

Prof. Bahdi on Labelling and National Security

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COMMENT: Labelling can unleash a Kafkaesque chain of events

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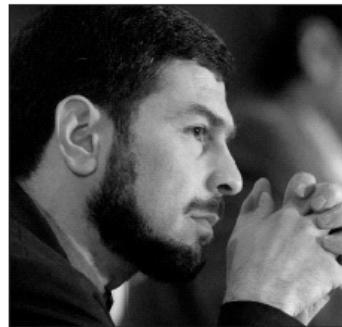
Windsor

When I testified before the Arar Commission in June 2005, I noted that Arabs and Muslims in Canada fear being "Arar'ed." This term, coined by London lawyer Faisal Joseph, refers to the labelling of individuals as national security risks because of stereotyping and racial profiling. Labels can unleash a Kafkaesque chain of events. In Mr. Arar's case, the chain led to his arbitrary detention and torture abroad as well as a prolonged media campaign to undermine his reputation in Canada. Mr. Arar has since become a passionate advocate for truth and justice around the world.

Released on Sept. 18, 2006, The Arar Commission Report (first part), confirmed the suspicions of many. Canadian officials acted improperly and placed Mr. Arar at unnecessary risk. They saw Mr. Arar through the lens of race-based and religious stereotypes. For example, they labelled him and his family "Islamic Extremists" without questioning the concept or how it is applied.

While Arabs and Muslims specifically worry about being

Arar'ed, all Canadians have to worry that racial profiling and stereotyping have infiltrated Canada's national security agenda.



Maher Arar ©Toronto Star

Any system which substitutes stereotypes for knowledge cannot inspire confidence. Stereotyping can lead to tunnel vision. As the

Arar Report recognizes, tunnel vision generates bad investigations. It causes investigators to irrationally focus on one possible suspect or interpretation to the exclusion of other plausible interpretations.

RCMP Commissioner Giuliano Zaccardelli eventually resigned over the Arar affair. However, as Mr. Arar himself has pointed out, Commissioner Zaccardelli's resignation should not be confused with accountability. Many questions remain unanswered. We still cannot eliminate the possibility, for example, that

Canadian security agencies had a policy of outsourcing torture. Amnesty International and others point to a pattern in the stories of Maher Arar and other Canadian-Arab-Muslim men like Abdullah Al Malki, Aboud Al Maati and Muayyed Nureddin. They were all tortured overseas because of questions and allegations that they say could only have come from Canada. None has ever been charged with any crime.

Ottawa announced an inquiry into the cases of Al Malki, Al Maati and Nureddin on December

12 and appointed Frank Iacobucci as Commissioner. That same day, the Arar Commission released Part II of its report. Justice O'Connor recommended a new body to oversee the RCMP as well as new mechanisms to supervise Canada's other security agencies. One hopes that Ottawa will promote fair and effective procedures for the Iacobucci Inquiry and that it will implement Justice O'Connor's recommendations in good faith. So much turns on it.

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Our self respect and international reputation are at stake. Canada has now been directly linked to the torture practices of states like Syria. Torture is a thoroughly discredited investigative tool; only repressive regimes rely upon it. Moreover, people like Abdullah Al Malki deserve to have their stories told and their names cleared. Finally, Canadian security agencies need to remove the controversy which continues to shroud them despite Mr. Zaccardelli's resignation. Canadians must respect and have confidence in the nation's security establishment, but respect and confidence have to be earned through accountability.

2007 is expected to produce several new chapters in the accountability story. Justice Major plans to report on the findings of the Air India Inquiry which was established in May 2006 to investigate matters surrounding the tragic bombing of Air India Flight 182. Justice Major will also examine the conduct of Canadian security agencies as part of his Commission's mandate.

Of course our courts also have a role to play in promoting accountability. In 2006, Canadian courts signaled that they will not allow security discourse to circumvent their analysis of the con-

stitutionality of Canada's anti-terrorism legislation. In October, an Ontario court severed the provision of the *Criminal Code* which defines terrorism in terms of political, religious or ideological motive (*R. v. Khawaja* [2006] O.J. No. 4245). Earlier that month, the same court declared sections of the Security of Information Act unconstitutional, finding that warrants executed by the RCMP brought the administration of justice into dispute (*O'Neill v. Canada* [2006] O.J. No. 4189).

In June, the Supreme Court of Canada heard the cases of Adil Charkaoui and others who have been deemed security threats under the Immigration and Refugee Protection Act (IRPA). Immigration proceedings also raise questions about "secret evidence," administrative accountability and racial profiling in the national security context. But, the IRPA offers even less procedural protections than the anti-terrorism provisions of the *Criminal Code*. It remains to be seen whether the Supreme Court will follow its European counterparts and deem the distinction between citizen and non-citizen discriminatory. The Court's decision is anticipated early in 2007.

In the meantime, charges laid against 17 Toronto area men and boys who are alleged to have plotted to commit various terrorist acts are snaking their way through

the courts. No convictions have yet resulted but the question of what distinguishes a terrorist offence from the garden variety *Criminal Code* offence will likely arise. This question has been brought into sharp focus by the ruling that the motive element of the anti-terrorism provisions of The Code is unconstitutional.

Ultimately, the 2006 demonstrates that human rights and national security need not be traded off against each other. Respect for human rights on the part of our national security agencies can inspire sober second thought, deter rash and ineffective decisions, and create common ground between security officials and Canadian communities. The Arar Report revealed the extent to which our security agencies have disregarded individual rights. It has vindicated those who dared criticize the Canadian security establishment and has inspired calls for further review of the conduct of Canadian officials. If all of this is taken seriously by our political, cultural and judicial leaders, I hope to report in 2007 that the phrase "to be Arar'ed" has come to mean that power and injustice cannot stand against a deep commitment to truth and security for all.

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