

**COMMISSION OF INQUIRY INTO THE INVESTIGATION OF THE BOMBING OF  
AIR INDIA FLIGHT 182**

**THE HONOURABLE JOHN C. MAJOR, Q.C.**

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**FINAL SUBMISSION OF  
CANADIAN COUNCIL FOR AMERICAN ISLAMIC RELATIONS (CAIR-CAN)  
and the CANADIAN MUSLIM CIVIL LIBERTIES ASSOCIATION (CMCLA)**

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## A. BACKGROUND ON INTERVENORS

### 1) Canadian Council on American-Islamic Relations (CAIR-CAN)

CAIR-CAN is a national, broad-based organization built from within the Muslim community and formally registered in 2000. It is engaged in activism in the areas of human rights, civil rights, media relations, anti-discrimination as well as legal and political advocacy. It has been actively involved in responding to the government's counter-terrorism and national security measures and practice in the wake of terrorist attacks in the United States in September 2001 and its impact on Canada's Muslim population.

Through activism in the areas of media relations, legal advocacy, anti-discrimination work and political advocacy, CAIR-CAN aims to educate Canadians and empower Muslims in Canada. It views the rise of Islamophobia, especially since the events of September 11, 2001, and more recently since the June 2006 arrest of eighteen individuals in Toronto in an alleged terrorist plot, to be one of the greatest threats facing Canada's Muslim community today.

CAIR-CAN works through its legal advisors and local members to fight discrimination directed against Canadian Muslims. This discrimination often relates to the violation of basic rights guaranteed in the *Charter of Rights and Freedoms* ("*Charter*") or federal or provincial human rights legislation.

CAIR-CAN has also undertaken unique and significant research work, including its 2002 survey: "Canadian Muslims One Year After 9-11", which highlighted the challenges and discrimination faced by Canadian Muslims today. To further educate on this topic, CAIR-CAN also presented internationally a research paper,

“Life for Canadian Muslims the Morning After: A 911 Wake-Up Call,” which was commissioned by the Canadian government.

CAIR-CAN offers seminars and workshops to train Canadian Muslim community members and leaders in techniques of effective media relations as well as knowledge of legal rights guaranteed under Canadian law. It also offers a succinct "Know Your Rights" pocket guide.

## **2) Canadian Muslim Civil Liberties Association (CMCLA)**

The CMCLA is a nonprofit organization, founded in 1994. Its mandate is to work to promote the legal rights and freedoms of the Canadian Muslim community, and to seek to empower Canadian Muslims through legal, political and social avenues. The CMCLA is a broad-based organization built from within the Muslim community. It is engaged in public education, activism in the area of legal and political advocacy and anti-discrimination, as well as monitoring and removing barriers to equal participation of Muslims in Canadian society.

Over the last 12 years, CMCLA members, which include scholars, students, community activists and lawyers, have been actively engaged in activism in the area of anti-Muslim discrimination, Islamophobia and arranging pro bono legal counsel to hundreds of Muslim individuals and institutional representatives pursued for questioning by the Canadian Security Intelligence Service (CSIS) and the Royal Canadian Mounted Police (RCMP). On many occasions the basis for the questioning or investigations have been anonymous tips, mere suspicion, profiling and guilt by association.

### 3) Joint Intervention

In recent years, both the CMCLA and CAIR-CAN have worked increasingly closely in public education, advocacy and activism efforts. The collaboration has been most pronounced in their response to the government's counter-terrorism and security measures.<sup>1</sup>

While CAIR-CAN and the CMCLA do not claim to be the only representatives of the Canadian Muslim community, since their inception, these two groups have been at the forefront among Muslim organizations in defending human rights, civil liberties and fighting discrimination. CAIR-CAN and CMCLA have proven itself over the past five years to be a major representative voice of Muslims in the public sphere, and a bridge to the broader Canadian community.<sup>2</sup>

#### B. SCOPE OF SUBMISSIONS

CAIR-CAN and the CMCLA sought standing to make representations to the Commission on the following:

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<sup>1</sup> The two jointly intervened in all three *Immigration and Refugee Protection Act* security certificate cases heard in June 2006 in the Supreme Court of Canada, namely *Hassan Almrei v. Minister of Citizenship & Immigration, et al.*, *Adil Charkaoui v. Minister of Citizenship and Immigration, et al.*, and *Mohamed Harkat v. Minister of Citizenship and Immigration, et al.* The two groups also have intervenor status in the Jacobucci Inquiry.

<sup>2</sup> This is confirmed by the fact that almost all the large national Muslim organizations (including the Islamic Society of North America, the Islamic Circle of North America, the Muslim Association of Canada, etc.) have endorsed or supported representations and submissions made by CAIR-CAN and the CMCLA in various forums. The most recent submission being submissions against the Passenger Protect Program which was endorsed by all three of these national groups, as well as the Canadian Islamic Congress and more than two dozen other umbrella groups across the country.

- (a) the historical and contextual background as well as the practical impact of anti-terrorism legislation and practice on Muslims as well as Muslim non-profit and charitable organizations;
- (b) contextual information about the direct and localized impact of national security and anti-terrorism legislation and practice on Muslims as well as Muslim non-profit and charitable organizations;
- (c) religious equality by highlighting the disparate impact of anti-terrorism legislation on Muslims as well as Muslim non-profit and charitable organizations; and
- (d) recommendations regarding any proposed changes to existing anti-terrorism legislation and practice.

We are grateful and thank Commissioner John C. Major for granting us the opportunity to make our representations on how to balance the need for security with our fundamental core values.

We recognize that we do not possess any special expertise on national security, intelligence-led policing, inter-jurisdictional law enforcement, international tradecraft, the Sikh religion or community or many of the other considerations that necessarily inform the Commissioner's discharge of his mandate. We do however have expertise on the Muslim community and the direct impact anti-terror measures have on the community. We are deeply involved and concerned about the direction and the long-term consequences to our society as a result of the growing divide and the resulting marginalization and alienation of the community. We provide some background and context before we begin to address the issues specifically raised by the Terms of Reference for the Inquiry.

## **C. BACKGROUND AND CONTEXT OF COMMUNITY**

### **1) Muslim Community**

The Muslim community in Canada is almost as old as the nation itself. Four years after Canada's founding in 1867, the 1871 Canadian Census found 13 Muslims among the population.<sup>3</sup> The first Canadian Muslim place of worship (mosque) was constructed in Edmonton in 1938, when there were approximately 700 Muslims in the country.<sup>4</sup> The years after the Second World War saw a small increase in the Muslim population. However Muslims were still a distinct minority. It was only with the removal of European immigration preferences in the late 1960s that Muslims began to arrive in significant numbers.

The 1991 Census recorded 253,265 Muslims.<sup>5</sup> By 2001, the community in Canada had grown to more than 579,000.<sup>6</sup> Current estimates place the Canadian Muslim population at approximately 700,000.

Compared to Muslims in Europe, Canadian Muslims have not faced the same set of problems.<sup>7</sup> The Muslim community in Canada is just one among many ethnic, religious, racial and cultural communities that together make up Canada. The Muslim community in Canada is both young (overwhelmingly comprised of first or second generation Canadians), and diverse (includes Muslims of European,

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<sup>3</sup> 1871 Census of Canada.

<sup>4</sup> Aramco World: Canada's Pioneer Mosque:

<http://www.saudiaramcoworld.com/issue/199804/canada.s.pioneer.mosque.htm> accessed last on February 4, 2008.

<sup>5</sup> 1991 Census of Canada.

<sup>6</sup> 2001 Census of Canada.

<sup>7</sup> Canada's Muslims: An International Comparison:

<http://www.cbc.ca/news/background/islam/muslim-survey.html> accessed last on February 4, 2008.

African, Middle Eastern, South Asian and East Asian extraction, as well as converts of various ethnicities).

Pre-9/11, mainstream Canada did little to understand the concerns or interests of one of its fastest growing minorities. Much of what Canadians knew came from stereotypes. The Hollywood Arab – a bumbling idiot, the lascivious oil sheik, the savage terrorist – very much characterized the average Canadian's perception of an Arabs and Muslims. This perception was reinforced by images of conflict in the Middle East. Even before the tragic events of 9/11, the frame of reference through which Islam and Muslims were seen were viewed through one of suspicion, fear, mistrust and violence.

Out of the horror and tragedy of Sept. 11th, came a rude awakening for many Muslims. In an attempt to come to terms with the proclaimed acts of "jihad" Canadian Muslims were forced to engage in jihads (struggles) of their own in a frenzy to establish their identity and prove their alliances.

The acts of a misguided few became a warrant to target an entire community. Muslims and Arabs, and those perceived to be, were subjected to verbal and physical assaults, arson, death threats, bomb threats, harassment, vandalism and venomous e-mails. In fact, a Hindu temple in Hamilton was burned to the ground within days. Police forces across the country reported significant increases in hate crimes and the Toronto Hate Crimes Unit even noted that despite the serious underreporting, 90% of the increase in hate crimes in 2001 was directly attributable to 9-11.

The perpetuation of stereotypes and the growing perception that Muslims represented the 'other' made it easy to indict the community through guilt by association. The climate of distrust resulted in a number of people being detained without charges, legitimate money transfer businesses shutting down, established mosques and charities losing support and a Muslim landlord even

having his insurance cancelled for his apartments. And none of them had committed a crime.

The stereotypes and racist overtones of some mainstream media gave permission for others to single out Arabs and Muslims for suspicious and discriminatory treatment. Muslims were guilty by association, suspect by nature of their ethnicity and religion and an acceptable target of hate. "[N]ot all the terrorist caves are in Afghanistan...some are in Quebec and Ontario," wrote George Jonas of the *National Post*. Others in the media even belittled the Muslim experience. "It is hard," the *National Post* opined, "to get worked up about the occasional slur directed against North American Muslims." And as if she was disappointed, in her column titled "If I jihad a nickel for each 'victim,'" *National Post* columnist Christie Blatchford concluded that the backlash "failed to materialize in any significant way."

Despite the countless reported press conferences and press releases condemning the terrorist attacks, fundraisers and blood donor clinics for the victims organized in Canadian mosques the efforts did not seem to cut it even for the usually sober *Globe and Mail*. A lofty editorial suggested that Muslims should hold a rally against bin Ladin. Why should Canadian Muslims take ownership over an act they had no part in? Do we really expect the Italian community to rally against the Mafia?

By and large, Canadian Muslims were left standing on their own, having to explain themselves and prove their loyalty; defend their religion and demonstrate its goodness; and too often hide their ethnicity and deny their heritage in a bid to escape state inquiry. Like their Japanese Canadian counterparts during World War II, Arab and Muslim communities bear the brunt of unwarranted government scrutiny merely because of their ethnic origin and religious persuasion.

In a survey conducted by CAIR-CAN regarding the experiences of Canadian Muslims in the year following 9/11, about two-thirds of respondents stated they experienced some form of discrimination. Other notable findings included:

- A large number of respondents (82%) said they knew of a fellow Muslim who experienced discrimination;
- 33% of respondents said that their lives changed for the worse;
- Those who indicated that their lives changed for the worse felt disliked by fellow Canadians, were subjected to rude and hostile behaviour, faced emotional distress, and were concerned for their own and their families' safety;
- The most frequent forms of bias were verbal abuse, religious or ethnic profiling, and workplace discrimination.

Though the backlash was demoralizing, it was anticipated in the wake of such a horrific crime. However, the fear mongering effect of the government initiatives post 9-11 struck the hardest blow. Although politicians at all levels came out strongly against the backlash, the anti-terrorism legislation, amendments to the Immigration Act, the alarmist pronouncements from CSIS and unwritten profiling policies created a sense of insecurity in many. Clearly, the long term impact of systemic discrimination arising from rash and ill-conceived laws and policies, even if unintended, will be far more devastating. As Neil Bissoondath noted: "Public policy, even if based on reasonable fear, must be examined rationally and weighed not just against possible threat but against the ideals we claim to believe in."

There is growing evidence that Muslims are bearing the brunt of the anti-terror legislative initiatives, policies, and practices. These include provisions with respect to secret evidence, charitable status revocation, listing of organizations, greater police powers and profiling.

Many have asked whose side Muslims are on. As if there was a dichotomy in being Canadian and Muslim. Canada's unique multicultural mosaic, always seemed to encourage the "strength in diversity," and so being hyphenated Canadian, was a source of pride. Being Canadian and Muslim was never a contradiction, and in fact many came to this land to be able to practice their religion freely and cherished the many Islamic principles Canada put into practice.

## **2) Islamophobia**

The climate for Muslims and Arabs has changed profoundly post 9/11 in Canada as in many parts of the Western world. Surveys and studies have shown that there is growing distrust of Islam and Muslims. In Canada, this is most pronounced in Quebec where intolerance and hate against Muslims is being advanced under the cover of forging a common identity and safety. There are various reasons for this including ignorance, misinformation, media sensationalism and stereotyping, and more recently the rise in Islamophobia. The first three are well documented and generally accepted while the fourth, Islamophobia, is a more recent phenomenon. Though many challenge and deny the existence of Islamophobia, there is a growing body of work confirming that it is a real and not an imagined problem.

In 1996, an independent anti-racist think tank in the United Kingdom, the Runnymede Trust, established a Commission on British Muslims and Islamophobia. The Commission chaired by the vice-chancellor of the University of Sussex, Professor Gordon Conway released its report in 1997 titled

Islamophobia: A Challenge to Us All.<sup>8</sup> It described Islamophobia as involving eight distinctive features:

1. Islam is seen as a monolithic bloc, static and unresponsive to change.
2. It is seen as separate and "other." It does not have values in common with other cultures, is not affected by them and does not influence them.
3. It is seen as inferior to the West. It is seen as barbaric, irrational, primitive, and sexist.
4. It is seen as violent, aggressive, threatening, supportive of terrorism, and engaged in a clash civilizations.
5. It is seen as a political ideology, used for political or military advantage.
6. Criticisms made of "the West" by Islam are rejected out of hand.
7. Hostility towards Islam is used to justify discriminatory practices towards Muslims and exclusion of Muslims from mainstream society.
8. Anti-Muslim hostility is seen as natural and normal.

It was officially recognized as form of intolerance alongside Xenophobia and Antisemitism in January 2001 at the Stockholm International Forum on Combating Intolerance.<sup>9</sup> According to Anja Rudiger, Executive Coordinator of the European Monitoring Centre on Racism and Xenophobia, since the 9/11 attacks, religion had surpassed race as the primary focus of conflict, and that a person's religion was now regarded as synonymous with their culture.<sup>10</sup> In the case of Muslims, this opened up another dimension of prejudice, Rudiger argued, in that European Muslims were regarded as representing a unified culture quite different from European culture, one that is strongly linked to certain non-European countries. From Rudiger's viewpoint, such perceptions are part of the process of labeling Islam as "other."

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<sup>8</sup> Gordon Conway, *Islamophobia: A Challenge to Us All* (Runnymede Trust, 1994).

<sup>9</sup> *New Muslims in the European Context: The Experience of Scandinavian Converts* - p. 53, Brill 2004

<sup>10</sup> Richard Bartrop, conference report, Muslims in Europe, post 9/11: Understanding and Responding to the Islamic World, (St. Antony's College, 25-26 April 2003).

A similar trend is increasingly becoming evident in Canada. In fact, the Ontario Human Rights Commission has now accepted the term Islamophobia as an emerging form of racism which it defines as follows:

“A contemporary and emerging form of racism in Canada has been termed “Islamophobia”. Islamophobia can be described as stereotypes, bias or acts of hostility towards individual Muslims or followers of Islam in general. In addition to individual acts of intolerance and racial profiling, Islamophobia leads to viewing Muslims as a greater security threat on an institutional, systemic and societal level.”<sup>11</sup>

### **3) Post 9/11 Shift in Paradigm from Liberty to Security**

Since the terrorist attacks in New York City and Washington DC on 11 September, 2001, counterterrorism initiatives and security concerns have come to the forefront around the world.

Canada is no exception. In fact, Canada found itself in a unenviable position of being an easy scapegoat. Ottawa came under intense political pressure to tighten its own legislation in order to protect its economic interests by demonstrating continental solidarity with its largest trading partner. This became increasingly urgent as a number of Americans -- including legislators -- began to portray the Canadian border as the weak link and penetration point for 9/11 terrorists even though there was no evidentiary basis to this allegation.<sup>12</sup> Indeed, as Michael Kergin, the former Canadian ambassador to the U.S., noted:

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<sup>11</sup> [http://ohrc.on.ca/english/publications/racism-and-racial-discrimination-policy\\_1.shtml](http://ohrc.on.ca/english/publications/racism-and-racial-discrimination-policy_1.shtml) accessed most recently on February 4, 2008.

<sup>12</sup> Both Canadian and American investigators concluded there was no evidence to this claim. See for instance Daniel Leblanc et al., “No Evidence of a Canadian Link,” *The Globe and Mail*, September 14, 2001, A7.

“We now know that all of the terrorists [responsible for 9/11] entered the United States Directly from overseas with U.S.-issued documents. None of the terrorists came from Canada.”<sup>13</sup>

Despite the lack of evidence, Canada is still seen by many south of the border as an “unreliable security partner” and as a “haven for terrorists.”<sup>14</sup> The arrest of Ahmed Ressam in 1999 attempting to cross into the U.S. with explosives, the case of the two Jabarah brothers (Mohammed Mansour Jabarah and Abdul Rahman Jabarah), as well as the continuing saga of the Ahmad Khadr clan and other alleged terrorist connections to Canada do not help the situation.<sup>15</sup> The Canadian government found itself in the unenviable predicament of trying to comply with international human rights norms, its own liberal democratic ideals and at the same time show the Americans that it was committed to deal with terrorists and those who exploit our immigration welcome mat. Within months of the tragic events, the government enacted the *Anti-Terrorism Act*, and moved quickly to adopt its first ever National Security Policy<sup>16</sup>, agreed to start working on and implementing the Smart Border Declaration, signed the Security and Prosperity Partnership with the U.S. and more recently subverted Parliament and launched Canada’s own “no-fly” list.

Arguably, times have changed. One of the most pressing contemporary debates in liberal democracies today is whether to trade off rights for greater security. This seems neutral in theory, but all members of society do not equally bear this burden. Canadian Muslims/Arabs are increasingly realizing that trading off rights

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<sup>13</sup> Ambassador Michael Kergin, “Stop Blaming Canada,” *The Washington Time*, January 16, 2003 [accessed on-line].

<sup>14</sup> Critics including Democratic Senator Hillary Clinton continue to cite the Canada-U.S. border as a national security risk.

<sup>15</sup> See for example Stewart Bell, “Cold Terror: How Canada Nurtures and Exports Terrorism Around the World,” (Toronto: Wiley, 2004) pp. 288; Stewart Bell, “The Martyr’s Oath: The Apprenticeship of a Homegrown Terrorist,” (Toronto: Wiley, 2005), pp. 288.

<sup>16</sup> The policy outlined three core national security interests of Canada, namely: 1) Protecting Canada and Canadians at home and abroad; 2) Ensuring Canada is not a base for threats to our allies; and 3) Contributing to international security. Accessed online at [http://canada.justice.gc.ca/en/news/sp/2005/doc\\_31726.html](http://canada.justice.gc.ca/en/news/sp/2005/doc_31726.html).

mean, more specifically, forfeiting their rights. The disproportionate impact of such measures on innocent Muslims and Arabs is well documented.<sup>17</sup>

It is our submission that many of these initiatives have a disproportionate and discriminatory impact on Canadian Muslims and their institution. It is our submission that there are four reasons beyond the legitimate security concerns that contribute to the targeting of Muslims and their institutions: Islamophobia; ignorance about Islam and Muslims; the influence of special interest groups; and pressures coming from south of the border.

We highlight each of these in this submission so that the Commission can take these factors into consideration in coming up with recommendations that are truly in the best interest of Canada and will provide real long term human security while preserving human rights and our cherished values.

#### **D. RECOMMENDATIONS**

The Commissioner was appointed to conduct the Inquiry specifically for the purpose of making findings and recommendations with respect to seven questions or issues. We have set out and addressed each the issues below:

**i) Were there deficiencies in the assessment by Canadian government officials of the potential threat posed by Sikh terrorism before or after 1985, or in their response to that threat, whether any changes in practice or**

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<sup>17</sup> Faisal Bhaba, “The Chill Sets in: National Security and the Decline of Equality in Canada” (2005), 54 U.N.B.L.J. 191.

**legislation are required to prevent the recurrence of similar deficiencies in the assessment of terrorist threats in the future.**

It is not within our expertise or mandate to respond specifically on the threat if any posed by “Sikh terrorism”. We wish to submit though that this terminology poses significant issues in terms of demonizing and tarnishing the image and reputation of an entire religion and community. This is a problem that the Muslim community itself has raised with respect to “Muslim terrorism” and or “Islamic terrorism.” The use of such terminology does not contribute to solve the problem of terrorism and in fact facilitates the targeting of and discriminatory treatment of Muslims and other ethnic groups. The effect has been to restrict Muslims from legitimately voicing their opinions on religious and political issues for the fear of being labeled as a terrorist. Islamic institutions have also encountered significant difficulties in carrying out their work. Moreover, this association of “terrorism” with a religion or a group as a whole simply contributes to the creation of the “other” which only fuels the alienation and marginalization which can only confirm that the “West” or the State is out to get Muslims or Sikhs, in the present context.

The acts of a misguided few or politically motivated groups who have hijacked a religion should not taint the religion of more than 1.2 billion around the world. Any religion or worldview is best understood as the living reality of its individual follows, the vast majority of who in every community are moderates and strive for peace and co-existence.

**1) We recommend that government agencies exercise greater care in using terminology that identifies any religion with terrorism. These are criminal acts and acts of violence for political purposes not religiously mandated or sanctioned actions.**

The second aspect of this issue, which we would like to address, revolves around the question of threat assessment. We submit that based on our extensive involvement and interaction with CSIS, RCMP and other government agencies there is a profound lack of expertise and knowledge about Islam and Muslims from objective sources or experts. We no way mean to imply that objective sources have to come from the Muslim community. The sources or experts should be scrutinized for biases, political leanings and support for foreign regimes and causes.

We submit that better analysis of raw intelligence data is necessary to ensure that errors or judgment are not made when it comes to risk assessment.

The fact that interest groups and agenda-driven lobbyists and “think-tanks” have influenced and shaped the way in which Islam and Muslims are perceived is of deep concern to us. Right-wing neo-conservative groups and pro-Israeli groups have a vested interest in generating fear about Islam and Muslims and they have been in the forefront in pushing for the demonization of Islam and Muslims. They are careful to use the caveat “that not all Muslims are terrorists” but they leave out the belief that they think most are or most cannot be trusted. Moreover, many of them view Islam as inherently incompatible with Western values and ideals and they cling on to the “Clash of Civilizations” theory. They advocate that Muslims hate the West for our values and that the only reason for opposing Israel is because of its Western pedigree. This simplistic view seems to have strong support among some in government circles and negates and undermines the legitimate political objections and the state of occupation that many, not only Muslims, oppose.

We submit that we need to move toward a “Dialogue of Civilizations” and appreciate a more nuanced approach divorced from the interests of foreign powers and causes.

**2) Better and properly structured training on Islam and Muslims delivered to the RCMP and CSIS, particularly on the religious, cultural and political contexts.**

**3) Re-assessment of the qualifications of the government's cultural and religious experts and advisors, and broadening the base of expertise on Islam and Muslims.**

**4) Independent academic body needed to study and report on how the threat of terror has been used and abused to create fear and advance certain political goals, including the interests of our allies to the potential detriment of our own.**

**ii) If there were problems in the effective cooperation between government departments and agencies, including the Canadian Security Intelligence Service and the Royal Canadian Mounted Police, in the investigation of the bombing of Air India Flight 182, either before or after June 23, 1985, whether any changes in practice or legislation are required to prevent the recurrence of similar problems of cooperation in the investigation of terrorism offences in the future.**

The Commission heard extensive evidence from witnesses as to the lack of cooperation between CSIS and RCMP. In fact, some even testified that there was intense competition and turf wars being waged. We submit that these same concerns continued even after the Air India tragedy and will continue unless proactive steps are initiated immediately.

We are confident that some of the other intervenors will address this issue more substantively and we only provide our recommendation to reiterate or support

any calls for greater cooperation, coordination and integration between CSIS, RCMP and various other agencies concerned with national security.

Based on the evidence heard at the Commission, we respectfully submit that the existing legislation and capacity within our agencies was adequate, but failed due to poor coordination, cooperation and integration and failure to follow existing protocols.

**5) We recommend that this Commission adopt the finding and recommendations of the Arar Commission relevant to this issue.**

**6) There is an urgent need to improve the coordination, cooperation and integration between the Canadian Security Intelligence Service, the Royal Canadian Mounted Police and other national security agencies.**

**7) A super agency or body reporting to a special parliamentary committee must be established to monitor and audit the level of coordination, cooperation and integration between these agencies. This agency should be empowered to remedy any problems and deficiencies in this regard.**

**8) Monitoring and documentation of law enforcement and intelligence use and possible abuse of anti-terror laws and policies.**

**9) A more accessible reporting and appeal mechanism must be established to facilitate and channel complaints and report abuses by law enforcement and intelligence agents.**

**iii) the manner in which the Canadian government should address the challenge, as revealed by the investigation and prosecutions in the Air India matter, of establishing a reliable and workable relationship between security intelligence and evidence that can be used in a criminal trial.**

A number of witnesses and some of the intervenors have argued for tougher measures to prosecute terrorism cases. By tougher measures they mean moving away from normal criminal proceedings. We submit that the laws and practices enacted post-9/11 are already excessive, particularly when it comes to impacting the Muslim community. We submit that terrorism cases should not import a different standard. As a number of legal scholars, including Professor Kent Roach, have argued we had sufficient laws in place to prosecute these cases as criminal acts.

Those advocating for drastic new laws, international agreements and a new way of dealing with the problem typically point to the uniqueness of the threat from terrorism.

The onus should be placed on these critics to prove the following: that the threat posed by terrorism is unlike anything that liberal democracies have ever faced and that the measures which go against the rule of law do in fact provide protection. As Professor David Cole points out, those commentators who call for harsher measures to deal with terrorism have failed to offer any reason or proof as to why we should accept their argument that these measures will make us more secure.<sup>18</sup> Moreover, they also fail to explain the historical record of abuse without any provable benefit. Indeed, as Professor David Dyzenhaus argues in

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<sup>18</sup> David Cole, “The Priority of Morality: The Emergency Constitution’s Blind Spot,” 113 *Yale L. J.* 1753 at 1757.

his new book those who advocate for exceptions from the norm in dealing with perceived crises must be put to the task of proving how and why their prescriptions are even necessary given the historical record of over-reacting and giving in to excess.<sup>19</sup>

National security investigations are unlike traditional criminal investigations. Such investigations pose a greater potential risk to rights and freedoms. Post-9/11 laws and policies have given law enforcement and intelligence officers extraordinary powers. These extraordinary powers, through their direct use, discretionary action or the implied “spirit of enhanced jurisdiction”, have led to the abuse of rights and freedoms in ways that traditional policing could not have. The experience of the Muslim community confirms that where there are discretionary investigative powers beyond, for all intents and purposes, reach of judicial scrutiny, media coverage or public debate, and especially in the absence of specifically legislated measures to regulate and review respect for civil liberties during national security investigations, rights and freedoms can and have been abused.

We submit that terrorism cases are by definition politically charged and given the current climate; the mere allegation of terrorism itself destroys the lives of these individuals and their families.<sup>20</sup> The new laws and initiatives post-9/11 have

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<sup>19</sup> David Dyzenhaus, *The Constitution of Law: Legality in a Time of Emergency*, Cambridge University Press, Cambridge, 2006.

<sup>20</sup> Project Thread Case in Toronto when the lives of almost two dozen South Asian men were destroyed after being falsely labelled terrorists. Not a single one was convicted of any terrorism offences, yet their lives and the lives of their loved ones are and continue to be significantly impacted even though no terrorism charges were ever pursued.

seriously undermined our commitment to procedural fairness and the rule of law. We submit that procedures used must be even more strictly followed in alleged terrorism cases given the above-noted considerations as well as the following (not an exhaustive list):

- a) consequences are far more severe than regular criminal charges;
- b) the climate of fear which exist surrounding this issue raise serious concerns about fairness;
- c) courts have a greater tendency to defer to the government in times such as these and in cases where national security concerns are raised;
- d) the evidence relied upon may come from sources who may be kept secret, thereby not allowing the accused to challenge the evidence;
- e) the evidence relied upon may come from foreign sources who may not respect some of our democratic norms;
- f) the evidence may have been obtained using sources that violate human decency, the Charter and our international obligations;
- g) evidence gathered by intelligence agents (not law enforcement officers) is not subject to the same level of scrutiny as evidence gathered by police officers.

There are ways to prosecute terrorism cases by complying with the rule of law and our fundamental values. Our existing laws before the enactment of new laws and policies post-9/11 provided sufficient means to effectively prosecute terrorist acts and conspiracies. In fact, Canada has had a great track record in prosecuting organized crime, which raised some of the same concerns and logistical issues. We respectfully submit that the exaggerated fear generated by the terrorism label has made us lose perspective on this issue: the chance of dying as a result of a terrorist attack is miniscule compared to other risks we face on a daily basis; and a terrorist act is a crime.

To understand the level of misinformation and lack of perspective brought to this issue, we can look at the track record and claims of Attorney General John Ashcroft in the United States. Upon his resignation in November of 2004, he pointed to 211 criminal prosecutions, 478 deportations, and \$124 million in frozen assets as evidence of his success in the “war on terror.”<sup>21</sup> What is left out of most media coverage and analysis of this issue of terrorism is the fact that almost none of these cases involved any actual terrorism convictions.<sup>22</sup> Indeed, at the time of Ashcroft’s resignation there had been only one *bona fide* terrorism conviction, that of the British shoe-bomber, Richard Reid.<sup>23</sup>

There is no doubt that nations do face genuine threats to their security, and in fact, modern constitutions and international human rights instruments recognize governmental restrictions on personal freedoms as a necessary response to a genuine threat to national security. The concern is that national security concerns may sometimes be invoked to legitimize excessive restrictions and to deviate from the norm. U.S. Supreme Court Justice William J. Brennan, pointed to a number of factors that explain how a cycle of infringement of civil rights takes shape during times of crisis.<sup>24</sup>

As Giorgio Agamben argues deviating from our normal laws during times of real or perceived crisis can become a prolonged state of being.<sup>25</sup> We respectfully submit that this Commission must not provide the justification to deviate from procedural and substantive fairness in the name of fighting terrorism.

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<sup>21</sup> Thomas Naylor, *Satanic Purses: Money, Myth and Misinformation in the War on Terror* (McGill-Queens University Press, 2006), p. 332.

<sup>22</sup> The Center on Law and Security at the NYU School of Law “Terrorist Edition,” September 11, 2001 to September 11, 2006:

[http://www.lawandsecurity.org/publications/TTRC\\_US\\_2006\\_Appendix\\_B.pdf](http://www.lawandsecurity.org/publications/TTRC_US_2006_Appendix_B.pdf)

accessed most recently on February 4, 2008.

<sup>23</sup> Thomas Naylor, *Satanic Purses: Money, Myth and Misinformation in the War on Terror* (McGill-Queens University Press, 2006), p. 332.

<sup>24</sup> Brennan, William J., Justice, “The Quest to Develop a Jurisprudence of Civil Liberties in Times of Security Crisis,” Speech at the Law School of Hebrew University, Jerusalem, Israel at 1 (Dec. 22, 1987), cited in Hannigan, Jennifer M., “Playing Patriot Games: National Security Challenges Civil Liberties,” 41 *Hous. L. Rev.* 1371.

<sup>25</sup> Giorgio Agamben, *State of Exception* (University of Chicago Press, 2005).

We submit that prosecuting alleged terrorists in a way that undermines our commitment to due process and procedural fairness only guarantees that some innocent individuals may be caught up in a miscarriage of justice and in us losing the moral high ground.

**10) Terrorism cases be tried as criminal cases with all the appropriate procedural safeguards, including the normal rules of evidence.**

**iv) Whether Canada's existing legal framework provides adequate constraints on terrorist financing in, from or through Canada, including constraints on the use or misuse of funds from charitable organizations.**

Over the last few years (even before 9/11) we have heard claims that terrorists are using Canadian charities and religious organizations to raise funds for their activities. The push is coming from various quarters including pro-Israeli groups who have made it their mission to stem the flow of the “terror-dollar” which it sees as the “lifeblood” of terrorist operations.<sup>26</sup> They have been more successful in the United States where since September 11, 2001, six major U.S. Muslim charities and several smaller Muslim charities have been shut down.<sup>27</sup> Numerous others have been harassed and targeted. Though many have shut

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<sup>26</sup> In Canada, one of the largest Muslim charities is now suing the Canadian Coalition for Democracy and Minister Stockwell Day for making such allegations against it. Another Muslim charity had to go to the Canadian Security Intelligence Review Committee to avert suspicion and innuendo. Numerous charities are under investigation and many applications are rejected based on excessive suspicion and concern about the kind of Islam it hopes to propagate.

<sup>27</sup> L. Al-Marayati, “American Muslim Charities: Easy Targets in the War on Terror,” presented on December 3, 2004 at Pace University Law Symposium, *Anti-Terrorist Financing Guidelines: The Impact on International Philanthropy* (hereafter Al-Marayati, Easy Targets): <http://www.library.law.pace.edu/PLR/25-2/Al-Maryati.pdf>.

down operations or been effectively bankrupted, none of them were ever convicted of actually funding terrorism.

Thomas Naylor, a McGill University professor and expert on money laundering challenges this claim.<sup>28</sup> He accuses the U.S. government of “fueling the myth.”

In its report “Muslim Charities and the War on Terror,” OMB Watch, a non-profit government watchdog, voices its concerns about the treatment of Muslim charities and the people involved with them.<sup>29</sup> The group also raised concerns about the questionable evidence used to shut them down. It noted that the closures have resulted in blocking humanitarian assistance to people who desperately need it, denying these charities the right to due process, and holding the individuals associated with their humanitarian work “guilty until proven innocent.” The report concludes that, despite their expanded investigative powers, the authorities have failed to produce evidence of terror financing by U.S.-based charities.

In Canada, despite claims by special interest groups and even CSIS, not a single Muslim charity has been prosecuted or shut down for financing terrorism. These groups have attempted to defame and target a number of Muslim charities and institutions through misinformation, innuendo and guilt by association. In one case, one of the largest Muslim charities is now suing the Canadian Coalition for Democracy and Minister Stockwell Day for making such allegations. In 2001, Benevolence International Fund a Canadian Muslim charity was effectively shut down through media smear campaigns without any evidence. In fact, the charity had not even gotten off the ground after being established and registered by our own law office. Innuendo and suspicion was lobbed at another large Muslim charity by CSIS. The charity filed a complaint with the Canadian Security Intelligence Review Committee and continues to operate.

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<sup>28</sup> Thomas Naylor, *Satanic Purses: Money, Myth and Misinformation in the War on Terror* (McGill-Queens University Press, 2006), p. 332.

<sup>29</sup> OMB Watch, “Muslim Charities and the War on Terror” (hereafter OMB Watch Report), revised March 2006: <http://www.ombwatch.org//npadv/PDF/MuslimCharitiesTopTenUpdated.pdf>

Almost all of the national mainstream Muslim organizations, including CAIR-CAN have been labelled and targeted as terrorist sympathizers and supporters by right wing or pro-Israeli groups. We respectfully submit that the aims of the smear campaign are fourfold:

- 1) to cut off any humanitarian aid to occupied and oppressed people around the world;
- 2) to bankrupt and distract these organizations from bringing attention to unpopular causes;
- 3) to derail and undermine any advocacy work that may conflict with the agenda of these interest groups;
- 4) to undermine the legitimacy of mainstream Muslim groups which are calling for integration and participation with the broader community. The goal being to continue to paint Muslims as irrational and not of “us”.

To date there has also not been a single case of any Muslim institution inciting terror or facilitating any recruitment. In fact, on the contrary Muslim organizations have gone above and beyond their civic duty in reaching out to government agencies, including CSIS and RCMP. CAIR-CAN and the CMCLA both understand that security is vital for our nation and have participated in encouraging cooperation between the community and the intelligence and law enforcement community. To this end both organizations participated in meetings with officials from the Ministry of National Security and Emergency Preparedness as well as senior officials from CSIS and the RCMP to explore how we can strike the proper balance between security and liberty and equality rights. The CMCLA has also helped organize and participated in a number of Town Hall Meetings with CSIS and RCMP to try and improve the relationship and understanding between intelligence/law enforcement and the Muslim community.

Unfortunately, in some cases the government agencies have not extended the same level of respect. This is more so the case given the present government

which has kept aloof from the community and has in fact worked with fringe groups within the community to undermine and defame mainstream community efforts.

We submit that what is needed is mutual respect and trust. Government agencies cannot expect the community to trust them when they do not trust community institutions and continue to target them.

We also submit that the listing process is highly political and subject to influence by interest groups. These interest groups do not necessarily have the best interest of Canada in mind and in fact may have conflicting agendas. Some of these groups are now calling for more even stricter legislation and policies than those that already exist. These include expanding avenues to target and litigate against institutions in Canada based on guilt by association and suspicion. We submit that this is not necessary and will in fact only drive Muslim institutions underground and ghettoize the community.

We further submit that the political and discretionary nature of listing and targeting as well as the power of anti-Muslim special interest lobby groups to shape policy and legislation in this area is not in the long-term interest of Canada's security. We believe that the suspicion and distrust of Muslim institutions will backfire as follows:

- 1) distrust of government agencies by Muslims;
- 2) confirmation that this is a war against Islam and Muslims not simply criminals who hide under the guise of Islam;
- 3) the fear of donating traceable funds to Muslim institutions and charities will force people to resort to cash transactions and money flowing through unscrupulous individuals and unregistered groups which increases the chance of these funds ending up in unsavoury hands.

With respect to the last point, many in the community are already afraid to donate to Muslim institutions and charities even though they are convinced that they are clean and would in no way support terror. A Muslim is religiously mandated to give 2.5% of his wealth annually to charity. If he or she cannot fulfill this

obligation by giving to registered charities that are being unfairly labeled then he or she will find alternative routes. In fact, many are now sending money overseas through non-institutional channels and even transacting in cash to avoid being targeted through guilt by association. This will clearly make it much harder to trace and track funds.

It is also increasingly becoming apparent that government agencies are relying on media reports and information provided by anti-Muslim advocacy groups to base their decisions and actions. There have been charitable registrations denied or delayed and charities investigated or targeted by government agencies based on baseless media smear campaigns and even “tips” from anti-Muslim groups.

**11) An independent body be set up to review any decision to list entities as a terrorist entity and that this body carefully evaluate any such decisions to ensure that humanitarian work is not affected or disrupted.**

**12) Independent academic body needed to monitor, study and report on impact of special interest groups (including those advocating for other nations) and U.S. pressure in directing Canadian response to terrorism.**

**13) Devise a strategy to coordinate with the large mainstream Muslim organizations to work toward the goal of ensuring real security without trampling on the legitimate religious, legal, social and political rights of Muslims to minimize alienation, marginalization and potential radicalization.**

**v) Whether existing practices or legislation provide adequate protection for witnesses against intimidation in the course of the investigation or prosecution of terrorism cases.**

It is not within our expertise or mandate to comment on this specific question. Though we would like to raise the related issue of informants and spying on the community. There is a growing chill in the community with respect to the use of informants and spies. The intelligence practice of recruiting people from the community to spy and report on members of the community and its institutions will undermine any trust between the community and government agencies. These informants are offered financial compensation and/or security clearances for jobs or immigration status in exchange for information. Our offices have received numerous complaints from the community.

There is also some concern that rather than being passive actors, these informants or agents are actually instigating and encouraging youth to push the envelope.

**14) Protocols be put in place to monitor the use of informants and spies to ensure that this legitimate law enforcement tool is not abused or undermined.**

**vi) Whether the unique challenges presented by the prosecution of terrorism cases, as revealed by the prosecutions in the Air India matter, are adequately addressed by existing practices or legislation and, if not, the changes in practice or legislation that are required to address these challenges, including whether there is merit in having terrorism cases heard by a panel of three judges.**

As noted under issue 3 above, we submit that existing legislation was more than adequate to address the threats posed by terrorism. In fact, again as noted above, we are of the view the new legislative and policy initiatives post-9/11 have in fact been unnecessary and excessive. We further argue that these were based on an exaggerated assessment of the threat posed by terrorism in Canada.<sup>30</sup> In fact, given the emotive and politically charged nature of national security, governments and agenda-driven political elites can easily manipulate public opinion by selectively releasing information and creating mass hysteria.

Adding to these worries is the fact that the usual check on unrestrained executive and legislative action, the judiciary also appears to show greater deference to the executive in times of crisis. As Professor David Dyzenhaus points out with respect to oversight by Federal Court judges, some of them “have a reputation for being more executive minded than the executive.”<sup>31</sup> Moreover, it may not only be Federal Court judges we may have to worry about, given the warnings issued by cabinet ministers, including the Minister of Justice, that judges may have to rethink their approaches in deciding national security cases. “This is so especially when the warning to judges can only be interpreted as a governmental signal that judges should change their understanding of the *Charter*...”<sup>32</sup>

We submit that procedures should not be changed when trying terrorism cases, as this would undermine the fairness of such proceedings. As we noted above, due process and procedural fairness are even more important in the context of terrorism cases given the extreme consequences for the accused and the other factors set out under issue 3. We would support a recommendation whereby the accused would have the choice of being tried by a single judge or a panel of three judges, provided that the accused’s right to trial by jury was preserved if he or she wished.

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<sup>30</sup> We do believe that this threat will increase as Canada participates more aggressively in American led interventions around the world.

<sup>31</sup> Ronald Joel Daniels, Patrick Macklem and Kent Roach, *The Security of Freedom: Essays on Canada’s Anti-Terrorism Bill* (University of Toronto, 2001) p. 33.

<sup>32</sup> *Ibid.* at 25.

**15) Those accused of terrorism be given the option of electing to be tried by a panel of three judges if they so wish, provided that their right to trial by jury is preserved.**

**16) Greater emphasis on due process and resort to criminal law and procedure to prosecute terrorist offences and conspiracies rather than relying on secret proceedings and exceptions from the norm, as much as possible.**

**vii) Whether further changes in practice or legislation are required to address the specific aviation security breaches associated with the Air India Flight 182 bombing, particularly those relating to the screening of passengers and their baggage.**

Based on the testimony from witnesses at the inquiry that the tragedy was preventable if existing mechanisms had been properly followed and complied with. We respectfully submit that no additional changes are required, particularly given that security has been tightened and improved above and beyond what was in place at the time of the tragedy.

In an attempt to deal with the perceived airline security deficiencies and to comply with Canada's commitment to the United States, Canada enacted the Passenger Protect Program in the summer of 2007. The cleverly named initiative is nothing less than Canada's "no-fly" list. We have extensively critiqued this initiative in a submission titled "Too Guilty to Fly, Too Innocent to Charge" we filed with the Minister of Transport and endorsed by more than two-dozen organizations.

We will not repeat the full critique but simply quote the executive summary and offer our recommendations.<sup>33</sup>

### **EXECUTIVE SUMMARY OF SUBMISSION ON PASSENGER PROTECT PROGRAM:**

At the outset we wish to reiterate our position that a program with such profound impacts on fundamental liberties, human rights, privacy rights and which poses serious threats of racial/religious profiling as Passenger Protect must be debated and thoroughly investigated by Parliament. We fundamentally oppose the fig leaf process of canvassing regulatory comment, *ex post facto*, instituted to attempt to give this initiative legitimacy. We believe there is no authority for the program and there will be no credibility and legitimacy without the following: a) an open and full debate by our elected representatives; b) thorough independent review of the concerns and issues raised; c) full public hearings where all stakeholders can express their positions as well as adduce evidence and challenge the government position; and d) adequate response to each of the concerns raised in this submission. Despite our objection to the lack of process, we hereby submit our comments in the interest of setting out our position for the public record and for the consideration of authorities.

We are fundamentally opposed to the cleverly named, Passenger Protect Program, which is nothing less than a “No-Fly” List, for the following reasons (which are addressed in more detail in the body of this submission):

- 1) **Lack of Authority:** The government does not have the authority to create a list of people prevented from flying (and thereby limiting their liberty, mobility and equality rights) without properly airing the matter through our elected representatives. The provisions of the *Aeronautics Act* relied on by the government do not give the power to violate the *Charter* rights of Canadians without giving them the benefit of due process and the principles of fundamental justice, particularly given that inclusion on this list is not a single event emergency decision but rather a long term deprivation of rights without the opportunity of being heard in an impartial hearing.
- 2) **Need/Effectiveness of List Not Established:** We submit that the need and effectiveness of this no-fly list has not been established to any reasonable degree. Why do we need such a list? We believe that this is a simple question, but one that Canadians deserve an answer to. This question should have been debated in Parliament. We submit that the only reasons the government may be able to advance to push forward this list is our

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<sup>33</sup> The full submission titled “**Too Guilty to Fly, Too Innocent to Charge**” can be downloaded from [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=962797](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=962797).

trilateral commitments and intelligence agreements, which also do not have Parliamentary sanction. What independent studies have proven the effectiveness of such a program in improving security? Again, we believe it is our right as Canadians to be convinced of the need for such an intrusive initiative.

- 3) **Violation of Liberty Rights and Lack of Due Process and Fundamental Justice:** Inclusion on the list created pursuant to this program imposes serious restrictions on the individuals and violates their *Charter* rights without due process. We believe the process of listing violates the fundamental rights of a person not be deprived of their liberty rights without being given the opportunity to respond and challenge the evidence against them. We believe that when the serious consequences of being placed on such a list are considered (liberty rights and privacy rights being violated, stigmatization and potential for racial/religious profiling) then there is a duty on the government to ensure that it meets the minimum requirements of due process and the principles of fundamental justice before adding individuals to this list.
- 4) **Violation of Privacy Rights:** The collection of information, its maintenance and management, as well as its sharing with airlines and foreign entities will lead to serious breaches of Privacy rights of Canadians. The track record in handling of such confidential information by private companies, the United States as well as other countries and their agencies do not engender confidence or trust in the process. We also reiterate all of the concerns raised by the Privacy Commissioner, Jennifer Stoddart.
- 5) **Lack of Independent Members on Passenger Protect Advisory Group:** The composition of the Passenger Protect Advisory Group (PPAG), which is charged with adding and removing names from the list, being only representatives of agencies with a vested interest in the national security agenda and other government agencies, leave it rife for unaccountable operation and abuse.
- 6) **Lack of Independent Oversight and Meaningful Appeal Channels:** There is no independent and comprehensive oversight of the entire process; adding names (including assessing and challenging criteria); deleting names; and dealing with errors and mistakes.
- 7) **Difficulty in Getting Off the List:** Despite assurances to the contrary, we believe the American experience and the bureaucratic nightmare it has created confirms that it will be very difficult to remove a name from the list once it has been added to it. The Office of Reconsideration (OOR) process and the thirty-day review promises are not very reassuring given *inter alia* the following: potential use of secret evidence (which cannot be

seen or challenged by the individual or lawyer); inherent difficulty in proving a negative due to the shift in presumption of innocence, particularly when one does not know the case against them; and the eventual integration and cross-fertilization with other nations' lists, which also renders the decisions potentially unchallengeable in Canada. There is also no incentive to ensure that the Program works and there is no penalty when it is proven that the system did indeed get it wrong.

- 8) **Violations of Other Charter Rights:** In addition to liberty rights as set out above, we believe that the no-fly list violates the mobility and equality rights provisions of the *Charter*.
- 9) **Potential for Racial/Religious Profiling:** Without proper due process, oversight, accountability, transparency and checks and balances, we believe that the no-fly list will be open to racial and religious profiling. Without publicly ascertainable and more objective criteria, the list will quickly fill up with the names of individuals we don't trust (for subjective reasons), dissidents and people who our neighbours and their agencies find threatening for their own subjective political and religious reasons.

**17) We recommend that the Passenger Protect Program be reconsidered and debated through Parliament.**

**18) In the alternative, if the Passenger Protect Program will not be reconsidered then we believe that some of the concerns raised in submissions filed by various parties including CAIR-CAN and the CMCLA be satisfactorily addressed.**

## **E. CONCLUSIONS AND GENERAL RECOMMENDATIONS**

Both CAIR-CAN and the CMCLA can confidently state that the number of Muslims who believe their rights have been trampled on or have been discriminated against -- including by official organs of the state -- has grown significantly since 9/11. The trickle has become a steady stream, which ebbs and flows depending on the alert levels and mood south of the border. At first it

seemed that it was the *zeitgeist* of the day that simply reflected the prejudices arising from the association of Islam with terrorism. Now it seems that the impact on Canadian Muslims and Arabs -- both intended and unintended -- arising from Canadian response as well as the extra-territorial impact of American initiatives is deeply profound. The responses and impact are eating away at some of our core values enshrined in the *Charter of Rights and Freedoms* and is even infringing on our sovereignty.

CAIR-CAN and the CMCLA have long supported the government's right and indeed responsibility to protect Canadians from threats of terrorism or other dangers, both external and internal. It also believes that, as members of Canadian society, we all have a duty to cooperate in keeping Canada safe. To this end, on July 21, 2005, CAIR-CAN organized an unprecedented statement by 120 Canadian imams (religious leaders) to denounce terrorism and to discourage extremism in the Canadian Muslim community. On June 8, 2005, CAIR-CAN released a report entitled: "Presumption of Guilt: A National Survey on Security Visitations of Canadian Muslims", which documents some of the unacceptable and alarming tactics being employed by RCMP and CSIS agents during interviews of Canadian Muslims.

While we obviously support efforts to keep Canada safe, we do not believe the war against terrorism justifies trampling on human rights and disregarding the rule of law. As Canadians we are not opposed to stronger security measures to ensure the safety of our nation, provided that they are necessary, effective, balanced and apply equally to all citizens in a manner that respects our cherished privacy as well as human and civil rights. We firmly believe that we can achieve security without sacrificing our rights through well-designed laws, prudent policies, effective checks and balances and community involvement.

Toward this end we would like to conclude by making some additional general recommendations.

## **GENERAL RECOMMENDATIONS**

**19) Any form of racial, cultural or religious profiling must not be employed at any level as it will target specific groups.**

**20) Any form of behavioural profiling used must not single out any specific racial, cultural or religious groups and must be focused on conduct or behaviour that can reasonably be deemed to pose a security threat.**

**21) Establishment of an oversight and auditing body to prevent use of racial and religious profiling.**

**22) We recommend that the government must fund a community-based initiative aimed at compiling, documenting and analyzing racial and religious profiling rather than simply denying it.**

**23) We recommend that community advocacy groups be funded to educate and provide legal advice to those targeted and affected by national security practices and policies.**

**24) We recommend that the government establish a commission to study and document the rise in Islamophobia and how it is shaping some of the legislative and policy decisions, both intentionally and unintentionally, and how this is marginalizing and alienating some**

**Muslims, especially the youth, with potential long-term negative consequences for Canada.**

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at Toronto, this 11<sup>th</sup> day of February, 2008.

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## **APPENDIX**

### **Recommendation 1:**

**We recommend that government agencies exercise greater care in using terminology that identifies any religion with terrorism. These are criminal acts and acts of violence for political purposes not religiously mandated or sanctioned actions.**

### **Recommendation 2:**

**Better and properly structured training on Islam and Muslims delivered to the RCMP and CSIS, particularly on the religious, cultural and political contexts.**

### **Recommendation 3:**

**Re-assessment of the qualifications of the government's cultural and religious experts and advisors, and broadening the base of expertise on Islam and Muslims.**

### **Recommendation 4:**

**Independent academic body needed to study and report on how the threat of terror has been used and abused to create fear and advance certain political goals, including the interests of our allies to the potential detriment of our own.**

### **Recommendation 5:**

**We recommend that the finding and recommendations of the Arar Commission relevant to this issue be adopted by this Commission.**

**Recommendation 6:**

**There is an urgent need to improve the coordination, cooperation and integration between the Canadian Security Intelligence Service, the Royal Canadian Mounted Police and other national security agencies.**

**Recommendation 7:**

**A super agency or body reporting to a special parliamentary committee must be established to monitor and audit the level of coordination, cooperation and integration between these agencies. This agency should be empowered to remedy any problems and deficiencies in this regard.**

**Recommendation 8:**

**Monitoring and documentation of law enforcement and intelligence use and possible abuse of anti-terror laws and policies.**

**Recommendation 9:**

**A more accessible reporting and appeal mechanism must be established to facilitate and channel complaints and report abuses by law enforcement and intelligence agents.**

**Recommendation 10:**

**Terrorism cases be tried as criminal cases with all the appropriate procedural safeguards, including the normal rules of evidence.**

**Recommendation 11:**

**An independent body be set up to review any decision to list entities as a terrorist entity and that this body carefully evaluate any such decisions to ensure that humanitarian work is not affected or disrupted.**

**Recommendation 12:**

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**Recommendation 13:**

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**Recommendation 14:**

**Protocols be put in place to monitor the use of informants and spies to ensure that this legitimate law enforcement tool is not abused or undermined.**

**Recommendation 15:**

**Those accused of terrorism be given the option of electing to be tried by a panel of three judges if they so wish, provided that their right to trial by jury is preserved.**

**Recommendation 16:**

**Greater emphasis on due process and resort to criminal law and procedure to prosecute terrorist offences and conspiracies rather than relying on secret proceedings and exceptions from the norm, as much as possible.**

**Recommendation 17:**

**We recommend that the Passenger Protect Program be reconsidered and debated through Parliament.**

**Recommendation 18:**

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