sikhs from becoming teachers, police officers, judges and being involved in other public-sector positions in Quebec.

In other words, if you are Sikh Canadian and choose to wear a turban, as is your constitutionally protected right in Quebec, you would not be allowed to become the president of the National Assembly. And that is why the Quebec government is invoking the notwithstanding clause: a rarely used provision to essentially say that your constitutional rights are irrelevant.

The Act is an unprecedented law that, in the name of the Government’s view of laicity, attempts to create a state religion of secularism whose purpose and effect is to deny certain Quebecers the right to fully participate in Quebec society. Among other things, the Act requires that those who work in or for a wide range of public institutions do so without wearing religious symbols, even if they are invisible. The Government has sought to shield the Act from judicial scrutiny by invoking the “notwithstanding” clauses of the Canadian and Quebec Charters. The impact of Sections 6 and 8 of the Act is widespread, significant, and immediate, striking at the heart of affected individuals’ ability to obtain and keep employment or advance in their careers.

27 “An Act Respecting the Laicity of the State.” National Assembly of Quebec. <http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2019C12A.PDF>

Hundreds and potentially thousands of Quebecers are now barred from obtaining jobs in many public institutions, changing functions, or receiving promotions.

The Act was adopted on June 16, 2019. It contains two prohibitions applicable to thousands of individuals who work in or for a variety of public institutions, including teachers, police officers, and lawyers: (1) a prohibition on wearing visible or invisible “religious symbols” at work (Section 6), and (2) a prohibition on covering their faces while exercising their functions (Section 8).

Under the Supreme Court of Canada’s decision in the *Secession Reference*, there are four interrelated principles of the Constitution:

Federalism – the principle that seeks to “reconcile diversity with unity” by giving federal authority over only those issues of common interest amongst culturally diverse and politically independent provinces. The purpose of Canada's federalism is not only to create a loose association amongst provinces, but a true national unity.

Democracy – the principle that seeks to promote participation in effective representative self-government, which respects and responds to all voices in a marketplace of ideas.

Constitutionalism and the Rule of Law – the principles that protect citizens from state actions by forcing governments to act under the rule of law, the constitution of Canada being the supreme law. The Constitution's entrenched protections of minorities ensures that the country does not operate simply on majority rule, and enables a true democracy in which minority voices are fairly considered.

Protection of Minorities – the principle that guides the other principles, but one which is also independent and fundamental because of its uniqueness to Canada relative to other federal, constitutional democracies.

The SCC held that these pieces cannot be viewed independently but all interact as part of the Constitutional framework of Canada.[28] This approach is important to remember in the context of Bill 21.

Recommendation

We are calling on all political parties to:

Recommendation 6: Condemn Bill 21 during the course of the federal election. Each political leader should host their own press conference where the leader clearly condemns Bill 21, and sets out how, if they become Prime Minister, will act substantively to resist this destructive piece of legislation.



28 Reference re Secession of Quebec, [1998] 2 S.C.R. 217. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>

C. NATIONAL SECURITY

In the NCCM's view, national security necessitates public confidence in the Canadian Security Intelligence Service (CSIS) and our security agencies. Our organization has always stood for upholding Canada's national security while ensuring respect for civil liberties, as these two core principles reinforce one another.

It has been the NCCM's long-standing position that Canadian national security discourse tends to erroneously conflate terrorism with Islam and Muslims. This serves to perpetuate misconceptions about the nature of security in Canada, embolden prejudicial elements in our society, and feed the extreme narrative espoused by terror groups about an inevitable conflict between Muslims and the West, creating a vicious cycle in which the discourse of each extreme reinforces prejudices and false stereotypes about those in the centre.

For over a decade, Canadian Muslim communities have been subjected to national security stigmatization. At the same time, they have extended a hand of partnership to successive governments and remain committed to protecting the safety of our country. Canadian Muslims have in many cases been instrumental in disrupting security threats to Canada.

The NCCM would like to take this opportunity to acknowledge and welcome the ongoing efforts made by CSIS to use accurate terminology and language when describing national security threats to Canada.

For a number of years now, public reports and statements by CSIS have discontinued and corrected the use of stigmatizing language that associates mainstream Muslims with terrorism. Instead, we have noted that CSIS has started to use terminology that more accurately characterizes security threats. We urge national security officials to continue this practice as it serves to reinforce social cohesion in Canada and counter the harmful notion that Muslims writ large or their faith are complicit with or sympathetic towards terrorism and those who promote it.

Unfortunately, revelations of Islamophobia and bias against Muslims inside CSIS, problematic intelligence sharing and the mistreatment of Muslims, disingenuous outreach efforts by government, and the rise of far-right extremism in Canada have, collectively, broken the trust of Canadian Muslims in national security agencies.

It is vital that this trust be repaired through genuine and meaningful engagement by CSIS with Muslim communities aimed at understanding their experiences and committing to treat Canadian Muslims as equal citizens whose fundamental rights and freedoms are respected. Moreover, in our view, a culture shift is required at CSIS that will lead to, among other things, the enactment of strong, transparent accountability measures as well as Diversity, Equity & Inclusion (DEI) policies with the goals of ensuring meaningful minority representation within the Service's management and the tackling of discrimination and Islamophobia within its ranks.

We also raise three ongoing issues in Canada's national security apparatus:

- A. Discrimination inside CSIS
- B. Information sharing with foreign entities
- C. Engagement with Canadian Muslims

A. Discrimination inside CSIS

In July 2017, Canadians learned of a lawsuit launched by several CSIS employees against their employer alleging discrimination, racism, homophobia and Islamophobia within the Service. Although that lawsuit was settled out of court, Canadian Muslim communities remain deeply troubled by the revelations about discriminatory behaviour inside CSIS, as corroborated by former officers,[29] as well as a workplace summary report publicly released by CSIS itself.[30] These combined reports point to issues of systemic bias within CSIS towards Muslims, including within the ranks of its upper management.

Canadians need confidence that their country's security intelligence agency can undertake its mandate with professionalism and in an objective manner without bias and discrimination. It is unacceptable for prejudicial attitudes to be left unchecked in any situation, but particularly in the context of CSIS's national security work and intelligence gathering. To date, there is no clear evidence that would indicate real changes within CSIS that would assuage these concerns.

29 Shanifa Nasser. "Veil of secrecy prevents CSIS employees from speaking out, say ex-officers," CBC News. July 14, 2017. <https://www.cbc.ca/news/canada/toronto/csis-toronto-spy-agency-employees-investigation-1.4206269>

30 Michelle Shephard. "Head of spy agency CSIS admits 'retribution, favouritism, bullying' in workplace," Toronto Star. Oct. 25, 2017 <https://www.thestar.com/news/canada/2017/10/25/csis-director-calls-behaviour-unacceptable-after-report-uncovers-bullying-reprisals-at-canadas-spy-agency.html>

The fact that Muslim and other minority CSIS employees had to publicly sue the agency to be heard suggests that the Service has ongoing organizational culture problems that cannot be resolved by merely settling a lawsuit and making vague public statements about the Service's purported intolerance of discrimination. A categorical culture shift inside CSIS is required before trust can start to be regained.

Perhaps what is most disconcerting is the inevitable impact of Islamophobic attitudes within CSIS on investigations and front-line intelligence work. In light of the public record, it is reasonable to conclude that managerial-driven discrimination targeting Muslims inside CSIS has translated at the macro-level into Islamophobia influencing actual CSIS operations.

The change necessary to address the scope of the problem requires a multi-pronged approach including both training on unconscious and conscious bias as well as Diversity, Equity & Inclusion (DEI) policies that include a focus on intentionality when recruiting minorities for leadership positions.

B. Information sharing with foreign entities

For many years, the NCCM and civil society organizations have raised serious objections about Canadian intelligence sharing with foreign regimes that are known to practice torture. These concerns date back to more than 12 years ago when Justice Dennis O'Connor first revealed some of these unlawful practices in the Arar Inquiry report. Further incidents of such information sharing came to light during the Abousfian Abdelrazik saga in 2009 as well as in subsequent well-known court cases.[31]

31 Bruce Livesey. "Torture and Interrogation the CSIS and RCMP Way," Canada's National Observer. September 20, 2017.
<https://www.nationalobserver.com/2017/09/20/news/torture-and-interrogation-csis-and-rcmp-way>

Despite these public revelations and repeated promises by security agencies that they would ensure such acts did not occur again, it appears that not much has changed. In its 2017-2018 public report, the Security Intelligence Review Committee (SIRC) found two cases where CSIS did not follow its own internal policies and directives on information sharing. In one of those cases, it was found that CSIS disclosed information to a foreign entity about a Canadian detained abroad without requisite approvals, in spite of evidence of the risk of torture.[32] Such reports confirm Canadian Muslim fears that CSIS does not respect constitutional rights or due process, and that it deliberately targets Muslims. The history of CSIS either being complicit in detentions leading to torture,[33] or interrogating Canadians detained by governments that were known to practice forms of severe mistreatment that amounted to torture,[34] are well-known to Canadian Muslims.

More recent reports of CSIS being involved in the cases of detained Canadian Muslims have reinforced the perception within Muslim communities that CSIS both considers and treats Muslims like second-class citizens.[35] These perceptions are especially harmful to the goal of establishing long-term trust with communities.

32 “Annual 2017-2018 Report: Building For Tomorrow: The Future Of Security Intelligence Accountability In Canada” Security Intelligence Review Committee (SIRC). May 31, 2018. http://www.sirc-csars.gc.ca/anrran/2017-2018/index-eng.html#section_2_2

33 *Abdelrazik v. Canada (Minister of Foreign Affairs)*, [2010] 1 FCR 267, 2009 FC 580. <https://www.canlii.org/en/ca/fct/doc/2009/2009fc580/2009fc580.pdf>

34 “CSIS’s Role in the Matter of Omar Khadr,” Security Intelligence Review Committee (SIRC), July 8, 2009. <http://www.sirc-csars.gc.ca/opbapb/2008-05/index-eng.html>

35 Bruce Livesey. “Investigating Canada’s security bias,” National Observer. Sept. 20, 2017. <https://www.nationalobserver.com/special-reports/investigating-canadas-security-bias>

C. Engagement with Canadian Muslims

Under the previous government (2006-2015), Canadian Muslims experienced a new era of scrutiny and troubling Islamophobic rhetoric from the highest levels of leadership. Those lived experiences created a sense of alienation from mainstream society and distrust of national security agencies among Muslim communities. Despite consistent efforts to extend a hand of partnership to government, Canadian Muslims witnessed their institutions being denigrated, community leaders being defamed, and little to no reassurances that their Charter rights would be protected.

While the current federal government's tone towards Canadian Muslims has considerably improved, there has been no sign of similar improvement in the security establishment. News about systemic discrimination and bias from within CSIS, coupled with revelations about CSIS actions unfairly and disproportionately impacting Canadian Muslims, have only reinforced these negative perceptions at a time when Islamophobic rhetoric is pervasive in Canada and elsewhere. Many of the allegations contained in the 2017 civil suit filed against CSIS, and which many Canadian Muslims viewed as credible, revealed attitudes within the Service that align with some of the worst anti-Muslim rhetoric we see emanating from the United States.

As such, there is little reason for Muslim communities to believe that CSIS views them any differently. Tied to this issue of perceptions is CSIS's lack of authentic engagement with Muslim communities. With respect, Canadian Muslims perceive existing CSIS outreach efforts as window-dressing aimed at either recruiting informants or improving CSIS's own public image while Canadian Muslims remain securitized and subjected to heightened scrutiny that can impact their families, livelihoods and careers.

This trust deficit needs to be genuinely and urgently addressed by CSIS before any real partnerships can be established between Canadian Muslims and security agencies.

Recommendations

We are calling on all political parties to:

Recommendation 7: Bring CSIS under federal whistleblower legislation in order to ensure that CSIS agents are able to disclose a managerial culture that promotes racism, or any other form of discrimination, without fear of reprisal.

Recommendation 8: A fulsome re-examination of immunity for CSIS agents.

Elaboration of recommendations on national security

Recommendation 7: Bring CSIS under federal whistleblower legislation

In Canada, the Public Servants Disclosure Protection Act (PSDPA) sets out procedural guidelines for public servants. CSIS is exempted under the PSDPA.

The purpose of the PSDPA is to encourage public servants to come forward if they have reason to believe that serious wrongdoing has taken place and to provide protection to them against reprisal when they do so. One requirement of the PSDPA is that if wrongdoing is found as a result of a disclosure, the organization must promptly provide public access to certain information. Specifically, it must describe the wrongdoing, the recommendations made to the chief executive, and the corrective action taken by the organization's chief executive.[36]

As discussed above, the since-settled lawsuit against CSIS reveals a serious problem regarding the lack of the ability for employees to effectively bring attention to systemic issues. Employees cannot approach Public Sector Integrity Commissioner (PSIC) to report an atmosphere of antisemitism or Islamophobia, for instance, in the workplace.

Because CSIS operates in total secrecy, the potential for mismanagement and misconduct is extraordinarily high. Most importantly, retaliation by such agencies against truth-tellers is easy and devastatingly effective. Simply stripping employees of their security clearances – an action which is almost impossible to challenge – instantly renders these individuals unemployable in their chosen career for the rest of their life.

36 Public Servants Disclosure Protection Act (S.C. 2005, c. 46). <https://laws-lois.justice.gc.ca/eng/acts/p-31.9/> 38 Michael Geist. Law, Privacy and Surveillance in Canada in the Post-Snowden Era. 2015. Ottawa: University of Ottawa Press

We are not advocating that CSIS agents or employees should be able to reveal state secrets that put state security at risk. However, it is equally important to recognize that CSIS agents must be able to disclose a managerial culture that promotes racism, or any other form of discrimination. Ensuring that whistleblowing at CSIS is brought under the appropriate federal legislation serves the public interest. While the current legislation certainly has been critiqued for not going far enough, ensuring that CSIS employees know that they can effectively whistleblow without facing reprisal for reporting is critical.

In *Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771*, the Supreme Court of Canada upheld the principle that whistleblowing should “move up the ladder” through internal reporting at the outset. But external whistleblowing procedures also need to exist.[37]

Therefore, amendments to the PSDPA to allow for reporting mismanagement at CSIS should ensure that these amendments also serve to protect relevant state secrets.

In this sense, Canada is to some extent behind its colleagues in the United States, who have had federal statutes on the books since 1998 when the Intelligence Community Whistleblower Protection Act was passed. In addition, President Obama’s Presidential Policy Directive (PPD-19) created the ability to make “protected disclosure” as per the below:

37 *Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771*. 2005, SCC 70 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2252/index.do>

A disclosure of information by the employee to a supervisor in the employee's direct chain of command up to and including the head of the employing agency, to the Inspector General of the employing agency or Intelligence Community Element, to the Director of National Intelligence, to the Inspector General of the Intelligence Community, or to an employee designated by any of the above officials for the purpose of receiving such disclosures, that the employee reasonably believes evidences (i) a violation of any law, rule, or regulation; or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

PPD-19 prohibits reprisals (1) that could affect a whistleblower's eligibility for access to classified information; or (2) involve a personnel action against the IC employee making a protected disclosure.

PPD-19 requires IC elements to certify to the DNI a process for IC employees to seek a review of personnel actions the employee believes are in reprisal for making a lawful disclosure. The review process also must provide for the security of classified information involved in a disclosure.

IC agencies also have to certify to the DNI that the agency has a review process that permits employees to appeal actions involving eligibility for access to classified information that are alleged to be in violation of prohibitions against retaliation for making lawful disclosures.[38]

38 Presidential Policy Directive (PPD)-19: "Protecting Whistleblowers with Access to Classified Information," The White House. October 10, 2012.
https://www.va.gov/ABOUT_VA/docs/President-Policy-Directive-PPD-19.pdf)

Title VI of The Intelligence Authorization Legislation (FY2014 IAA, P.L. 113-126) codified provisions of PPD-19 and provided the first expansive statutory protections for IC whistleblowers against personnel or security clearance actions made in reprisal for protected disclosures, then codified these disclosure regimes.[39] As such, we recommend that all political parties commit to reforming the PSDPA to include CSIS under its purview, with an eye to ensuring that the reforms protect state secrets.

Recommendation 8: Re-examination of immunity for CSIS agents Under recently passed legislation in the form of Bill C-59, CSIS agents have now been granted immunity if they break certain laws during the course of their work. Under section 20.1(2) of the CSIS Act, immunity is now granted for, “acts or omissions that would otherwise constitute offences.”[40]

As the International Civil Liberties Monitoring Group (ICLMG) noted:

We are also concerned by new powers, to be added as section 20.1 (2) of the CSIS Act, granting CSIS agents or individuals at their direction, immunity for “acts or omissions that would otherwise constitute offences.”[41]

Essentially, this will grant CSIS agents and individuals at their direction the permission to break Canadian law in the pursuit of their activities.

39 Anne Daugherty Miles. “The Intelligence Authorization Legislation for FY2014 & FY2015: Provisions, Status, Intelligence Community Framework.” Congressional Research Service Report. January 12, 2016. <https://fas.org/sgp/crs/intel/R43793.pdf>

40 Canadian Security Intelligence Service Act (R.S.C., 1985, c. C-23). <https://laws-lois.justice.gc.ca/eng/acts/c-23/>

41 “Brief on Bill C-59, the National Security Act, 2017,” International Civil Liberties Monitoring Group. May 2019. <https://iclmg.ca/wp-content/uploads/2019/05/C-59-brief-May-2019-update.pdf>

When law enforcement officials were granted these powers in 2001 (in Bill C-24), the proposal was already controversial. At the time, the Canadian Bar Association raised serious concerns, calling it “antithetical to the rule of law”.^[42] The ICLMG raised similar concerns during the review of Bill C-36, the Anti-Terrorism Act, 2001, writing that:

Even prior to Bill C-36, legislation had been introduced representing an unprecedented expansion of state power under the auspices of fighting organized crime, though never limited in its application only to organized crime. For example, in 2001, Bill C-24, Criminal Code amendments (Organized Crime) created an exemption from criminal liability not only for police, but also for agents of the police.^[43]

We believe these concerns are even more serious when such powers are given to intelligence agents operating in secret. As with CSIS’ threat disruption powers, the issues with granting these powers to CSIS officers are compounded by the fact that, even after the fact, CSIS’ actions are unlikely to be revealed or challenged in open court.

Bill C-59 purports to provide oversight to these acts or omissions through the Intelligence Commissioner, but this is applied only to the “classes” of acts or omissions, and on a yearly basis. There is after-the-fact reporting and review by the National Security Intelligence Review Agency, and the proposed changes reiterate the need to obtain a warrant in adherence to Section 21 of the CSIS Act (which addresses CSIS threat reduction powers).

42 “Submission on Bill C-24: Criminal Code amendments (Organized Crime and Law Enforcement),” National Criminal Justice Section, Canadian Bar Association. November 2001 <https://www.cba.org/CMSPages/GetFile.aspx?guid=fb312e8a-6ec7-4e35-9d66-0261ad57578a>

43 “Submission Concerning the Review of the Anti-Terrorism Act,” International Civil Liberties Monitoring Group. April 2005. <https://iclmg.ca/wp-content/uploads/2014/03/BR-Re-review-of-ATA.pdf>

Despite these attempts at safeguards, they do not off-set the immense danger of granting a spy agency, that operates largely in secret, the power to break the law in carrying out their duties. This does not mean, however, that we prefer the old regime when CSIS relied on Crown immunity for protection. Under that regime, there was little oversight over CSIS approving conduct that would otherwise break the law.

Rather, we propose that a fulsome re-examination of CSIS immunity powers be considered properly.

Recommendation 9: Legislating a Diversity, Equity & Inclusion Audit

Since the lawsuit related to a hostile work environment at CSIS for minority Canadians, it is critical that a third-party Diversity, Equity and Inclusion (DEI) audit takes place in CSIS, and is mandated in legislation every five years thereafter. A DEI audit would critically and honestly assess programs, policies, procedures and practices across CSIS regarding diversity, equity and inclusion to strengthen and coordinate its approach. Such an approach would also be in line with the Government of Canada's general approach towards DEI. For example, in the academic context, the Government of Canada and the Canada Research Chairs Program (CRCP) are committed to excellence in research and research training for the benefit of Canadians. Achieving a more equitable, diverse and inclusive Canadian research enterprise is also essential to creating the excellent, innovative and impactful research necessary to seize opportunities and for responding to global challenges. As such, the program is committed to the federal government's policies on non-discrimination and employment equity.

Simply put, it is unacceptable that a national security agency such as CSIS, which has struggled with allegations of harassment and bullying on the basis of race, has not undertaken a fulsome accounting of its own issues.

CONCLUSION

At the end of the day, our Canada is one that is for all of us.

We have to work hard to keep it that way.

Our policy positions set out clear and common-sense recommendations that we think the majority of Canadians will agree with, and that we urge all parties to adopt.



