

# Canada's Inadequate Response to Terrorism: The Need for Policy Reform

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## Executive Summary

Failure to exercise adequate control over the entry and the departure of non-Canadians on our territory has been a significant factor in making Canada a destination for terrorists. The latter have made our highly dysfunctional refugee determination system the channel most often used for gaining entry. A survey that we made based on media reports of 25 Islamic terrorists and suspects who entered Canada as adults indicated that 16 claimed refugee status, four were admitted as landed immigrants and the channel of entry for the remaining five was not identified. Making a refugee claim is used by both terrorists and criminals as a means of rendering their removal from the country more difficult.

In addition to examining specific shortcomings of current policies, this paper will also look at the reasons why the government has not rectified them. These reasons include the lack of resources provided for effective program delivery as well as the influence of special interest groups who argue that the rights of refugee claimants and others ordered removed from the country should take priority over other considerations.

A further reason for the reluctance of the government to take firm measures against terrorists and their supporters is concern over the possible loss of political support. A notable example of this is Ottawa's failure to designate the Liberation Tigers of Tamil Eelam as a terrorist group. Related to this is the fact that little action has been taken to stop terrorist fundraising in Canada even though this is now estimated at \$180 million a year.

This paper will recommend that we demand a more explicit commitment to Canada and Canadian values on the part of newcomers. Putting into place the requirements for such a commitment may be complicated by official multiculturalism policy which, according to former Prime Minister Pierre Trudeau, has evolved from its original intention of helping immigrants integrate into Canadian society into a celebration of their countries of origin.

Canada must also give emphasis to building bridges with members of the Muslim community both to ensure they feel fully a part of Canadian society as well as to enlist their full cooperation in identifying extremists in their midst.

Finally, the paper will look at the impact on our trade with the United States and our economy in general if there is another major terrorist attack in North America and we have failed to take reasonable precautions against such an eventuality. This paper will argue that the measures we need to take are necessary for our own security and sovereignty quite apart from helping to ensure that our border with the United States remains open for the movement of goods and people.

## Introduction

Defending Canada against the threat of terrorism involves a wide range of measures. This paper will focus on two in particular, both of which are related to immigration policy. One is the extent to which we exercise adequate control over who is allowed to enter our territory and to remain here. This includes people who come as immigrants, as refugee claimants, and as temporary visitors such as tourists, workers, and students. The second is the issue of national identity and whether we are sufficiently demanding in terms of requiring newcomers to be loyal to Canada and make a clear commitment to Canadian values.

There are, of course, many other important areas in which major action needs to be taken in the fight against terrorism including, for example, strengthening the armed forces, emergency preparedness planning, protection of critical infrastructure and services, etc., that we will not attempt to examine in this paper.<sup>1</sup>

With regard to the review of immigration policy, in this paper the term “immigration” will be used in the broad sense; it will include not only people coming for permanent settlement but also visitors such as tourists, foreign students, and temporary workers, as well as refugee claimants. (Immigration also has a narrower usage, i.e., to refer only to the first of the above categories, who, in the case of Canada, were until recently termed “landed immigrants” and are now described as “permanent residents”.) For the sake of convenience, however, this paper will use the term “immigration” in its broader sense.

For non-Canadian readers it should also be pointed out that where Canada employs the term “refugee claimant” most other countries use “asylum seekers.” While every year Canada accepts for permanent resettlement thousands of refugees we have selected overseas, the term “refugee claimant” is restricted to those who arrive on our territory or at our borders seeking to stay here on the basis of claims that they have been persecuted in their home countries and that it is unsafe for them to return.

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1 There have already been major critiques regarding the deficiencies in these areas. They include the *Canadian Security Guide Book* released in 2005 by the Standing Senate Committee on National Security and Defence as well as recent reports by the Auditor General of Canada (Auditor General, 2004a, chapter 3; Auditor General, 2005, chapter 2).

## The Presence of Terrorists in Canada

One of the most comprehensive and frequently quoted public statements regarding the presence of foreign terrorist groups in Canada prior to September 11, 2001 (9/11) was that made by the head of the Canadian Security Intelligence Service (CSIS), Ward Elcock, to a special committee of the Senate in June 1998 (Elcock, 1998). Elcock stated that, with perhaps the singular exception of the United States, there were more international terrorist organizations active in Canada than any other country in the world and that the counter-terrorism branch of CSIS was investigating over 50 organizations and about 350 individuals.

He noted that among the terrorist groups or front groups acting on their behalf that had been or were active in Canada were Hezbollah and other Shiite Islamic terrorist organizations; several Sunni Islamic extremist groups (including Hamas), with ties to Egypt, Libya, Algeria, Lebanon and Iran; the Provisional IRA; the Tamil Tigers; the Kurdistan Worker's Party (PKK); and all of the major Sikh terrorist groups.

According to Elcock's testimony, activities in which these groups were involved in Canada ranged from logistical support for terrorist acts; fundraising in aid of terrorism; exploitation of ethnic communities through propaganda, advocacy, and disinformation, to the intimidation, coercion, and manipulation of immigrants; the provision of safe haven in Canada to terrorists; and the smuggling of immigrants and the transit of terrorists to and from the United States.

He went on to say that some of the specific acts with which individuals and groups in Canada have had direct or indirect association included the World Trade Centre bombing of 1993, suicide bombings in Israel, assassinations in India, the murder of tourists in Egypt, the Al Khobar Towers attack in Saudi Arabia, and the bombing campaign of the Provisional IRA.

Elcock concluded his remarks with the observation that he did not believe that "Canadians want their country to be known as a place from which terrorist acts elsewhere are funded or fomented. We cannot ever become known as some R and R facility for terrorists. In other words, and I will be as blunt as I can be, we cannot become, through inaction or otherwise, what might be called an unofficial state sponsor of terrorism" (Elcock, 1998).

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Making a refugee claim is used by both terrorists and criminals as a means of rendering their removal from the country more difficult.

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This was not the last public statement by Elcock on the subject prior to 9/11. In an interview with the *National Post* on May 4, 2000 he identified Islamic terrorists as the leading threat to Canada's national security. The same week CSIS issued a report indicating that, over the previous 15 years, it had witnessed a disturbing trend as terrorists moved from significant support roles, such as fundraising and procurement, to actually planning and preparing terrorist acts from Canadian territory (*CSIS Perspectives*, 2000).

### ***The problem continues***

There is no indication that the presence of terrorists has significantly diminished in Canada from what it was when the director of CSIS described it in 1998. In an October 2003 report entitled *Threats to Canada's National Security*, CSIS warned that "terrorism represented an acute threat to domestic public safety and to Canada's international interests" (CSIS, 2003). It went on to state that "terrorism of foreign origin continues to be a major concern in regard to the safety of Canadians at home and abroad" and that "Canada is viewed by some terrorist groups as a place to try to seek refuge, raise funds, procure materials and/or conduct other support activities." The report added that "Canada's open and tolerant multicultural society, which includes large, identifiable ethno-religious communities from the Middle East, North Africa, and South Asia, *inter alia*, makes this country distinctly vulnerable to infiltration by international terrorist networks. Virtually all of the most notorious international terrorist organizations are known to maintain a network presence in Canada" (CSIS, 2003).

While most government documents released to the public usually contain relatively little detailed information on specific terrorists, a considerable amount has become available through the media. Stewart Bell of the *National Post* has provided the most sustained and detailed reporting on the subject, having produced articles on a wide range terrorist groups and individuals with Canadian connections. Bell has also provided graphic and comprehensive descriptions of foreign terrorist activities in Canada in his book *Cold Terror: How Canada Nurtures and Exports Terrorism Around the World*, released in 2004. A second publication of importance is a Mackenzie Institute Occasional Paper by John Thompson and Joe Turlej entitled *Other People's Wars: A Review of Overseas Terrorism in Canada*. The authors provide a wealth of detail on the history of international terrorists in Canada, as well as their objectives and their modus operandi. Thompson and Turlej describe not only fundraising for terrorist activities abroad but procurement of equipment and the planning and preparation of specific terrorist acts beyond our borders. They also relate how terrorist groups cultivate federal politicians in order to minimize interference by Canadian authorities in their activities.

### ***Canada has taken some measures, but not enough***

This is not to suggest that the Canadian government has taken no action in combating terrorism. Following the events of 9/11, Ottawa moved with considerable dispatch to send troops to Afghanistan and to pass legislation dealing with terrorists within our borders as well as with terrorist fundraising. Cooperation between Canadian and American security authorities, which has always been good, was further strengthened. Various bodies were created to provide better coordination of intelligence, threat assessment, and response. These bodies include the Department of Public Safety and Emergency Preparedness, the Integrated Threat Assessment Centre (ITAC) and Integrated National Security Teams (INSETs). The government also produced a National Security Plan.

In addition, a number of cooperative arrangements were made with the United States to facilitate the movement of people and goods at the border as well as monitor and apprehend individuals attempting to cross it illegally. In December 2001, Ottawa and Washington concluded a 30-point Smart Border Action Declaration (later expanded to 32 points) aimed at creating a secure and efficient border. The declaration included, for example, a commitment to expand Integrated Border Enforcement Teams (IBETs) (originally created in 1996) that now patrol the border in 14 strategic areas as well as joint targeting teams dealing with container security at a number of Canadian and American ports.<sup>2</sup>

## **Canada has been Unwilling or Unable to Mount a Sufficiently Effective Response to the Threat from Terrorism**

### ***Failure to ban terrorist groups***

Despite the above mentioned measures taken by Ottawa to curtail terrorism, there is widespread evidence that the federal government is less than serious about taking effective measures in a number of areas. One of the most obvious is its reluctance to ban certain terrorist groups. This was clearly seen in its reticence with regard to adding

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2 This point as well as other measures taken are outlined in Andre Belelieu's paper of September 2, 2004: *Canada Alert: The Present Evolution in Canadian Security Policy*. For a review of joint Canadian-American initiatives and an excellent summary of various proposals that have been made for bilateral security cooperation, see *Fortress America or Fortress North America?* (Noble, 2004).

Hezbollah to its list of designated terrorist organizations. It did not get around to doing so until December 2002, and only after considerable pressure from the Opposition in Parliament. It has thus far resisted all efforts to ban the LTTE (Liberation Tigers of Tamil Eelam) despite the facts that it is one of the most ruthless terrorist organizations in the world, that it has been banned in the UK and US for some time, and that CSIS has recommended that it be outlawed in Canada (Fife, 2003).<sup>3</sup>

An indication of the government's reservations about taking action against such groups was signalled soon after 9/11 when the federal solicitor-general indicated he would fast-track legislation taking away the charitable status of known terrorist fronts, but did not want to make a "mistake" by *moving too quickly and actually outlawing these organizations* (my italics) (*National Post* editorial, 2001a). American awareness of our reluctance to outlaw terrorist groups was noted in a US Library of Congress report in 2003 that observed that the number of organizations banned in Canada included fewer than half those on a similar list issued by the US State Department (Library of Congress, 2003a).

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A survey of 24 Islamic terrorists and suspects who entered Canada as adults indicated that 16 claimed refugee status and four were admitted as landed immigrants.

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### **More surveillance than arrests**

This is not to say that there has been no improvement in Canadian efforts to track terrorists since 9/11. Canada's record up to that time, however, had been less than impressive, to say the least. The case of Ahmed Ressam provides testimony to the extent of its weakness. After entering Canada on a doctored French passport and claiming refugee status (which, while refused, did not result in his deportation), Ressam was arrested four times and convicted once for minor crimes. Although known to be working closely with suspected terrorists, he succeeded in fraudulently obtaining a Canadian passport and traveling to Afghanistan in 1998 for explosives training with al-Qaeda. Canadian authorities had lost track of him by this time and, following his return to Canada, he was able in 1999 to assemble explosives intended to be used to blow up Los Angeles airport. His mission was aborted only because an alert American customs officer became suspicious when he tried to enter the United States. Ressam was not the only terrorist who had successfully used Canada as a base. In December 2001, the *National Post* published an article

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3 The close connections between LTTE front groups and the federal Liberals will be discussed later in this paper.

listing 16 Islamic terrorists who had been living in Canada. All had subsequently been arrested and in most cases convicted in other countries—but had never been charged in Canada (Bell and Jimenez, 2001). One of the 16, Fateh Kamel, is an interesting case in point.

Kamel had been head of a cell in Montreal that was a branch of the Algerian terrorist group GIA (Armed Islamic Group) and had also developed close links with al-Qaeda. He fought in jihadi campaigns in Afghanistan and Bosnia as well as played a central role in a series of terrorist attacks in France in the 1990s, including bombings on the Paris subway. In 1998 he was apprehended in Jordan and sent to France where he was tried for terrorism and sentenced to prison. With Kamel's departure, Ahmed Ressaym took over the Montreal cell and the members considered bombing a Jewish neighbourhood in that city as well as attacking the Montreal Metro before settling on the above mentioned plan to bomb the Los Angeles Airport.

After serving his sentence in France, Kamel returned to Canada at the end of January 2005. He has, however, never been charged as a terrorist in this country and is now able to move about freely in Canada. He has been in the news most recently for filing papers with the federal court claiming that the Canadian government violated his Charter rights when it turned down his recent passport application on security grounds (Bell, 2006a).

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Only one person in Canada  
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with terrorism.

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Kamel, moreover, is not the only jihadist who has returned to resume residence in Canada. A 2004 report of the federal government's Integrated National Security Assessment Centre (INSAC) revealed that a number of Islamic extremists, such as the sons of Ahmed Said Khadr, had recently returned to Canada from abroad (INSAC, 2005).

Although the Montreal cell in which Kamel and Ressaym were involved is now out of action, the recently appointed head of CSIS, Jim Judd, told a parliamentary committee in late February 2005 that similar extremists continue to operate in Canada. According to Judd, "There are several graduates of terrorist training camps, many of whom are battle-hardened veterans of campaigns in Afghanistan, Bosnia, Chechnya, and elsewhere, who reside here, and still others who continue to seek access to our country... Often, these individuals remain in contact with one another in Canada, and show signs of ongoing clandestine-type activities employing sophisticated countersurveillance techniques, secret communications, and secretive meeting arrangements" (Bell, 2005a).

While the emphasis continues to be on trying to keep track of terrorists on our soil rather than incarcerating or removing them, the government is at least making an effort to strengthen the provisions for carrying out surveillance. Following the London bombings on July 5, 2005, then Deputy Prime Minister Anne McLellan announced that police were being granted warrants that would permit them to use electronic surveillance methods to investigate individuals suspected of committing various terrorist crimes as well as those participating in the activities of a terrorist group and facilitating terrorist activities (Bell, 2005f).

### ***Only one person charged with terrorism thus far***

An indication of the extent to which the Canadian government has been unwilling or unable to prosecute terrorists is the fact that to date it has laid only one charge of terrorism and, in doing so, made it under the criminal code rather than the anti-terrorism act. In March 2004, Mohammad Momin Khawaja, a computer programmer on contract with the Department of Foreign Affairs in Ottawa, was accused of being involved in a bombing plot in London, UK. It was, moreover, the British police who provided the evidence against Khawaja. In comparison, up to May 2004, the United States had charged more than 310 persons in terrorist-related cases and won 179 convictions, (although some of the latter were for relatively minor infractions such as immigration violations) (Arnold, 2004).

### ***Canadians trained by al-Qaeda***

Further evidence of the inability or unwillingness of Canada to take firm action against potential terrorist threats is its failure to deal with citizens who undertook training in terrorist camps. A former senior intelligence official has stated that, during the Ressam investigation, Canadian authorities identified up to a dozen people in Canada who had trained at the camps. Not one of these trainees, however, has ever faced any criminal charges in Canada for their participation in the jihad. In contrast, US authorities have aggressively prosecuted those who have undergone such training (Bell and Friscolanti, 2003).

### ***Criticism of anti-terrorism legislation***

Despite such sparing use of the anti-terrorism act, it has come under sustained attack from the opposition in Parliament as well as civil liberties advocates for being too draconian. In response to such criticism, Anne McLellan, then Deputy Prime Minister and Minister for Public Safety and Emergency Preparedness, rose to its defence, arguing that

it strikes the right balance between citizens' rights and national security (Gordon, 2005a). McLellan explained that the threat from terrorism since 9/11 has been an unwelcome addition to our landscape—a challenge we did not invite but can not ignore (Gordon, 2005a).

On this point, no one has suggested that balancing the rights of citizens against threats from terrorism is easy or simple. Canadians understandably want to preserve human rights as much as possible. By the same token, the exigencies of pursuing suspected terrorists require greater flexibility for investigators and prosecutors than is available under normal criminal law. In one of the relatively rare public acknowledgements by a member of the Canadian judiciary that this is the case, Justice Ian Binnie of the Supreme Court of Canada observed that the greatest threat to our rule of law is terrorism and that in matters of international security it is “absolutely necessary” for courts to show deference to state agencies because they have more expertise, information and resources on such matters than do judges. He added, however, that such deference has to have limits and that determining where to draw the line was not an easy task but nevertheless one that had to be addressed (Schmitz, 2005).

### ***The Air India case***

While Canadian anti-terrorism laws are attacked by critics as being too harsh, it is clear from the outcome of the Air-India bombing trial in March 2005 that the Canadian justice system is not up to the task of dealing with terrorists. After an investigation and trial that cost an estimated \$130 million and together took almost 20 years to complete, the government was still unable to get a conviction against the two accused.

In the course of the proceedings, witnesses for the prosecution were threatened and one key witness, who was prepared to testify that one of the accused had told him he had been involved in the bombings, was murdered. At the trial, the dead man's sworn deposition linking one of the accused to the bombing was disallowed because he was unable to testify personally. Another prosecution witness who had provided a statement was intimidated to the point that he was afraid to testify in court. His statement was also disallowed by the judge, this time on the basis that it would be unfair to the accused if his counsel did not have an opportunity to conduct a cross-examination.

The outcome of the trial suggested to many Canadians that their justice system was often more concerned about protecting the rights of those who might be guilty than in bringing them to justice.<sup>4</sup> Another disturbing aspect of the trial was that it was obvious that terrorists and their supporters were able to move about freely in Canadian society to intimidate and even kill critics with little fear of retribution. It was, in the event, proba-

bly no accident that the worst terrorist act against India in pursuit of the establishment of an independent Sikh homeland—the Air India bombings in 1985—was mounted from Canadian soil. Sikh extremists have arguably enjoyed more freedom of movement in Canada than any other country in the world.

A relative of one of those killed in the Air-India bombings summed up the situation with the observation that “in this country [Canada], there are no rules and regulations; only the jungle rules” (Bolan, 2005a). The extent of the relatives’ frustration with the ineffectiveness of the Canadian justice system in dealing with terrorists is reflected in the fact that, in the wake of the acquittal of the accused, they approached the government of India for help in obtaining restitution for the crimes committed (Bolan, 2005b).

### ***Security certificates***

Another measure that has come in for major criticism is the use of security certificates in the fight against terrorism. Such certificates are issued to detain non-Canadians who are believed to pose a significant threat to the security of Canada until they can be removed from the country. The certificates must be prepared and signed by the Minister of Public Safety and Emergency Preparedness (PSEP) and the Minister of Citizenship and Immigration (CIC) and are used in cases involving sensitive information that needs to be protected and which has to be reliable and from multiple sources. They have been issued relatively infrequently—in total, 27 times between January 1991 and October 2003—with five in effect in August 2005.

The government is, nevertheless, being challenged on the use of the certificates and recent court decisions have left in doubt how useful they may be in the future in dealing with suspected terrorists. One such case is that of Mohammed Mahjoub, who has been held for four and a half years on a security certificate and who is alleged by CSIS to be a high-ranking member of Vanguard of the Conquest, a radical wing of the Egyptian Islamic Jihad, a group that

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4 A poll taken among British Columbians (many of whom had followed the trial closely since it was held in Vancouver) showed that 68 percent of those surveyed did not agree with the verdict and almost half had a worsened opinion of the justice system as a result of the outcome (Matas and Clarke, 2004).

merged with al-Qaeda in 1998. CSIS also claims Mahjoub took part in decision-making on terrorist operations organized by the Vanguardians. He has been convicted in absentia in Egypt for his involvement with the group and sentenced to 15 years in prison. In early February a federal court judge struck down his deportation order on the basis that he might be tortured if he was returned to Egypt. The judge explained that there were “powerful” indications that deporting anyone to face torture would shock the Canadian conscience and violate fundamental justice (Duffy, 2005).

Later the same month, Adil Charkaoui, who had been held for 21 months on a security certificate awaiting deportation to Morocco, was ordered released by a federal court judge. According to CSIS, Charkaoui had been in contact with Montreal-based Islamic extremists including al-Qaeda recruiter Raouf Hannachi, had travelled to Afghanistan for training, and had met senior al-Qaeda members. According to Deputy Prime Minister Anne McLellan, Charkaoui is “absolutely” a national security threat (Ha, 2005). The judge hearing the case acknowledged that the Moroccan government had issued an arrest warrant in September for Charkaoui, but also noted that it had given assurances in December that he could be deported without fear of reprisal (Montgomery, 2005). The judge went on to declare, however, that his danger to Canada had been reduced with the passage of time and he could therefore be released back into society, albeit with some restrictions.

The decisions of the two federal court judges in the cases of Mahjoub and Charkaoui do not auger well for the prospects of containing and removing even the relatively few individuals detained by the Canadian authorities on the basis of extensive information indicating they have terrorist connections that constitute a serious threat to Canada's national security. A further case that throws into doubt the future usefulness of security certificates is that of Hassan Almrei, a Syrian national who has been held since 2001. Almrei is described by Citizenship and Immigration Canada as someone whose deportation is justified because of the danger he posed to Canada and who would not be at risk of torture if returned to Syria. In March 2005, however, a federal court judge ruled that CIC had “committed reviewable errors in assessing both Mr. Almrei's risk of return and the danger he poses to Canada” and ordered his case reviewed (*Edmonton Journal*, 2005).

### ***Terrorist fundraising continues***

Yet another area in which the government appears either unable or unwilling to deal in an effective manner with terrorists and their supporters on our soil is terrorist fundraising in Canada. Back in the late 1980s when we were already becoming a centre for such activity, as part of my responsibility for coordinating counter-terrorism policy in the Department of Foreign Affairs, I proposed that legislation be drafted that would curtail terrorist fundraising. My initiative, however, met with no interest outside my own

department and nothing came of it. While Canada continued to show little concern over this problem in the course of the next decade, our enthusiasm for multilateralism eventually got the best of us and, when the UN drew up the Convention on the Suppression of the Financing of Terrorism in 1999, we helped draft it. Even so, we continued to show only limited interest in taking tough measures at home and, until 9/11, were considering only such modest moves as denying charitable status to organizations that raise money for terrorists.

After 9/11, Ottawa, not surprisingly, at least tried to give the impression that it was serious about clamping down on terrorist fundraising and pushed through legislation with more teeth. Despite this, an October 2003 CSIS report confirmed that fundraising for terrorism had not stopped in Canada, even though halting the flow of money to such groups as al-Qaeda, Hezbollah, and Hamas had been one of the chief aims of the anti-terrorism bill. "In Canada, supporters of a number of terrorist groups collect and send money abroad to finance their causes," the report stated. "These supporters range from highly structured and well-run organizations... which can raise substantial sums, to less formalized groups of individuals with limited fundraising abilities (Canadian Security Intelligence Service, 2003).

### **FINTRAC**

The extent of such activity has been evident from reports of the Financial Transactions and Reports Analysis Centre (FINTRAC), which was created to track the movement of criminal and terrorist funds in Canada. According to FINTRAC's data, terrorist fundraising in Canada appears, if anything, to be on the increase. In fiscal year 2002-2003, \$460 million in suspected criminal or terrorist-related transactions was identified, of which \$22 million, or five percent, involved the latter. By fiscal year 2003-2004 the total of criminal or suspected terrorist-related transactions had risen to \$700 million, of which \$70 million, or 10 percent, involved suspected terrorist activity financing and threats to the security of Canada (Government of Canada, FINTRAC, 2004). While the increase in the total from \$460 to \$700 million was attributed to the fact that investigators were getting better at tracking laundered money as well as getting more assistance from police, intelligence agencies, and the private sector, etc., FINTRAC investigators were reportedly surprised to discover that the cash tied to terrorism had risen to 10 percent of the total from less than 5 percent the previous year (Bell, 2004a). Most recent estimates now put the amount of funds suspected to be terrorist-related at \$180 million in 2004.

Despite the large and apparently increasing scale of terrorist fundraising in Canada, the government has yet to file a charge (Bell, 2005e). This lack of action on Canada's part contrasts with the situation in the United States, the UK, and France, where members of terrorist support networks have been aggressively prosecuted. According to police

sources, investigations are being frustrated by the Canadian cabinet's refusal to outlaw one of the most active terrorist organizations in Canada, the Liberation Tigers of Tamil Eelam, which police believe raises \$10 million a year in Toronto, Montreal, and Vancouver. Other major groups under investigation reportedly are al-Qaeda and other Sunni Islamic extremists, Hezbollah, and Sikh extremists (Bell, 2004).

In her report of November 2004, the Auditor General of Canada stated that FINTRAC's effectiveness is hampered by strict information-sharing legislation and growing pains, and that its liaison officers are "severely limited" in passing information to agencies such as the RCMP and CSIS because they aren't allowed to provide the context that led to

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FINTRAC's suspicions. The report indicated that such strict safeguards are unusual and that most other countries allow much closer links and easier flow of information between their financial intelligence units and law enforcement. It also noted that no prosecutions had been launched as a result of FINTRAC disclosures (Auditor General, 2004b, Section 2.44).

Yet a further problem hobbling efforts to curtail money laundering and terrorist fundraising is the shortage of resources the government has provided to make the system workable. In mid-2004 it was reported that the RCMP had not pursued more than a third of the money-laundering tips passed on by FINTRAC owing to a lack of manpower (*The Province*, 2005).

After the negative publicity resulting from what appears to be a lack of interest on the government's part in seriously pursuing money laundering and terrorist fundraising, in July 2005 it announced that more stringent requirements would be imposed on financial institutions with respect to the reporting of transactions that could involve money laundering or terrorist fundraising. The new measures will reportedly include providing FINTRAC with more flexibility in turning over information to the RCMP and other agencies, a development could result in more effective action in this area. Given, however, Ottawa's propensity for making announcements and passing legislation that appear to herald tougher measures in the fight against terrorism but which frequently have limited outcomes, it remains to be seen whether terrorist fundraising will be reduced to any great extent (Waldie, 2005).

### ***Concern about future funding for security***

Apart from the lack of funding available for following up tips on money laundering and terrorist fundraising, there is the broader question of whether the Canadian government is prepared and able to commit the resources required to bring the threat of terrorism reasonably under control. It has allocated substantial amounts of money to this end since 9/11 and made a further commitment to do so in the February 2005 budget. While the government has undertaken a significant range of measures to improve security since 2001, questions remain about the degree to which it is prepared to continue with such commitments in the future. David T. Jones, who was a senior official at the American Embassy in Ottawa in the mid-1990s, suggests that many Americans believe the Canadian anti-terrorism effort is stronger on lip-service than on commitment and that “it smacks of humouring that half-demented uncle who believes in alien abduction but has a sizable legacy you don’t want to miss out on” (Jones, 2004).

Canada’s tardiness in taking appropriate action has also been noted by Canadian academics. One of the measures announced to reassure Canadians that the government was serious about countering the threat of terrorism in the wake of the July 2005 London bombings was that a “no-fly” list of people considered too great a risk to be allowed on aircraft would be put into effect by 2006. Wesley Wark, a security and intelligence expert with the University of Toronto, observed that such a system should have been made operational years ago: indeed, even before September 11, 2001 (Gordon, 2005b).

In a paper released by the Center for Strategic and International Studies in Washington in September 2004, Andre Belelieu questioned whether current funding for security was sufficient to solve many of the major gaps in current policies and whether, in the absence of future commitments for security, it would be possible to sustain and build on security efforts in the future. He cited in particular the possibility that priorities that are more pressing in terms of gaining political support, such as health care, would crowd out needed spending on security (Belelieu, 2004). Not long after Belelieu made this point, the government ordered nearly every department in Ottawa to figure out where they could achieve 5 percent spending cuts so an additional \$12 billion could be found over the next five years for such areas as health care, aboriginal programs, and national child care. Included among those required to make such cuts were the Canadian Security

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The Canadian anti-terrorism effort is stronger on lip-service than on commitment and “smacks of humouring that half-demented uncle who believes in alien abduction but has a sizable legacy you don’t want to miss out on.”  
—David T. Jones, former US diplomat in Ottawa

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Intelligence Service, the RCMP, and the Canada Border Security Agency (*National Post* editorial, 2004a).

In the case of the RCMP, in an internal report released in November 2004 expressed concern that the force would one day have evidence of an impending terrorist attack in Canada but would not be able to stop or disrupt it because of a lack of resources. It went on to say that “It is not a matter of ‘if’ but ‘when’ an incident will occur whereby the RCMP will be in possession of a piece of information and/or intelligence that could have been used to disrupt or prevent a terrorist act but could not act upon it because we were inadequately resourced to properly deal with it” (Gordon, 2004). The effect of a continuing shortage of funding for the RCMP was also reflected in the announcement on February 25, 2005, that they were closing their forensic laboratory in Alberta due to lack of financial resources.<sup>5</sup>

## Titles of New Legislation and Policies

Since the events of 9/11 there have been various indications that Canada's concern about its security is subject to certain qualifications. One of these can be seen in the government's determination to make it clear in its choice of titles and the provision of new legislation and policy that Canada remains open and accommodating rather than unduly preoccupied with security.

### ***Immigration and Refugee Protection Act***

In late 2001, the minister of immigration lost no time in pushing through Parliament new immigration and refugee legislation. To those who called for immigration and refugee policies that would be more effective in protecting Canadian interests, immigration minister Elinor Caplan responded by denouncing them as “anti-immigrant, anti-everything” (*National Post* editorial, 2001) and proceeded to claim that the new law was “tough” and should be approved without delay in order to deal with the increased security threat.

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5 The extent of resource shortages in the RCMP was brought out in a January 2006 *MacLean's* magazine article entitled “The Mounties Give Up.” In addition to mentioning that the RCMP has fallen some 600 officers, or 25 percent, below normal strength in federal enforcement areas like drug interdiction and organized crime, the article notes that, on drug offences, clearance rates have dropped from nearly 80 percent in 1995 to 61 percent in 2004 and, for other federal investigations (such as immigration fraud, stock market scams, and smuggling schemes), they have fallen from nearly 80 percent in the mid-1990s to 49 percent in 2004 (Gillis, 2006).

Instead of simply calling the new legislation the Immigration and Refugee Act, it was given the title Immigration and Refugee Protection Act, in all likelihood to emphasize that allowing people to come to Canada was primarily a welcoming and humanitarian process. In parallel with this, the name of the Refugee Division of the Immigration and Refugee Board was changed to the Refugee Protection Division to underline that the government's first priority was to make refugee claimants feel at home rather than determining whether they had a valid case for remaining in Canada.

While a number of modest, security-related improvements were included in the new legislation, the overall assessment of critics, such as former head of the immigration service, James Bissett, was that it rendered the refugee determination system even less effective than previously in terms of protecting the security of Canadians (for details, see Bissett 2002a and Bissett 2002b).

### ***Public Safety and Emergency Preparedness Act***

A further indication of the government's resolve to project an image of openness for Canada rather than one of being unduly worried about security was to be seen when Paul Martin took over the reigns of the governing Liberal party in December 2003. One of his first acts was to announce the creation of the new Ministry of Public Safety and Emergency Preparedness. Although the new ministry's responsibilities were to include border security, immigration was specifically left out of its mandate in order to reflect Canadians' sensitivity about any suggestion that there might be "a link between security problems and foreign-born residents" (Fagan, 2003). A subsequent statement by a spokesman for Citizenship and Immigration Canada made Ottawa's priorities even more explicit when he explained that, "The government was clear that CIC should remain in place (as a separate department) precisely to protect the rights and interests of immigrants and refugees" (Curry, 2004). Although Ottawa did eventually yield to reality and transfer 800 immigration officers to the new ministry (McClintock, 2004), its tardiness in doing so left some doubt about how much priority it wished to give to security.

### ***Securing an open society: Canada's national security policy***

Yet a further indication of the government's ambivalence on security issues was provided when the government produced its long-awaited national security policy in April 2004. The name it chose for this initiative was "Securing an Open Society: Canada's National Security Policy." Quite clearly, Ottawa was not comfortable with simply stating the obvious, i.e., that we finally had a national security strategy; the government felt instead that Canadians needed to be reassured by the very title that it would enhance rather than infringe upon their freedoms.

### ***The government attempts to deny the seriousness of the terrorist threat***

Despite extensive evidence concerning the presence of international terrorists in Canada, the federal government's posture has often been to downplay the seriousness of the problems Canada faces in this area. The relaxed attitude towards the threat was, in fact, evident well before 9/11. Following the capture in December 1999 of al-Qaeda terrorist Ahmed Ressam while trying to smuggle explosives into the United States to blow up in the Los Angeles Airport, Americans lost no time in recognizing the danger. This included the decision on short notice to convene a meeting of a congressional committee to examine border security as well as to cancel millennium celebrations planned by the city of Seattle.

In contrast, following Ressam's capture, Prime Minister Chrétien urged Canadians "not to worry about the threat of terrorist attacks and enjoy the holiday season" (*Vancouver Sun*, 1999). In one respect, Chrétien's reassurances made sense; while Canada had allowed itself to become a haven for international terrorists in terms of fundraising, planning operations abroad, and procurement of military equipment, it seemed unlikely, in the circumstances, that such terrorists would target Canadians and thereby risk jeopardizing the relative freedom with which they were able to carry on their activities in this country.

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Prime Minister Chrétien's limited appreciation of the problems related to the presence of terrorists on our soil was further confirmed shortly after 9/11 when he told the House of Commons that he was not aware of any terrorist cells in Canada (Bell and Jimenez, 2001). As to his understanding of the causes of terrorism,

one year later in an interview with the CBC in September 2002, he espoused the "root causes" approach when he asserted, "I do think the Western world is getting too rich in relation to the poor world and necessarily, you know, we're looked upon as being arrogant, self-satisfied, greedy, and with no limits. And September 11 is an occasion for me to realize it even more" (Nichols, 2002).

In the wake of the events of September 11, it became increasingly difficult for the Canadian government simply to ignore the threats from terrorism and it, therefore, began trying to promote the notion that, if there were any suggestion—particularly in the United States—that Canada was not playing its part in dealing with the threat, it was only because of unfounded rumours and unjustified criticism. Government spokesmen cited, in particular, false media reports that some of the 9/11 hijackers had begun their final

journey from Canada, noting that these reports unfairly contributed to the impression among the American public that their northern neighbour was a haven for terrorists (Chipello *et al.*, 2001). A second example cited by Canadian leaders as unjustly tarnishing our image in the US was an episode in the television series *The West Wing*, in which terrorists were depicted as having crossed into the United States along the Ontario-Vermont border. This fictional account was attacked by Canadian leaders on the basis that the province of Ontario and state of Vermont do not, in fact, have a common border (Alberts, 2001a).

While it is certainly true that both of these items contained incorrect information and may have contributed to the impression in the United States that Canada was less serious than it should be in dealing with terrorism, Ottawa's claim that its reputation in this regard was therefore undeserved did not impress those aware of Ward Elcock's testimony and the revelations at the trial of Ressam and others. Anyone familiar with Elcock's statement and the Ressam trial might well have concluded that Canadian ministers were highly optimistic if they believed that the issue of terrorism in Canada could be brushed aside in this way. Yet more than three years after 9/11, Canadian officials were continuing to cite the discredited reports as the reason why we were being unfairly accused of slackness in dealing with terrorists (Alberts, 2005).

Indeed, some of the comments that Canadian politicians have made verge on self-delusion rather than simply spin. One relatively senior member of the Liberal caucus in the House of Commons condescendingly suggested that American legislators had bought into rumours about terrorists in Canada because "they have not educated themselves, have not travelled outside of the United States," and that "a majority... have never had an American passport" (Alberts, 2001b). Prime Minister Chrétien cast further light on why the US thought Canada had a problem with terrorists by explaining that some US politicians remained in denial about the breakdown in security in their own country and, therefore, found it easier to blame Canada (Alberts, 2001b).

### ***Will Canada benefit from a public relations campaign?***

In January 2003, Denis Coderre, the immigration minister, and Bernard Patry, chairman of the House of Commons foreign affairs committee, declared that Ottawa needed to take a more aggressive stand to fight the growing perception in the United States that Canada was a terrorist breeding ground. In an interview Coderre declared that, "We need a Canada-United States communications strategy.... We need to go directly to American people... There is an issue of education" (Alberts, 2003). To which Patry added that there should be a public relations campaign and that "it seems like the Americans are looking for a bad country, just so they can say, 'We told you about this, Canada

is a haven for criminals and hiding suspect people” (Alberts, 2003). Such proposals by Coderre and Patry were to bear fruit the following year when in June 2004 it was announced that the Canadian Embassy in Washington had launched a web site designed to debunk some of the rumours and urban legends that have tarnished our image south of the border (Friscolanti, 2004).<sup>6</sup>

In what appears to be an implicit criticism of such an approach, one of Canada's most distinguished envoys in Washington, Allan Gotlieb (who served as ambassador from 1981 to 1989) wrote in February 2005 that the emphasis placed by Ottawa on the embassy's role of advocacy seemed “misplaced, if not misguided” (Gotlieb, 2005).

In Gotlieb's view, if this were Ottawa's idea of how the embassy should be used, then we should move it to K Street “to join the legions of professional advocates, lobbyists, and hired guns.” According to Gotlieb, we should use our privileged access as diplomats to strengthen our common understanding of each others' interests, deepen our sensibility to our interdependence, and build bonds and mutual confidence. He went on to state that, “Canadians cannot expect the United States to be sensitive to our agenda without our being sensitive to its. The ambassador has no more vital service than helping Canadians understand the agenda of his host country, its priorities and constraints, its room for compromise, negotiation and manoeuvre” (Gotlieb, 2005).

While Allan Gotlieb no doubt had a number of issues in mind when he chided Ottawa for the importance it placed on an advocacy role for the embassy, it is reasonably certain that he did not envisage the embassy making a contribution to our bilateral relations by mounting a public relations campaign to convince the United States that Canada does not have a problem with terrorists on its soil, particularly when the Americans were quite capable of reaching their own conclusions on this matter.

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6 While the website provides details on steps Canada has taken in the fight against terrorism—which is a normal part of a diplomatic mission's functions—in the “Myth buster” section, it also includes points clearly designed to downplay impressions that Canada has a problem with terrorists on its soil.

## Whether We Like It or Not, Americans Are Well Aware We Have Major Problems in Dealing with Terrorists in Canada

While the Canadian government has on many occasions sought to downplay the extent to which we have a serious problem of terrorists on our soil, there is no lack of evidence that the United States is well aware that one exists. As indicated in the introduction, much of this paper will focus on Canadian immigration policy and it is in this area—and especially our refugee system—that the Americans have expressed particular concern in relation to Canadian vulnerability to penetration by terrorists. The following are US reports reflecting an awareness of our deficiencies in this regard.

### *Library of Congress and State Department reports*

The section on Canada in the October 2003 Library of Congress report titled *Nations Hospitable to Organized Crime and Terrorism* reported that “terrorists and international crime groups are increasingly using Canada as an operational base and transit country en route to the United States. A generous welfare system, lax immigration laws, infrequent prosecutions, light sentencing, and long borders and coastlines offer many points of entry that facilitate movements to and from various countries, particularly to the United States.” In consequence, according to the report, Canada is a “favoured destination for terrorist groups and international organized crime groups” and, for the former in particular, our country is “a safe haven, transit point, and place to raise funds” (Library of Congress, 2003b).

A less than positive reference to our ability to control our borders was also made in the Department of State report on Human Rights for 2003. It observed that “Vancouver and Toronto served as hubs for organized crime groups that traffic in persons, including trafficking for prostitution. East Asian crime groups targeted the country, and Vancouver in particular, because of lax immigration laws, benefits available to immigrants, and the proximity to the US border” (US Department of State, 2003). The State Department Trafficking in Persons annual reports suggested that, if anything, the United States was becoming somewhat frustrated by the lack of Canadian action in this area. Whereas the “Prosecution” section in the 2004 report began with the observation that “The Government of Canada made impressive gains in prosecuting traffickers in 2003” (US Department of State, 2004), the same section in the 2005 report began with the statement that “The Government of Canada has comprehensive anti-trafficking legislation, but this law has produced few results to date” (US Department of State, 2005).

### ***The Rand Corporation***

Concern over the extent to which Canada has a terrorism problem has also been registered by non-governmental organizations. In April 2004, a Rand Corporation paper observed that Canada “has been decisively affected by the spillover effects of overseas conflicts and continues to act as a highly important hub of political, financial, and logistical support for Sikh and Islamic religious radicalism as well as ethno-nationalist separatist movements in Sri Lanka, Turkey, Ireland, and the Middle East” (Chalk and Roseneau, 2004).

### ***Center for Strategic and International Studies***

The previously mentioned paper by Andre Belelieu of the Center for Strategic and International Studies in Washington noted that, while there had been significant developments in improving security in Canada, some serious gaps remained. Belelieu pointed out, for example, that the National Security Strategy announced by Ottawa in March 2004 made only vague references to future reform in Canadian refugee policy. He went on to state that this was especially noteworthy “as refugee policies are seen as the most important vulnerability in Canadian security efforts by influential policymakers in the United States. To be sure, regardless of opinions in Washington, Canadian security efforts will be less effective if the problems related to refugee policy are not addressed, specifically, the common occurrence of refugee applicants becoming lost in the system” (Belelieu, 2004).

### ***Center for Immigration Studies***

In May 2003, the Center for Immigration Studies in Washington released a paper by Glynn Custred that presented the issues in even less complimentary terms. Custred stated that “what the United States sees today when it looks at its northern flank is a neighbour that disregards document fraud, maintains lax visa practices, and has the most generous asylum policy in the world. Few asylum seekers are rejected, violators of immigration laws are not vigorously pursued, no one is tracked once inside the country, terrorist groups have the freedom to raise money, criminal enterprises (people smugglers) are establishing a secure territorial base, and endless litigation negates the law and favours criminals.” The study concluded that “Canada is the ‘weak link’ in America’s defence against terrorist operations. US security is only as good as Canadian security since the United States has no control over who comes into Canada and since the border is so easily crossed” (Custred, 2003).

### *The Nixon Center*

A paper published by Robert S. Leiken of the Nixon Center in March 2003 described the Canadian border as “a preferred jihad route to America and to that country’s asylum system.” Leiken added that, while the US system had been relatively secure, the asylum systems in Canada and Europe had been repeatedly abused by terrorists. In a further reference to our refugee system, Leiken noted that the Canadian border (in comparison with the Mexican) was more attractive for entry into the US by jihadists, because of the large Muslim presence and the support networks created by indulgent asylum and other immigration policies in Canada (Leiken, 2004, pp. 115, 129, 131).

Leiken provided further details on the latter point in a Center for Immigration Studies paper released in April 2005. He reiterates that, while far more illegals enter the United States from across the Mexican border than across the Canadian, the latter is of greater concern to the United States from a security perspective and points out that 26 mujahadeen have been identified who have used Canada as a host country, while none has shown up in Mexico. Leiken added that, of these 26, 16 were originally from North Africa and noted that the high correlation between countries in this region and Canada can be attributed to immigration channels. Islamic extremists such as Ahmed Ressam went to France before arriving in Canada, where they settled in and around French-speaking Montreal (Leiken, 2005).

As for statements from senior American officials concerning the extent to which Canada is dealing seriously with problems of terrorism, the tendency has been to be as diplomatic as possible in their public statements. They frequently and quite rightly cite the excellent cooperation between the intelligence and security agencies of the two countries as well as refer to various measures Canada is taking to improve its security. For the most part, the officials have avoided stating explicitly that Canada is not doing enough. Nearing the end of his assignment as American ambassador to Canada, however, Paul Cellucci chose to be more direct. In an interview with CanWest News Service in February 2005, he warned Canadians not to be complacent about terrorism, and stated that it was “inevitable that terrorists would look to Canada as a potential launching pad to get into the US” (Dawson and Fife, 2005). He underlined that “security trumps trade” for US President George W. Bush and that any terrorist attack in the United States or Canada would have serious economic repercussions for the hundreds of billions of dollars in annual bilateral trade. On the subject of how seriously Canadians take the threat of terrorism, he noted that “In the United States ... everybody has a sense that it might happen again and I don’t think that’s the sense in general in Canada” (Dawson and Fife, 2005).

### ***The United States strengthens its border with Canada***

If the above statements leave any doubts about whether or not Americans believe there is a significant threat from the Canadian side of the border, the specific actions that the US authorities are taking should erase them. Between 9/11 and July 2003, for example, the United States tripled the number of border patrol agents at posts along the Canadian border (McCaffrey, 2004; Godspeed, 2003; Seper, 2004). At the Blaine, Washington border sector the Americans have 32 new camera surveillance systems online and 133 agents on staff, two and one half times the number prior to September 11, 2001 (Duff-Brown and Arrillaga, 2005).

A further indication of American concern is the fact that, instead of turning back people who are attempting to cross the border from Canada with fraudulent documents, the Americans are detaining them and laying criminal charges (Nelson, 2004). In contrast with such tough action on the US side of the border, when someone found to be misrepresenting themselves attempts to cross the border into Canada, as an American government report notes, they do not face any ban; they are merely turned away and can attempt to re-enter the country immediately (Library of Congress, 2003a).

Other measures taken by the Americans include the deployment of the US-VISIT (United States Visitor and Immigration Status Technology) program at entry points along our common border. This program involves taking fingerprints and a facial photograph of people seeking entry which are then checked against a data bank of non-American criminal and terrorist suspects. The program has recently been expanded to include nationals of countries who do not require a visa to enter the United States, such as British, French, German, and Australian. While it does not extend to Canadian citizens at this juncture, it does apply to our landed immigrants (and given our propensity to be as inclusive as possible, this has elicited allegations of racism in some quarters in Canada since most of Canada's recent immigrants are visible minorities).

There is no guarantee, moreover, that Canadians in general will not at some stage be subject to US-VISIT fingerprinting and photographing requirements when they enter the United States. The deputy director of the US-VISIT program has described the current exemption for Canadians as "a hole in the perimeter not everyone in the US is pleased with" and has indicated that, while no decision had been taken on whether to include Canadians in the system, such a possibility is being considered (Humphreys, 2004).

### ***Increase in US surveillance capacity along the Canadian border***

Perhaps the most telling evidence of American concern over the potential for illegal penetration of its territory from the Canadian side of the border is the dramatic strengthening of its surveillance capacity. The communications director of the agency responsible, the US Office of Air and Marine Operations, indicated in 2004 that border surveillance bases outfitted with planes, helicopters, and boats had been established to monitor the British Columbia-Washington and the Ontario-New York borders, and that there were plans in place to set up similar operations in the near future in Montana, North Dakota, and Michigan. He explained that “intelligence indicates there is a threat up there [in Canada] that needs to be responded to” and that his organization would not only deal with people smuggling, but with the possibility of terrorists or weapons of mass destruction crossing the border (O’Brian, 2004; *National Post* editorial, 2004).

At a more senior level, Department of Homeland Security Undersecretary Asa Hutchinson declared in December 2004 that “our carefree approach to the northern border... is no longer applicable” (Cockfield, 2004). To illustrate how porous the border can be, Hutchinson said that in the course of a few days in late November 2004, border patrol agents stopped a suspected terrorist lookout, two Canadians who allegedly hid 66 pounds of the drug ecstasy in a spare tire, and a fugitive charged with running an alien-smuggling operation. Hutchinson indicated that his department also may widen the use of electronic fingerprint checks—already in use at some crossings—along sections of the northern border (Cockfield, 2004).

At the congressional level, there have also been expressions of frustration over the inadequate level of the Canadian response to the threat from terrorism. In February 2005, US Congressman Mark Souder, who sits as the senior Republican on the Homeland Security committee, stated that the United States was running out of patience with gaps in Canada’s border security. He explained that “We were hoping that the Canadians were more advanced than apparently they are. We’d like to think that as an advanced Western nation, Canada is committed to devoting some resources to this... We would like to have Canada as a joint partner rather than a junior partner. But if you don’t spend the money, you become a junior partner” (Humphreys, 2005a).

One of the strongest indications that the Americans are not only concerned about security along our mutual border but are prepared to take significant measures to strengthen it came late in 2005 when the House of Representatives voted by a large margin to consider erecting “physical barriers” along the American border with Canada, similar to the fences put in place along their border with Mexico. In commenting on the US vote, a spokesman for Canadian Deputy Prime Minister Anne McLellan (who is responsible for

border security) noted that such barriers have not been part of Canada's security strategy and were not a priority for us (Boswell, 2005).

### ***Canadian laxity at border posts***

In contrast to American action to strengthen their side of the border, the degree to which we guard our side is less than impressive—not that there has been a lack of evidence from Canadian sources about the highly inadequate state of Canadian border security. An internal “risk evaluation” memo prepared by the Canada Border Services Agency revealed that, of the 160 border crossing posts, 103 are “work-alone sites,” which means there is only one person on duty. To make things worse, almost 70 percent of the work-alone sites experience “technical difficulties with their communications tools [e.g., radios not working properly, old equipment, poor cellular reception, dead zones due to geography].” Unlike their US counterparts, Canadian customs inspectors, moreover, are not issued firearms and are instructed to “withdraw when they feel danger” from “unfavourable clients.” According to the CBSA report, even if they are able to get a call out to the RCMP, the latter, too, are understaffed and it takes them 45 minutes to respond, though sometimes they can't respond at all (Hutchinson, 2004).

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Of the 160 border crossing posts,  
at 103 of the sites there is only  
one Canadian on duty.

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Further information came to light on the state of Canadian border security in testimony before the Canadian Standing Senate Committee on National Security and Defence in April 2005 when it was revealed that there were 225 cross-border roads without any guards; long distances between unarmed border agents and police detachments; drunk drivers stopped at major border sites who were freed because they could not be tested by police quickly enough; and large drug, weapons, and cash seizures stored without any armed guards. In a brief presented to the committee by the union representing front-line border officers it was reported that they do not have access to computer databases listing wanted fugitives, terrorists, criminals or others they should watch for, which means, in effect, that they cannot run live computer checks on arriving passengers. The border officers also noted that there were 62 land border crossing sites staffed by agents who do not have access to any CBSA computer databases, which left them unable to run live, computerized checks on the licence plates and names of incoming travellers (Humphreys, 2005b).

A House of Commons committee also heard disturbing information relating to these issues. In March 2005, when it discussed the RCMP decision to shut down nine posts,

the president of the RCMP officers' association told the committee that such action would further compromise security and force US agents to pick up the slack. Also testifying before the committee, the head of the border agents union illustrated the parlous state of border control by pointing out that 1,600 vehicles had driven through entry points in 2004 without bothering to report to customs. His organization recorded that 17 vehicles had "blown" the Lacolle border post, a major crossing in Quebec, over one three-week period in 2004 (Curry, 2005). RCMP Commissioner Giuliano Zaccardelli dismissed such concerns and defended the closings as part of a countrywide plan to create a more mobile team of officers protecting the border. This in turn prompted Conservative MP Peter MacKay to question how fewer detachments would improve border security. In MacKay's view, "We are abdicating our responsibility at the border... All of these [i.e., the weaknesses identified by the above-mentioned employee groups] amounts to less ability for front-line officers to do their jobs to protect Canadian citizens. I'm just astounded as to how you can justify this and say security has actually improved" (Curry, 2005).

In July 2005, Deputy Prime Minister Anne McLellan did, in the event, announce that over the next five years Canada would station an additional 270 guards along the US border (Gordon, 2005c). This was not altogether surprising given that in the wake of the London bombings polls indicated that a large majority of Canadians believe both that an act of terrorism will take place in Canada within the next few years (Doyle, 2005) and that the country is not well prepared to deal with such a threat (Clarke, 2005). The border guards union, however, expressed concern that McLellan's announcement gave no indication of any plans to equip them with sidearms (as had been recommended by a Senate committee) or to end the practice of having border sites manned by only one officer (Gordon, 2005c).

## Areas Where Security Needs To Be Strengthened in Canada

### *The refugee determination system*

In a review of policies relating to the control of our borders and the admission of non-Canadians to our territory, a set of policies that have come under particular scrutiny in relation to national security are those that apply to the refugee determination system. This scrutiny has come about because the refugee system has to date been the channel most frequently used by terrorists to both gain entry to Canada, and to avoid removal once they are here. A survey of Islamic terrorists and suspects in various Western coun-

tries carried out by Robert Leiken of the Nixon Center (Leiken, 2005), found that, in the sample selected, 11 claimed asylum to get into Canada, a further 4 used visas, and two entered the country illegally.

In a review carried out by the author of this paper of press reports on Islamic terrorists and suspects associated with groups such as al-Qaeda who had come to Canada as adults, 16 were found to have entered by claiming refugee status and four to have arrived as landed immigrants. The entry status of the remaining five was not mentioned in the reports.<sup>7</sup>

Another indication of the extent to which terrorists have used the refugee determination system was reflected in a statement by an RCMP spokesman in a report presented at a conference in Montreal in October 2001. He described the situation as follows: terrorists entering Canada all have the same modus operandi: the first step is to claim refugee status, allowing the claimant to remain in Canada while their case works its way through Canada's often cumbersome immigration and refugee regulations. Next come applications for Canadian benefits—welfare and health cards granting access to medical care. That provides a base salary as they establish themselves. The terrorists then typically link with others in Canada who are engaged in crime to boost their income (Humphreys, 2001).

This having been said, it should also be pointed out that the proportion of those found to be terrorists among people making refugee claims in Canada is very small. A further consideration is that extremist groups such as al-Qaeda may be looking increasingly at recruiting terrorists from within Western countries rather than bringing them in from abroad. All of this, however, does not diminish the fact that the refugee determination system has to date been the major channel through which most of them have gained entry and therefore deserves close examination.

The fact that our refugee system continues to be highly dysfunctional and vulnerable to penetration by terrorists has not gone unnoticed in the United States. The above-men-

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7 My survey included only terrorists and suspected terrorists such as those associated with Islamic extremist organizations such as al-Qaeda and similar groups since they are considered to pose the greatest threat to Canada. It is quite possible that members or supporters of the Tamil Tigers have made even greater use of the refugee determination system since members of the Sri Lankan Tamil community in general have been among the most frequent users of this channel of entry. There are, of course, other terrorist groups aside from those affiliated with al-Qaeda and the Tamil Tigers; for example, members of Babar Khalsa and the International Sikh Youth Organization may have entered Canada as refugees. It should also be noted that my selection included only terrorists and suspects who entered Canada as adults and not those who were either born here or came at a young age with their parents as landed immigrants and who developed their extremist affiliations in the course of growing up here or after they had become adults.

tioned studies by the Center for Immigration Studies, the Nixon Center, and the Center for International and Strategic Studies all cite Canada's refugee policies as one of the most serious, if not the most serious, area of weakness that must be dealt with if we are to reduce the terrorist threat in Canada (and, by implication) the risk it poses to the United States.

### ***Public concern over abuse of the refugee system***

In reviewing our refugee system, Canada can take credit for an impressive record of accepting refugees for permanent resettlement. There is widespread public support for us continuing to do so, providing it is done fairly and effectively. In recent years, however, there has been increasing public concern over the fact that the system has been widely abused by people seeking to enter Canada who are not genuine refugees. Although the motives for most of the latter are principally economic, there have also been a number of terrorists among them.

While, as indicated above, most known terrorists have gained entry to Canada as refugee claimants, some have used other channels. Terrorist Mohammad Issa Mohammad, for example, had been given a 17-year sentence by a Greek court for an attack on an El-Al airliner in Athens in 1968 in which a passenger was killed. He was released two years later in an inmates-for-hostages exchange engineered by a Palestinian terrorist group that took over a Greek airliner. After returning to work with a terrorist group for several years following his release, in 1987 he succeeded in entering Canada as a landed immigrant by using a false identity. When his real identity and terrorist background were discovered and he was ordered deported in 1988, he availed himself of the automatic right to launch a refugee claim in order to delay removal. Since then, he has used a variety of appeals and reviews to avoid deportation, his latest being an appeal to a federal court based on the argument that sending him back to his native Lebanon would be "cruel and unusual" punishment because health care services there are not as good as those to which he has access in Canada (Bell, 2004b). His appeals have thus far cost Canadians several million dollars as well as sending out the message that known terrorists have a good chance of staying in Canada indefinitely if they put their minds to it.

### ***More than just a problem with terrorists***

The problems of the refugee determination system go well beyond the fact that terrorists have used it as a way to enter Canada. The current system is dysfunctional in a host of respects. Not only do its deficiencies slow down the processing of genuine refugees, but it imposes major costs on Canadians by dealing with large numbers of claims of questionable merit and by giving permanent status to tens of thousands of people whom other

countries would not consider to be genuine refugees. This paper will examine a range of major problems with the system, some of which bear more directly than others on the ease of entry for terrorists into Canada.

## What Are the Problems with the Refugee Determination System?

### *Stretching the definition*

One development that has had a major impact on the effectiveness of the system is that Canada has stretched the definition of who is a refugee well beyond the original intention of the UN documents on which our system is supposed to be based. The United Nations Convention Relating to the Status of Refugees, adopted in 1951, and the Protocol which followed in 1967, define a refugee as a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

In recent years, however, Canada has expanded the definition of who should be accepted as a refugee well beyond these parameters, with the result that many who are now allowed to stay would not be regarded as genuine refugees by other countries. A large proportion are believed to be simply economic immigrants looking for a more prosperous life who either would not have qualified as regular immigrants, or who have jumped the queue to avoid having to wait their turn as a regular applicant for permanent residence. The existence of this problem was acknowledged in November 2004 by the minister of immigration, Judy Sgro, when she described refugee claimants as economic migrants more than anything else (Jiménez, 2004a).

In consequence of the expansive Canadian policies towards refugee claimants (usually described as “asylum seekers” in other countries) Canada has a much higher rate of acceptance than other nations. A further measure of our generosity is that we take in far more claimants per capita than other countries that accept refugees for permanent resettlement. Whereas our approval rate was close to 50 percent in 2003, the average for 17 other Western countries that receive refugees for permanent resettlement was 14.3 percent. In addition to an approval rate almost three-and-a-half times that of other countries, the total number of refugees we accepted was five times as large in terms of population size (see Appendix A).

### *Ease with which refugee claimants can get into Canada*

Canada's openness with respect to asylum seekers was well illustrated in the period between the events of September 11, 2001 and the end of that year, when the incoming flow continued unabated and we allowed more than 15,000 to make claims, with close to 2,500 coming from terrorist-producing countries including Iraq, Iran, Pakistan, Somalia, Algeria, Albania, and Afghanistan (Bissett, 2002).<sup>8</sup> The Canadian welcome mat continued to remain out for anyone claiming to be a refugee in early 2003 when thousands of people who had been living in the United States came to our border to seek refugee status in Canada as American authorities began checking on whether persons from 34 largely Islamic and Arabic states were in the US legally. The largest nationality among those seeking sanctuary in Canada were Pakistanis, most of whom had been living and working in the US for some years. With no virtually no prospect of succeeding with an asylum claim in the US, and no desire to return to their country of origin, they made the case that they had been persecuted when they left Pakistan as grounds for gaining admission to Canada as refugees. Entering through this channel brought with it not only immediate benefits in terms of welfare and free medical and dental services, but also an almost 50 percent chance of being given permanent residence and citizenship here (as well as little likelihood of being forced to leave if their application failed).

As a result, the number of Pakistani nationals seeking refugee status in Canada ballooned to 2,600 in the first quarter of 2003—more than four times the number of Mexican nationals, who had the second highest total (Bissett, 2003a). Altogether in 2003, Canada granted refugee status to more than twice as many Pakistanis as did all other countries in the world combined (UNHCR, 2003, table 8). While American government agencies responsible for removing illegal aliens were no doubt grateful to their northern neighbour for having relieved them of the expense and effort that would have been involved in locating and removing these people, other US agencies—those responsible for securing the borders of their country—may well have regarded with some concern the ease with which people from terrorist-producing regions could enter and remain in Canada.

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8 Nor was the refugee determination system the only channel through which large numbers of individuals from terrorist-producing countries entered Canada. In the wake of 9/11, when the Americans began scrutinizing more closely applications for student visas from nationals of Middle Eastern countries, Canadian universities were quite ready to take in those who found that the process of getting into the United States had become too demanding. In 2002, for example, the University of British Columbia increased foreign student enrolment by 43 percent, to 4,029, up from 2,814 the previous year, with the highest jumps in applications coming from the Moslem world. Those from Kuwait were up 300 percent; from Saudi Arabia, up 250 percent; and from Oman, up 200 percent (Nuttal-Smith, 2002).

### ***Safe countries of origin and safe third countries***

One key reason for the refugee system's disarray is that it will consider a claim from virtually any non-Canadian who sets foot on our soil. Former head of the Canadian immigration service, James Bissett, has pointed out that the only way to bring some semblance of order to our refugee determination system is to limit access to it to those who have a reasonably good case and that, to achieve this, Canada must put into effect safe country of origin and safe third country provisions as other countries have done (Bissett, 2002b).

### ***Safe countries of origin***

Safe countries of origin are those that are democratic, have a good human rights record, and have signed the UN convention on refugees. Most refugee-receiving nations refuse even to consider refugee claims from nationals of such countries. Canada, however, has no such restrictions. We are, in fact, the only country in the world where Americans are permitted to make refugee claims and, in 2003, allowed 317 to do so. In the same year, Canada also received several thousand claims from people from such countries as Costa Rica, Uruguay, Grenada, and St. Lucia—once again being the only state to do so. While none of the Americans whose cases were decided in 2003 was granted refugee status, and only 38 of the 2,102 Costa Ricans were, applications from nationals of these two countries helped to clog up a system that should be concentrating on people from areas where there is a real possibility of persecution taking place. Even so, the hundreds of applicants from such democratic states as Uruguay, Granada, and St. Lucia enjoyed modest success in that more than 20 percent of their claims to be refugees were approved (UNHCR, 2003, table 8).

### ***Safe third countries***

Under international rules it is expected that people genuinely fleeing persecution will ask for asylum in the first safe country in which they arrive after leaving their homeland. Those who choose not to do this can generally be assumed to be asylum shopping, i.e., looking not primarily for protection from persecution but rather for the countries with high acceptance rates and the most generous resettlement arrangements.<sup>9</sup> The concept

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9 An example of the extent to which the failure to apply safe third country provisions can skew the outcome of a refugee determination system was provided in a statement by the Michael McDowell, the minister of justice of Ireland. McDowell stated in 2003 that the applications of 90 percent of those who applied for asylum in Ireland were found to be unjustified at the end of the process. He added that, of the remaining 10 percent (i.e., those who were granted asylum), 95 percent had trav-

of safe third country, therefore, refers to a country through which a refugee claimant has passed and in which they should have made a request for asylum while en route from their homeland and prior to reaching the country where they finally made a claim. Under international rules, claimants should return to the third safe country through which they passed. Someone from Sri Lanka who travelled through Germany to make a claim in Canada, therefore, should be returned to Germany to apply for refugee status there.

At the time the current Canadian refugee system was designed in the late 1980s, it was intended to provide a quasi-judicial process which would give claimants ample opportunity to make their case, hear the case against them, and make an appeal if their application were refused. All this was premised on Canada implementing safe third country provisions in order to prevent access to the system by large numbers of people who should have made their claims elsewhere.

When the current system was passed into law in 1990, however, pressure from the refugee lobby resulted in the minister of immigration declining to designate any other country as safe for refugees (Bissett, 2002b). In consequence, Canada has been inundated with large numbers of asylum seekers who should not have been allowed to make claims in Canada according to international standards and have swamped a system designed to provide a rather limited number of applicants with relatively detailed hearings. The refugee lobby achieved even greater success in shaping the system according to its interests when the 2002 immigration and refugee legislation was drafted. Rather than simply placing other countries in the safe third category as other states do, the new legislation now requires that Canada conclude a formal agreement with the country in question—which, of course, makes the whole process much more complicated, if feasible at all.

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In 2003 Canada gave refugee status to 1,749 Sri Lankan asylum seekers—more than the total accepted by rest of the world combined.

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### ***Canada-USA Safe Third Country Agreement***

As a result of all these factors, Canada has in place only one safe third country agreement—that with the United States. Under this agreement, many individuals who would previously have been able to come to Canada from the US to make refugee claims now have to apply to the Americans for asylum. In like manner, anyone in Canada who might wish to cross the border to make a claim in the US now has to make their claim here. The

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elled through (refugee) convention countries (i.e., safe third) and were not really entitled to seek asylum in Ireland because it was not the first safe country they had reached. In effect, McDowell was saying that only one claimant in 200 deserved to stay in Ireland as a genuine refugee (Lucey, 2003).

agreement, however, contains a number of exceptions which allow certain categories of people who are in the United States to continue to be able to seek asylum at the Canadian border. These include claimants accused or convicted of crimes punishable by death in the United States or any other country—which, as James Bissett has pointed out, ensures a welcome in Canada for just about any terrorist or murderer in the world (Bissett, 2002c).

Other exceptions under the agreement are underage children travelling on their own in the US. They can still make claims in Canada (which seems to imply that the Americans are unable to take care of such minors), as can anyone who has a relative in Canada (thus providing a means for people to get relatives into Canada as refugee claimants whom they would not have been eligible to sponsor as immigrants). There is also provision for individuals who have successfully crossed the border illegally to make claims when they are inside Canada. As critics have pointed out, this encourages people to put themselves at risk by attempting potentially dangerous illegal crossings in order to get around the system.

### ***Claimants go back to their countries of origin for visits***

An indication of Canadian laxity in granting refugee status is the frequency with which claimants from some countries go back for visits even though their applications were based on the argument that they were unsafe there and had to flee. Such activity has been particularly common among Sri Lankan Tamils making refugee claims in Canada. According to the records of the consular section of the Sri Lankan High Commission in Ottawa, more than 8,600 Sri Lankans with refugee claims pending in Canada applied for travel documents to visit Sri Lanka in a single year (Kaihlal, 1996).

In comparison with Canada, other countries have accepted relatively few refugee claims from Sri Lankan Tamils as they do not consider them to have been persecuted. In 2003 Canada accepted 1,749 Sri Lankan claimants (UNHCR, 2003, table 8), while the rest of the world combined gave refugee status to only 1,160. Canada's acceptance rate was 76.3 percent, while the average for other countries was 15.8 percent. The UK accepted 2 percent of those making claims and Germany less than 4 percent. Altogether Canada accepted over 37,000 claims from Sri Lankans between 1989 and 2004, far more than from the nationals of any other country in the world.<sup>10</sup>

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10 One of the reasons why Sri Lankan Tamil refugee claimants have a much higher success rate in Canada than elsewhere is that we accept their claims that they will be in danger if forced to return to Sri Lanka. Yet an internal Citizenship and Immigration Canada communication noted that "returnees (to Sri Lanka) are dealt with professionally, and unless there are outstanding criminal warrants, deportees and other returnees are simply returned to the community on arrival after brief

### ***We lose track of thousands ordered removed***

Another major problem with the refugee system is our failure to track and ensure the departure of those ordered removed. In April 2003, the Auditor General of Canada, who has not hesitated to point out shortcomings in the system, chided the federal immigration department, whose enforcement program it described as being “under increasing stress,” for failing to keep track of 36,000 people ordered deported during the previous six years (Auditor General, 2003). These numbers have since increased to more than 45,000, of whom most are failed refugee claimants. While Canada is not the only Western country with such problems,<sup>11</sup> our situation is not helped by the fact that we detain relatively few people after they are ordered removed and, by not doing so, make it far less certain that they will leave the country. Only half of the persons ordered removed even bother to show up for their removal hearings, according to the Auditor-General.

One aspect of the government's poor performance in this area that has attracted widespread media attention is its failure to remove war criminals. When the *National Post* revealed in 2003 that Ottawa had lost track of 59 war criminals who were under deportation orders, security authorities asked that they be provided with their names, pictures, and birthdates to facilitate their apprehension (Friscolanti, 2003a). The federal minister of immigration declined to release this information, however, on the basis that according to Canada's privacy act it would infringe on the right to privacy of those being sought—a position that was described as “silly” by Toronto's chief of police since, in his view, public safety was more important than the privacy rights of war criminals who had, in any event, broken Canadian law by failing to appear at their own immigration hearings (Bell, 2003a). Despite expressions of concern, by October 2004 the number of missing war criminals had risen to 125 (Bell and Friscolanti, 2004).

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and professionally conducted interviews. Other countries have successfully returned large numbers of failed asylum seekers, and Sri Lanka is a safe destination for unsuccessful refugee applicants” (Obtained through an access to information request by Vancouver lawyer, Richard Kurland, in November 2004). In January 2006, the Immigration and Refugee Board upheld an order to deport Sri Lankan Jeyaseelam Thuraisingam, a Tamil Tiger supporter and leader of a street gang in Toronto. In response to his lawyer's claim that he would be mistreated if sent back to Sri Lanka, the IRB noted that more than 100 Sri Lankans had been sent back to their homeland and none had been mistreated as their lawyers had claimed they would be (Bell, 2006b).

11 The United States also, for example, has a less than impressive record when it comes to removing those ordered deported. One estimate puts the number on the current list of those who have failed to appear for their deportation at between 300,000 and 400,000 (Vaughn, 2005).

## *Failed refugee claimants avoid removal*

### **Risk of torture argument**

In cases where failed claimants make a determined effort to establish a legal basis for remaining in the country, their track record in prolonging their stay for lengthy periods, or even indefinitely—while not perfect—is quite impressive. An example is Mohammad Issa Mohammad, cited above. A particularly widely-used device that refugee lawyers employ is to argue that their clients will face torture if forced to return to their homelands. Making such a claim has become increasingly common since the entry into force of the United Nations Convention Against Torture.

In the case of terrorists, many of the countries to which they are likely to be returned do, in fact, have a less than perfect record when it comes to the use of torture to extract information. It is hardly surprising, therefore, that lawyers raise this issue in an effort to prevent the removal of their clients. They were, moreover, given some encouragement by the Supreme Court in pursuing the “risk of torture” argument when it ruled in January 2002 that the federal government could not deport even terrorists to their homelands if there were a “substantial” risk they would be tortured. To do so would violate the terrorists’ constitutional guarantee of life, liberty, and security as provided for in the Charter of Rights and Freedoms (Bell, 2003b).

Faced with a similar predicament, Britain has begun concluding agreements with such countries in an effort to ensure that deportees will not be tortured, executed, or otherwise mistreated (al-Khalidi, 2005). Critics of these efforts have argued that there is no reason to believe that these countries will not ignore these undertakings once a suspected terrorist has been returned to them, particularly if they consider it important to their own national security to find out how much he knows. Presumably, however, if deporting countries keep track of the fate of deportees, they will be able to determine fairly accurately if the receiving country is respecting its undertakings and, in the event it is found that it is not, they can suspend future deportations to that country.

The Canadian government has, in fact, not been completely without success in removing failed refugee claimants and terrorists in cases where the “risk of torture” argument has been invoked. In 2002, Mansour Ahani argued before the Supreme Court that he would be tortured and killed if he were returned to Iran. Despite this, the court decided that the risk to our national security took priority over the possibility of him being subjected to torture. His lawyer and supporters condemned his removal as a clear transgression of his human rights and the United Nations Human Rights Committee later criticized Canada for its excessive haste in removing him (Bell, 2004c) despite the fact that he had already been able to delay his removal for nine years through various appeals. A subsequent

investigation by the *National Post*, however, revealed that, after being detained briefly by Iranian officials on his arrival in Tehran, he had for several months been living safely with his parents and looking for a job. He also admitted that the case he had made for acceptance as a refugee in Canada had been false (Bell, 2003b).

Nevertheless, future prospects for the government being able to deport someone when the “risk of torture” issue is raised appear problematic to say the least. As mentioned in the earlier section of this paper on security certificates, in February 2005, a federal court judge struck down a government decision to deport someone to Egypt who was alleged by CSIS to be a high-ranking member of an Egyptian terrorist group on the basis that deporting anyone to face torture would shock the Canadian conscience and violate fundamental justice (Duffy, 2005).

### **Difficulty in deporting criminal suspects**

The Canadian government’s difficulty in removing failed refugee claimants is by no means limited to terrorist suspects who argue that they may be tortured. Its difficulties also extend to individuals charged with crimes in other countries who are determined to use all avenues available to them in Canada to avoid extradition. An example is the case of Lai Changxing, whose return has been requested by the Chinese government for having amassed a fortune of several billion dollars allegedly through smuggling operations. After his lawyer argued that he would be executed if sent back to China, Canada obtained assurances from the Chinese government that this would not happen if he were returned. In the event, his claim for refugee status was rejected by the IRB and the federal court subsequently turned down his request to stay in Canada because it did not find convincing his claim that he would be tortured if sent back to China. His lawyer did not appear overly dismayed by this turn of events, however, and predicted that Lai’s opportunities to avoid removal could continue “for many years” (Fong, 2004). There has been no indication to date that he will be made to leave Canada in the foreseeable future.

Another case related to criminal charges is that of Rakesh Saxena, an Indian national whom Thailand has been trying to extradite from Canada since 1996 on charges of having embezzled \$88 million from a Bangkok bank where he worked as treasury adviser. He was initially released on bail in Vancouver but the bail was revoked in 1998 after he allegedly try to obtain a fake passport and threatened a witness. Subsequently, however, he convinced a judge that he should be allowed to remain in his luxury condominium while being guarded by private security guards for whom he reportedly pays \$30,000 a month. In June 2005, reports surfaced that Saxena had recently been involved in a multi-million dollar investment swindle during the period he has been fighting extradition (Baines, 2005a). It now appears that Saxena could eventually succeed in being

released and remaining in Canada after having availed himself of a variety of legal avenues to block his extradition to Thailand over a period nine years (Baines, 2005b).

Nor were difficulties in removing people limited to those alleged to have committed crimes in other countries. It has been equally difficult to deport individuals convicted of criminal activity in Canada. In October 2001, in a massive operation involving 400 police officers, more than 50 alleged members of Tamil gangs, all non-Canadians with criminal records, were arrested in Toronto with the object of deporting them to Sri Lanka. After more than two years, Canadian authorities had succeeded in removing only two of them. The cases of those still in Canada were bogged down in appeals launched by refugee lawyers, and 41 of those slated for deportation were, by 2003, back on the street (Bell, 2003c; Bell, 2003d). One of those still in Canada, Sanththijesvaran Kathiravelu, who had been caught in Toronto with an AK-47 assault rifle and sawed-off shotgun that police believe were meant for a murder, was a member of a Tamil gang responsible for killings, assaults, extortion, and drug trafficking. Since his arrest in 2001, however, he had married and fathered a son in Canada. The refugee board official hearing his case in 2004, accordingly, set aside his deportation order on the basis that his removal would cause undue hardship to his family (Bell, 2004d).

Another case where there are problems removing someone involved in criminal activity in Canada is that of Massoud Boroumand. After arriving in this country in April 1988 and making a refugee claim, he was arrested in Toronto in July 1991 on charges of being part of an international heroin trafficking ring and convicted on three counts a year later. He was first ordered deported in February 1993 because of his heroin convictions. He lost his refugee claim a year later as well as a review by the federal court in September 1994. He was again rejected in February 1995 after a pre-removal risk assessment determined that he would face no undue risk if returned to Iran. Following that ruling, he got married and disappeared, violating both the immigration orders against him and his parole conditions (Bolan, 2005c; Bolan, 2005d).

The Canadian authorities then lost track of Boroumand until 2002. That year they arrested him while he was being driven around in a Rolls Royce in the company of the leader of an Iranian gang that, according to the RCMP, is involved in kidnapping, extortion, money laundering, and drug trafficking. Boroumand was ordered to be held in custody after a hearing in September 2003 but released in October 2004 following an

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When the Canadian government lost track of 59 war criminals under deportation orders in 2003, it refused to provide the police with details of those being sought on the grounds that it would infringe on the latter's right to privacy.

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immigration department review that reversed the 1995 decision and concluded that he could, after all, face persecution if deported to Iran. In the judgement of one Member of Parliament, the fact that a convicted heroin trafficker was free despite a decade-old deportation order made a laughing stock of the Canadian immigration system. He described the Canadian refugee system as “dreadfully abused” and one designed so that anybody who wants to exhaust a deportation order can do it and will do it (Bolan, 2005e).

In some instances, the courts themselves have played an active role in making it difficult to remove criminals. A case in point is that of Sri Lankan refugee, Sritharan Kanthasamy, who was sentenced to two years imprisonment for rape following two earlier criminal convictions. When he appealed his conviction and his lawyer argued that if he returned to Sri Lanka he might be in danger, the appeals court judge reduced his sentence by one day so that he would not be subject to the mandatory removal a full two-year sentence would have required and would therefore be able to make a further appeal to remain in Canada (Hansen, 2005). A similar case occurred later in 2005 when a Vietnamese national, Quoc Ai Mai, was sentenced to two years imprisonment after being found guilty of importing 1,728 kilograms of marijuana from Ecuador. He had previously been convicted on drug-related charges in 1992 and ordered deported but was able to stay in Canada after a successful appeal in 1998 to the Immigration and Refugee Board. The two-year sentence in the latest conviction carried with it a deportation order with no right to appeal. The British Columbia Court of Appeals, however, chose to reduce the sentence by one day in order to give him a further opportunity to prolong his stay in Canada (Tanner, 2005; *Vancouver Sun* editorial, 2005).

### ***Multiple appeals and the effect of the Singh decision— The Charter of Rights and Freedoms***

One of the principal reasons why refused refugee claimants are frequently able to delay their removal for many years is the outcome of a Supreme Court of Canada case in 1985 known as the Singh decision. The decision, which was taken in response to an appeal by seven failed refugee claimants, made reference to the provision in the Charter of Rights and Freedoms that accorded fundamental rights and justice to everyone. The Court ruled that, on the basis of Section 7 of the Charter, claimants were entitled to the same fundamental justice as Canadian citizens, i.e., even though they were not Canadians and may have entered the country illegally, they enjoyed the same basic legal rights and protections as Canadians.

More specifically, in making its decision, the Court decided that refugee claimants were entitled to an oral hearing in which they would be able to hear the government's case as to why they should not be granted refugee status and also have an opportunity to

respond to it. A senior federal public servant and former deputy minister of immigration, John L. Manion, warned the government when the Charter was still in draft that the proposed wording of Section 7 of the Charter (which granted fundamental justice to “everyone” rather than only to “Canadian citizens”—the term used in other sections of the

document) would allow anyone on our soil, whether here legally or not, to use the provisions of the Charter to avoid removal (Manion, 1999). Manion was told at the time that his concern was unwarranted and his advice was ignored.

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The Supreme Court of Canada *Singh* decision in 1985 “destroyed any immigration control, and made Canada the laughing stock of the rest of the world and the destination of too many footloose criminals, terrorists and social parasites.”  
—John L. Manion,  
former Deputy Minister  
of Immigration

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Not long after the Charter came into effect, however, the *Singh* decision was taken and Manion’s concerns were proven to be justified. In his words, it “destroyed any real immigration control, and made Canada the laughing stock of the world, and the destination of too many footloose criminals, terrorists, and social parasites” (Manion, 2001).<sup>12</sup>

One of the major effects of the *Singh* decision has been that the refugee determination system is a good deal more complex and attenuated than the past. While critics generally agree that the decision has been a major reason why the refugee system is so dysfunctional, they are divided on whether its revocation would be sufficient or even essential to

rectifying the situation. In Manion’s view, the wording of the relevant section of the Charter was never intended to provide the same legal rights to non-Canadians who entered the country illegally as it did to Canadians. While a remedy is provided within the Charter itself to deal with such situations (i.e., Section 33, the so-called “notwithstanding clause”), the Liberal party, which was in power from 1993 to 2006, showed no disposition to invoke the clause under any circumstances, even in cases such as this where an obvious error had been made. Before his party was defeated in the January 2006 federal election, Prime Minister Paul Martin went as far as to propose that the “notwithstanding clause” be scrapped completely (Greenaway, 2006). As the party that was in office when the Charter was drafted, moreover, the Liberals assiduously promote the idea that the document is sacrosanct and that any suggestion that parts of it may need to

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12 Manion’s description of the situation was contained in an unpublished letter of August 11, 1999, which he sent to the minister of immigration, Elinor Caplan, a copy of which was made available to the author. Further comments by Manion on the impact of the *Singh* decision on the refugee determination system were made in testimony before a Senate committee on October 3, 2001 (Manion, 2001).

be revisited constitutes a veritable assault on Canadian values, including the rights of minorities.

At least one other solution has been suggested to rectify the problems created by the Singh decision. With respect to the section of the decision granting refugee claimants an oral hearing, immigration policy critic Charles M. Campbell has pointed out that the essential requirements flowing from the decision could be met by a relatively simple hearing conducted by an immigration officer and that the more formal and complicated proceedings of the Immigration and Refugee Board are not essential. Campbell makes the case that there is already a precedent for a more limited interpretation of the Singh decision in a judgment of the British Columbia Court of Appeal, also from 1985 (Campbell, 2000, pp. 73-74, 94-95). In the circumstances, Campbell's proposal might provide a much more politically acceptable route than trying to invoke the highly contentious notwithstanding clause. By the same token, it can be assumed that any attempt to simplify the current system in a manner that reduces the role of lawyers will meet with fierce resistance. In the judgments of Manion and James Bissett, the current refugee determination system costs Canadian taxpayers billions of dollars a year. Those with a vested interest in retaining many of its current features are, therefore, unlikely to accept major changes that would adversely affect the extent of their involvement and benefits without a fight.

### ***Minister of Immigration Judy Sgro questions the need for so many appeals***

For a long time the refugee lobby, and particularly the lawyers, were allowed to make their case for more and more appeals without challenge. Finally, in November 2004, Minister of Immigration Judy Sgro acknowledged the obvious, i.e., that there were already too many appeals for those whose claims had been rejected by the refugee board. In commenting on the fact that Canada's refugee determination system is subject to blatant abuse by economic migrants and is in need of a major overhaul, she recommended reducing the number of avenues of appeal available to failed claimants in order to make it possible to remove them more quickly (Jiménez, 2004a). Sgro's assessment of the situation was, however, challenged on the basis that, while it was true that there were a variety of appeals or reviews available, none of them was based on the actual substance of the claim (Dauvergne, 2004). Arguments along this line were also used in efforts by refugee lawyers and advocacy groups lobbying to get the government to implement a provision in the 2002 immigration legislation that would establish an appeals division in the Immigration and Refugee Board.

While it can be argued that the some of the appeals and reviews now available often do, in fact, involve a consideration of the merits of the claim, the argument that failed claimants should have at least one review of the substance of their case is not unreasonable. The fact is, however, that the establishment of an appeals division at this stage would also ensure that the determination process becomes even more drawn out than it is at present. What needs to be undertaken is a total overhaul of the system that will provide for a one-stop appeal that would include a review of the merits of the case as well as all the various other considerations addressed in the current array of appeals.<sup>13</sup>

### ***Seeking sanctuary in churches***

In addition to mounting legal appeals of one kind or another to delay their removal, failed claimants have also achieved considerable success by appealing directly to the sympathy of the Canadian public. One avenue has been to find a church prepared to give them sanctuary in the expectation that the Canadian authorities will be reluctant to force their way into the church to apprehend them. During their stay, failed claimants also have an opportunity to get to know members of the congregation and are usually able to generate a good deal of sympathy for their case as well as attract media attention. The success rate of those seeking sanctuary in churches is impressive. Although in all such cases the government had already determined that the individuals involved were not genuine refugees, it has usually capitulated in the face of public pressure and allowed them to remain in Canada. One study found that, of 261 failed claimants who sought sanctuary in churches over a period of 20 years, 70 percent were successful in obtaining permission to stay (Jiménez, 2004b).

### ***Moratorium on removals to Algeria***

Public demonstrations have also proven successful in getting decisions reversed. For several years in the late 1990s a moratorium was in place on the removal of people to Algeria because of the continuing violence in that country. In 2002, Ottawa cancelled the moratorium because the situation in that country had improved to the extent that it was judged that there was no longer undue risk to those ordered to return. Many of the latter, however, preferred life in Canada and began mounting aggressive demonstrations,

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13 Stephen Gallagher notes that the United Kingdom has introduced just such a “one-stop” system in order to ensure that multiple appeals are not used to stave off deportation. He also points out that, in the case of claimants coming from a good many countries, appeals against a refusal can be made—but only from outside the United Kingdom (Gallagher, 2003). With such a system in place, we would still be according claimants the right of appeal while denying them the advantages of using it to extend their stay in Canada.

including the occupation of the office of the minister of immigration, in order to gain support for their being allowed to stay. The government once more gave in and created a special program under which their cases could be reviewed. In the event, 93 percent of those who applied under the program were granted permanent residence status in Canada (Canadian Council for Refugees, 2005).

### ***Frequent re-entry of deportees***

In addition to the problems involved in removing people who have been ordered deported is the issue of those who have been deported but who manage to re-enter Canada with relatively little difficulty. News reports in late 2004 described cases of two Americans who had been removed and were successful in re-entering Canada 32 times (Hall, 2004) and 20 times (Godfrey, 2004) respectively.

### ***People smugglers***

One aspect of the refugee determination system that should be of considerable concern to Canadians is that a large proportion of those who come here to make claims are believed to have been assisted in their entry by international criminal organizations. Various international bodies believe these organizations are making billions of dollars a year through such illicit activities. One expert on the subject, Corporal Fred Bowen of the RCMP, has estimated that up to 90 percent of refugee claimants accepted by Canada came here with the assistance of professional smuggling gangs (Kaihla, 1996).

A related issue is that many refugee claimants arriving in Canada do so with no documents or with false documents. A report by the Auditor-General of Canada stated that in 2000 close to 60 percent of those who made refugee claims were in this category (Auditor General, 2003, Section 5.95). Refugee advocates maintain that this is hardly surprising since refugees are frequently unable to obtain legitimate documents from their own authorities before fleeing their homelands. The fact is, however, that virtually all who arrive in Canada have passed through safe third countries on their way here, and have used some kind of travel document to do so. If they came by air, they would not have been allowed to board the flight without a travel document, and yet have unaccountably lost it during the voyage. It is assumed that in many cases the claimant handed it over during the last leg of the journey to an accompanying courier of the smuggling ring so it could be recycled in future smuggling operations. A further reason for arriving without proper identification is to make it more difficult for the Canadian authorities to establish a claimant's country of origin to which they should be returned if they are found not to be genuine refugees.

Nor have the numbers thought to have been brought in by smugglers decreased in recent years. According to a Citizenship and Immigration Canada note released in 2004 through access to information, in 1998, the department estimated that up to 15,000 people arrived in Canada each year with help from smugglers and that the current figure is believed to be in the same range or greater (Bronskill, 2004). Adding to concern over the continued use of criminal organizations by refugee claimants are reports that al-Qaeda is using organized crime gangs to smuggle terrorists into Europe in ever-increasing numbers and is taking advantage of Europe's relatively liberal asylum laws (Geiger, 2004). Given Canada's even more generous refugee system, it is not unreasonable to expect that the same is happening here.

### ***The use of detention***

Other countries, such as Australia, have faced up to obvious efforts at deception by claimants who have somehow managed to lose their documents before deplaning from a flight originating abroad. In Australia, these claimants are detained until the authorities are reasonably satisfied as to their identity, where they came from, and that they do not pose a threat to national security.

One of the few areas where Canada's Immigration and Refugee Protection Act, which went into effect in June 2002, has improved rather than weakened our capacity to protect our borders was in strengthening the grounds for detention. Those grounds now include cases where individuals are uncooperative and fail to establish their identity. This addition, along with enhanced screening measures and technology, and combined with improvements in both domestic and international sharing of information, has led to an increase in annual levels of detention from less than 10,000 prior to fiscal year 2001-2002 to more than 13,000 in 2003-2004. Most of those detained were, however, released fairly quickly, with few being held for more than two or three weeks. A further indication that the Canadian government is not particularly enthusiastic about the use of detention is the fact that it only has enough dedicated places to hold 300 people—not a very large number when viewed in relation to the fact that we take in over 200,000 immigrants a year as well as thousands of refugee claimants. Very often federal authorities end up having to negotiate for provincial jail space at a cost of about \$200 a day for each offender (Freeze, 2005a).

### ***Claimed security improvements in the new legislation***

When the Immigration and Refugee Protection Act was presented to Parliament in the wake of the events of 9/11, the minister of immigration claimed that it would signifi-

cantly improve security not only because of the more extensive provisions for detention described above, but also because security checks on asylum seekers would be initiated when they made their claims rather than when they were granted refugee status. While up-front security screening does constitute an improvement over previous arrangements, it falls well short of providing adequate security to Canadians. Refugee claimants who could constitute a threat to national security may not, in fact, be on any existing watch list and will be released into Canadian society until their claim is heard (which usually takes place months later). It may be some time before it is known if they have terrorist connections and by then it may be difficult even to locate them, quite apart from determining what kind of activities they have been involved in. A significant proportion of refugee claimants do not, in fact, bother to show up for their refugee hearings and their whereabouts usually remain unknown.

### ***The Immigration and Refugee Board***

One of the most serious problems with the refugee determination system in Canada arises from the composition of the Immigration and Refugee Board, the government agency that makes the initial determination of whether an applicant should be granted refugee status in Canada. Apart from questions about why Canadian approval rates are far higher than those of other countries, the glaring inconsistency of approval rates among various IRB offices raises serious questions about the competency and fairness of the organization. The 1997 Auditor General of Canada's report noted, for example, that in 1996 the acceptance rate for claimants from one particular country was 4 percent in one regional IRB office, yet 49 percent and 82 percent in two others. In the case of nationals of a second country, the acceptance rates at these same offices were 39 percent, 70 percent, and 85 percent respectively (Auditor General, 1997, section 25.94).<sup>14</sup> The report provided details on a wide range of problems with the refugee determination system and concluded by cautioning the government against making patchwork changes since a thorough review of the entire claim process was needed. There has, however, been only limited improvement in the interim and, in some respects, the system has become even more dysfunctional.

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14 Nor does the track record in terms of the consistency of IRB decisions appear to have improved greatly since the Auditor General's report was released. A *Globe and Mail* article in July 2004 noted that some members rejected all claims put before them while the approval rate for others was over 80 percent (Jimenez, 2004c).

### *Political appointments to the board*

One of the most obvious reasons for such an inconsistent performance is that the members of the Immigration and Refugee Board have been political appointments. Though they include some very able individuals, some are simply patronage appointments of individuals who frequently lack the necessary background and training, and in some instances are simply incompetent. A significant number are drawn from organizations or professions that have a vested interest in the refugee system—hardly a prescription for ensuring disinterested decisions.

The government-commissioned *Immigration Legislative Review* released in December 1997 recommended that the refugee determination process be handled by career civil servants who, following extensive training, would be professional and expert in refugee and international human rights law and in the procedures for making fair, legally sustainable, and consistent decisions on claims for Canada's protection (Minister of Public Works and Government Services Canada, 1997, p. 84). In contrast with decisions on refugee claims being made by political appointees in Canada, in other countries, such as Australia, the UK, and the US, the first determination is made by public officials who are intensively trained, closely monitored, and effectively directed (Gallagher, 2003, pp. 20-22).

In March 2004, the government improved the situation somewhat by introducing new procedures for selecting appointees to the IRB in an effort to establish more uniform and professional standards as well as diminish the part that political patronage has often played in appointments. Unfortunately, however, groups with a vested interest in maintaining high acceptance levels and keeping the system as wide open as possible were given a key role in the process when it was decided that candidates' applications would be screened by an advisory panel of lawyers, academics,<sup>15</sup> members of organizations that assist newcomers to Canada, and human resources experts. While, therefore, the new selection process may ensure that candidates for the board bring with them more professional expertise, a built-in bias favours the selection of appointees inclined to be particularly generous in their decisions (Citizenship and Immigration Canada, 2004).

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“Virtually anyone refused admission or discovered overstaying in Canada can claim recognition as a refugee. This makes rapid determination of well-founded cases impossible.”  
—Nielsen Task Force

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15 Most academics involved in asylum policy are strong advocates of introducing even more generous guidelines for refugee claimants than we have at present.

### ***The refugee system is unfair to immigrants, genuine refugees and Canadians in general***

The shortcomings described above are only part of the problem. The fact that many claimants whose cases have little merit are able to enter Canada without difficulty and almost immediately begin receiving benefits is manifestly unfair to the thousands of people who pay their fees and apply to come here through the normal immigration channels. It is also unfair to genuine refugees whose processing is slowed down by a multitude of cases that should not even be considered. Nor does it come without major costs to Canadians in general. In testifying before a Senate committee in October 2001, John L. Manion estimated that the refugee claimants cost Canadians in the region of \$2 to 4 billion a year (Manion, 2001); James Bissett has pegged it at \$3 billion a year (Bissett, 2004).<sup>16</sup> What is particularly disgraceful is that, in comparison, Canada gives only a pittance to the millions of refugees languishing in camps in developing countries. Our contribution to the latter comes to only about one dollar a year per person compared to estimates of \$50,000 or more spent on each claimant in Canada.

### ***Why haven't the failings of the refugee system been dealt with?***

The failure of successive Canadian governments to rectify the serious problems afflicting the refugee determination system has not been for lack of information on what needs to be done. Successive Auditor-Generals' reports have described the shortcomings of the system in scathing terms (the 1990 and 1997 reports in particular). Nor have the Auditors-General been alone in their criticisms. A report of the Law Commission of Canada in 1991 detailed how dysfunctional the IRB had become, while the Immigration Legislative Review in 1997 reported a host of shortcomings and made major recommendations for reform—most of which have been ignored. As long ago as 1985, a task force under Deputy Prime Minister Eric Neilson described in detail just how far the existing system had strayed from effectively serving the interests of refugees and Canadians.<sup>17</sup> The Neilson report summarized the disarray of the refugee determination system by stating that “what can best be described as an assault on our system for refugee asylum and appeals has led to a situation where virtually anyone refused admission or discovered

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16 While the government is, no doubt, less than pleased at having figures of such magnitude bandied about—and both Manion and Bissett readily acknowledge that they are ball-park estimates—the government has shown no inclination to challenge them with figures of its own, because whatever they might produce, if comprehensive and accurate, would be very high.

17 For information on the report of the Neilson Task Force with regard to the refugee system and summaries of other critiques of the system, see Campbell, 2000, chapter IV.

overstaying in Canada can claim recognition as a refugee. This makes rapid determination of well-founded cases impossible.”

There has also been no shortage of well-informed individual critics who have pointed out the need for major reform in the refugee system. As part of a study for the Atkinson Foundation, author and journalist Daniel Stoffman wrote a paper on the subject and published a series in the *Toronto Star* in 1992 on what was wrong with both our immigration and refugee policies. He followed this with a book in 2002 in which he detailed how most of the problems he had described 10 years earlier were still unresolved (Stoffman, 2002). After serving on the refugee board for 10 years, including 8 as a vice-chairman, Charles M. Campbell pulled no punches in describing the failures of the system in a book released in 2000 (Campbell, 2000). Journalist Diane Francis of the *Financial Post* has written a good many columns as well as a book that details problems with the system (Francis, 2002).

A number of former senior public servants familiar with the workings of the refugee system have also clearly identified the need for major changes. James Bissett, who served both as ambassador to various countries and as executive director of the Canadian immigration service from 1985 to 1990 (during which period he helped draft the legislation establishing the Immigration and Refugee Board) has written a number of trenchant articles on why the present system functions so badly. John L. Manion, who served in the immigration department for 30 years (including as deputy minister) and subsequently as secretary of the treasury and associate clerk of the Privy Council, has also identified major changes that need to be made. William Bauer, another former ambassador as well as member of the IRB for several years, has written extensively on the subject and, like Bissett, Manion, and myself, has made presentations to parliamentary committees calling for a major overhaul of the system. Among academics, Stephen Gallagher, who teaches at Concordia University, has published a comprehensive assessment of the problems of the Canadian refugee determination system in comparison with those of UK, USA and Australia (Gallagher, 2003).

### **Refugee lobby**

Unlike immigration policy, where political parties are often influenced by what they think may get them the most votes from immigrant communities, there is relatively limited interest in refugee policy as a means of gaining electoral support. Policies in this area have, however, been heavily influenced by refugee support groups and immigration lawyers. There is no shortage of highly articulate and effective spokespersons lobbying the government to introduce standards that are even more wide open than our current policies—considered by many to be the most generous in the world. Sometimes referred

to by the government as “stakeholders” in the system, these two groups have been, in large measure, successful in turning refugee policy in directions that suit their interests and priorities. Examples of their effectiveness are to be seen in their above-mentioned successes in lobbying the government not to designate any countries as “safe third” in the early 1990s and, more recently, in getting the government in the most recent legislation to require that an agreement be concluded with another country before it can be designated as a “safe third.”

These lobbyists cannot, however, claim a perfect record in their efforts to influence government policy. After successfully pressuring the government to include in the new laws the provision for an appeals division in the IRB, Ottawa has yet to bring it into force—despite the objections of refugee lawyers and advocacy groups. A major reason for the government’s reluctance to implement this provision is, no doubt, increasing public awareness of the failings of the system in general and of specific instances in which it has been seriously abused. One fairly recent poll, for example, indicated that 71 percent of Canadians surveyed believed that the refugee system requires a “major re-think” while only 26 percent thought it was working well (Jiménez, 2005c).

On occasion, the government has endeavoured to strike a compromise of sorts between recognizing the public’s concern over the system’s failings while continuing to cater to some extent to the refugee lobby. The government made such an attempt in the summer

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The measures we need to take are necessary for our own security and sovereignty quite apart from helping to ensure that our border with the United States remains open for the movement of goods and people.

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of 1999 when almost 600 people from China were apprehended in four boats off the coast of British Columbia over a period of several weeks. Following their capture as they attempted to enter Canada illegally and their admission that they were being smuggled into Canada in order to be smuggled across the border into the US, they were given advice by the Canadian authorities on how to make a refugee claim. After the first boatload had registered their claims and were released pending their hearings, 70 percent disappeared—presumably because they considered it more profitable to continue with plans to

enter the United States illegally. Their arrival had attracted a good deal of media attention and their subsequent disappearance raised questions in the public’s mind about whether the refugee system was working properly. Consequently, the minister of immigration ordered that those on board the next three boats be detained until their hearings had been completed and, if these were unsuccessful, until they could be returned to China.

The detention of people from the last three boats predictably caused an outcry from their lawyers and from human rights activists who argued that Canada was unfair to detain them. In this instance, however, the government stuck to its guns and kept them in detention. What it did not do, however, was detain the even larger numbers of Chinese coming in by air to claim refugee status. Since the latter arrived in much smaller groups and attracted little public attention, almost all were released even though, in the case of those arriving by air in British Columbia, 70 percent of them also disappeared (Lee, 1999). Without public pressure to do otherwise, Ottawa's preference was clearly to avoid confrontation with the lawyers and advocates rather than serve the best interests of the country.

Another notable feature of those in the refugee lobby has been their success at depicting themselves as strong supporters of human rights and their opponents as lacking in sympathy for the downtrodden. They frequently argue that a failed claimant is likely to face imprisonment, torture, and even death if made to leave Canada—even if there is little evidence that such has been the case with those previously made to leave. Many refugee advocates argue that the benefit of the doubt should always be given to the claimant—which on the face of it may not seem entirely unreasonable. When, however, one takes into account the facts that most receiving countries consider the vast majority of claimants not to be genuine refugees and that most of those coming to Canada could have applied in other countries, the argument that we should always give the benefit of the doubt to questionable claims becomes much less compelling.

One prominent Canadian human rights advocate, Julius H. Grey, has argued in this regard that in the case of refugees we should apply the criminal law principle that it is better to acquit 100 guilty persons than convict one innocent (Grey, 2005). Such a comparison, however, does not bear up under close examination; convicting an innocent person and imposing a penalty upon them is quite different from refusing permanent residence in Canada to someone who we consider is not entitled to it.

### ***The government implicitly admits it has lost control of the system***

All this is not to say that the Canadian government has not made at least some effort to tighten up a refugee determination system that is arguably not only one of the most dysfunctional in the world, but which also poses serious national security risks to both Canada and the United States. Ottawa has not, however, been prepared to engage in a direct confrontation with its refugee lobby and deal with the fundamental reforms required. This contrasts, for example, with Australia, where the coalition government of John Howard took firm measures following the attempted landing of a boatload of illegal migrants seeking refugee status in August 2001. His government decided that the claims of such people would have to be reviewed outside of the country, rather than allowing

them to enter Australia and then have great difficulty removing them if they were found not to be genuine refugees. Although Howard encountered vocal and sustained opposition from refugee activists because of the measures he took, he clearly enjoyed the support of most Australians. While his chances of winning an impending national election had not been considered particularly good prior to these events, he was returned to office with a strong majority, an outcome that political observers believed resulted largely from the fact he had been prepared to deal firmly with the problems arising from the arrival of the illegal migrants.

While the Canadian government, in comparison, has demonstrated for the most part a lack of political will in facing down its refugee lobby, there are indications that it is very much concerned about the parlous state of the refugee system and the fact that it has relatively little control over what happens to claimants once they gain access to it. In relation to this, the government has taken two significant steps to try to reduce the numbers of those who succeed in setting foot on our soil and who are therefore able to make claims. The first measure has been to increase the number of Migration Integrity Officers (formerly called Immigration Control Officers), one of whose principal functions is to prevent individuals with questionable travel documents from boarding flights to Canada. Once a claimant has boarded such a flight—even if the prospective claimant's documents are either fraudulent or else mysteriously disappear en route—there is little the government can do to prevent them gaining full access to the refugee determination system when the aircraft lands in Canada.

The second measure the government has taken is to conclude the Safe Third Country Agreement with the United States. Notwithstanding the serious exceptions to this agreement noted above, it should still have a significant impact on the total numbers of asylum seekers since in recent years about one third of those making claims in Canada have done so at the United States border.

Even with these measures in place, however, it is likely that several tens of thousands of claimants will continue to reach Canada each year.

One measure the government should seriously consider is to treat potential refugee claimants as having not entered Canada until they have been approved to do so by the immigration or customs officer at the port of entry. Other countries have adopted such an approach in order that individuals judged to have a manifestly unfounded case can be immediately sent back to the country they arrived from (assuming it is a safe third) rather than subject our authorities to a long and often fruitless attempt to remove them once they have been admitted to Canada. If we want to be scrupulously fair, we can agree to consider an application for refugee status from them following their deportation from Canada. Such a procedure would certainly bring a greater degree of consistency to our

procedures. Refugee advocates have complained that it is unfair to stop individuals with fraudulent travel documents from boarding flights to Canada when those who succeed in eluding detection at this point are allowed to enter Canada and make claims even though their documents are discovered to be bogus or are mysteriously lost during the flight. In a sense the advocates have a point. The solution, however, is not to ease up on interceptions at airports abroad, but rather to ensure that those who succeed in eluding detection when they emplane are not rewarded when they reach Canada.

## Permanent Residents and Visitors' Visas

Claiming refugee status is not the only means by which terrorists can enter Canada. In the case of the 9/11 hijackers, none used asylum claims to get into or to remain in the United States. In Canada's case, however, the refugee determination system has to date been the channel favoured by terrorists to enter or avoid removal from Canada. It is for this reason that particular attention has been given to this area in this paper.

If Canada is to establish a reasonable level of defence against the access of terrorists to our country, we must also examine what needs to be done to block their entry as visitors or as people who come here as permanent residents and eventually become citizens. In this paper I will not attempt to examine all aspects of immigration policy that may be relevant to issues of security and to terrorism in particular. In an earlier paper (Collacott, 2002), I reviewed various effects of current immigration policy that could have a bearing on how susceptible Canadian immigrant communities are to recruitment by terrorists. These effects include the significant decline in economic performance and increase in poverty levels among newcomers who arrived here since 1980 compared with both earlier immigrants and people born in Canada, developments that have negative implications for their economic and social integration into Canadian society.

These problems have been particularly acute among visible minority immigrants, who in recent years have constituted three quarters of all newcomers. In this respect a Statistics Canada report issued in 2004 revealed that over a period of two decades there had been a quantum leap in the number of visible minority neighbourhoods in Canada.<sup>18</sup> The report indicated that the number of such neighbourhoods had increased from six in 1981 to 254 in 2001. It also noted that such residential concentrations of minority groups may result in social isolation and reduce incentives on the part of those involved to acquire the host-country language or gain work experience and educational qualifications. Neigh-

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18 The Statistics Canada report defined a visible minority neighbourhood as an area where a visible minority group represents 30 percent of the inhabitants.

bourhoods with large concentrations of visible minorities, moreover, tend to have poor economic status and low income rates (Hou and Picot, 2004).

Given that Canada has the highest per capita immigration rate in the world, such problems are likely to increase rather than diminish. A classified RCMP intelligence report pointed out that 17 percent of the Canadian population is foreign born (compared to 9 percent in the United States), making it easier for both terrorists and crime groups from abroad to blend in with immigrant communities (Bell and Friscolanti, 2003).

Some of these issues are discussed in the above-mentioned Fraser Institute publication. For the purposes of this paper, we will examine only two major security-related issues with respect to the entry of foreign nationals for permanent residence or as visitors: a) the shortage of resources available to ensure adequate screening of applicants and b) the need for a system to record, track, and confirm the departure of visitors.

### ***Shortage of resources to process applications***

While there have recently been increases in funding for visa offices in Canadian missions abroad, major budget cuts in the 1990s combined with increased pressures on visa officers have eroded the capacity of some locations to provide assurances that Canada's security concerns have been adequately addressed. The government sets annual immigration targets for each post that visa officers are expected to meet. The officers' readiness for promotion depends in considerable degree on their ability to achieve those targets rather than by the extent to which they are able to protect Canadians from potentially dangerous individuals seeking to establish themselves in Canada.

Turning down an application for a visa is often far more demanding than simply approving it. Visa offices are continually barraged with representations from immigration lawyers and Members of Parliament on behalf of applicants (Delhi, for example, reports an average of 20 representations a day from Canadian Members of Parliament) and the task of responding to these can be extremely time-consuming.

The result is that many of our key visa offices simply do not have sufficient resources to conduct a thorough screening of many visa applicants. In 1999, for example, our embassy in Moscow advised headquarters that it did not have enough staff or resources to weed out Russian mobsters trying to move to Canada (Skelton, 2000). Immigration files at many posts are, moreover, replete with reports of high percentages of fraudulent applications and supporting documents submitted by applicants. Investigating these is also very demanding and almost impossible to do with any degree of thoroughness while

at the same time dealing with competing demands such as responding to inquiries from Members of Parliament, lawyers, etc.

### ***Malfeasance at immigration offices abroad***

One of the most serious consequences of the shortage of resources is the fact that there are not enough Canadian officers at visa offices abroad to oversee the work of locally engaged staff. Of the 1,400 or so people engaged in visa offices in 2002, approximately 80 percent were local employees. The fact that locals do most of the work involved in the screening and processing of visa applications makes them vulnerable to various kinds of social pressures and, as one former Canadian immigration officer described it, “irresistible temptations” to get involved in theft, bribery, people smuggling, and other offences (May, 2002).

Between 1996 and 1999, 45 locally engaged staff quit or were fired in the wake of theft, corruption-related activities, etc., in immigration offices at our missions in India, Egypt, Germany, Syria, Hong Kong, Los Angeles, Ukraine, Pakistan, Kuwait, Dubai, Beijing, Ivory Coast, Barbados, and Cuba (Tanner, 2000). In 2000, there were 67 incidents of alleged fraud or misconduct at overseas visa offices, again involving those in Ukraine and Cuba as well as Romania, Sri Lanka, Syria, and Peru (O’Neil, 2003).

The situation, moreover, does not appear to have improved since then. In August and September of 2004, for example, there were new reports of problems of corruption on the part of local staff in our visas offices in India, Guyana, and Iran. In the last of these cases, internal Canadian government documents indicate that the visa section of the embassy in Iran had to fire a total of five local staff in the previous year for ethics violations. The report stated that “there is extensive fraud and corruption in Iran,” and that the visa section was “close to, if not already, overwhelmed by the expectations placed on its limited resources and facilities ... this has seriously damaged staff morale. Corners are cut; necessary work goes undone or is extremely delayed” (McIntosh, 2004).

Further evidence of the extent to which Canadian missions overseas are under-staffed came to light with the release of Treasury Board figures showing that thefts of at these posts by local staff had increased 1,500 percent between 1996-1997 and 2000-2001—ris-

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The philosophy of the immigration department is to facilitate, to speed things up, and to get people in. Enforcement and control are given very low priority.  
—James Bissett, former Executive Director of the Immigration Service

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ing from \$55,728 to \$935,798. Most of the thefts were from the embassies' immigration sections and, in addition to cash, included such items as port-of-entry stamps, which according to police are sought by terrorists and organized crime because they can be used to authenticate bogus documents proving Canadian citizenship. A spokesperson for the Department of Foreign Affairs tried to put the best spin possible on the report by suggesting that the loss did "not reflect a significant increase of thefts from previous years" but rather "the effective implementation of new monitoring and controls" (Godfrey, 2002).

Another type of problem that has surfaced at visa offices and that might have been avoided had more resources been available involved visas issued to attend non-existent educational institutions. One defunct business school in Ottawa sold fake enrolment papers to at least 400 foreign students (Friscolanti, 2003b). In another case, more than a dozen Pakistanis were able to enter Canada on the basis of attending a non-existent business school. When the fraud was discovered, several proceeded to make refugee claims, reportedly with the help of "cheat sheets" that explained how the Canadian refugee system could be manipulated (*Indo-Canadian Voice*, 2003).

Government files reveal that Canadian immigration officials in China ignored obvious education scams that gave "high-risk" foreign students a chance to enter Canada via bogus schools. The documents indicate that in some cases, bureaucrats simply turned a blind eye to suspicious applications rather than investigate further. "Even when we do find a very questionable institution, the policy advice is to issue visas in any event," reads one e-mail, sent by a senior official in Ottawa. For their part, Canadian officials in Hong Kong and Beijing sounded warnings about the "unbridled growth" of so-called "visa schools," which, for a price, provide the enrolment papers necessary to help foreigners get to Canada. The documents suggested that many of the so-called visa schools were linked to organized crime and money laundering operations and that unwanted visitors, from petty criminals to potential terrorists, might be paying for documents they know are fake in order to get into Canada. In the words of James Bissett, "It has become a big business... It's partly because of the whole philosophy of the [Immigration] Department, which is basically that enforcement and control is given very low priority. The priority is to facilitate, to speed things up, and to get people in" (Friscolanti, 2003c).

Nor has identification of such problems arising from staff shortages related to visa issuance been limited to media reports. In 2000, the Auditor General of Canada referred to the negative impact of the resource shortages at Canadian visa offices and the implications this had for ensuring the protection of Canadians. In describing the problem, the Auditor General made it abundantly clear that the resources required to do the job properly were not there, and that "the significant weaknesses... lead us to conclude that in its current operations and with the resources at its disposal, the [Immigration] Department is overtasked" (Auditor General, 2000). The report added that it was "highly question-

able whether the Department can handle the number of applications involved in meeting the annual immigration levels set by the government and, at the same time, maintain the quality of decisions and the [Immigration] Program's integrity at an acceptable level and ensure compliance with the Immigration Act..." It went on to state that the Auditor General's office was "very concerned about the Department's ability to ensure compliance with legislative requirements in this area" and "noted serious deficiencies in the way it applies admissibility criteria related to health, criminality, and security." The report added that "generally, employees are very concerned about the present state of affairs and feel they are no longer up to the task. A high percentage of employees feel they must contend with operational requirements that seriously limit their ability to protect the Program's integrity. They have neither the time nor the tools they need to do the work that is normally required. Many of the employees' comments indicate an obvious malaise. Visa officers feel they are not only going against their own values, but also making decisions that could carry risks that are too high and that could entail significant costs for Canadian society" (Auditor General, 2000, Sections 3.45 to 3.62).

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"Visa officers feel they are not only going against their own values, but also making decisions that could carry risks that are too high and that could entail significant costs to Canadian society."  
—Auditor General of Canada

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While some additional resources have been made available since 9/11, the continuing revelations cited above of malfeasance in visa sections of our missions abroad suggest that the problems have not significantly improved. In order to achieve adequate control over the selection and screening of people applying to immigrate to or visit Canada, there must be either a large increase in the Canadian-based staffing available to carry out these tasks, or a reduction in intake to match the resources available. With the current high immigration levels (as noted above, the highest per capita in the world) driven primarily by the government's political

interests and without justification on either economic or demographic grounds, the logic of the situation dictates a reduction in intake. If the government cannot bring itself to take this obvious action, it must at least provide substantially increased resources so that our visa officers can do their jobs properly and ensure the security of Canada and its population.

Shortage of resources at visa offices abroad is, moreover, by no means the only area where the government has demonstrated that it is not prepared to commit sufficient funds to protect Canada's borders. An internal department of immigration report obtained through an access to information request in early 2005 indicates that the vast majority of arrest warrants issued in Canada against foreign nationals—including those wanted for serious criminality—are not assigned for active investigation because of lack

of resources for immigration enforcement (Humphreys, 2005c). The report states that the criminal case inventory of the Greater Toronto Enforcement Centre at the time the report was issued in June 2003 was 1,483 cases. Of those, 225 were assigned and 1,258 were unassigned. The total of 1,483 included 134 cases of people wanted for “serious criminality,” of which 35 had been assigned to an officer for action. (Serious criminality is defined as a crime punishable by a prison sentence of 10 years or more). The report added that, at that time, the non-criminal caseload for the centre stood at 20,739—of which 91 cases were assigned. This included 13,994 cases of failed refugee claimants facing an outstanding arrest warrant, of which 70 cases were assigned. Anna Pape, the Ontario region spokeswoman for the Canada Border Services Agency, which took over immigration enforcement duties from the department of immigration, stated that criminal case inventory figures for the Centre from April 1, 2005, showed a total caseload of 745, of which 80 were assigned and 665 unassigned (Humphreys, 2005c).

### ***Screening and tracking visitors***

Another area where much more needs to be done to protect Canadians is visitor screening and tracking. Prior to 9/11, Canada probably did a better job in some respects than the United States in screening people allowed into our country as visitors. This was done to a large extent because of concern over the greater ease with which someone could claim and obtain refugee status in Canada than in the United States once on our soil. Twenty years ago, when I was serving as Canadian High Commissioner to Sri Lanka, our office frequently refused requests to issue visitors' visas to people who had already obtained such visas for the United States. The reason was simple: there was little prospect of their being granted refugee status (i.e., asylum) in the US, while their chances were significantly better in Canada. The Americans could therefore risk admitting them as visitors while we could not.

Since 9/11, the balance has shifted considerably. The Americans have been putting into place a comprehensive system that will record the arrival of visitors and confirm whether they leave when they are supposed to. Canada has no plans to implement similar measures. The US system will be expensive and it will be some years before it is in full operation. While it will not be able to track those who enter the country illegally (a problem on which I will comment later), it will go a long way towards keeping the authorities informed as to who is still in the country who is no longer supposed to be there.

The value of having such a system has been identified in papers published by the CD Howe Institute. In one of these, Canadian lawyer Peter Reikai noted with regard to visitors that, while the Americans were developing a comprehensive entry- and exit-tracking system, “once past the post at a Canadian port of entry, a visitor is basically off the

radar screen for tracking purposes” (Rekai, 2002). Rekai observed that, despite this, there had been no significant staff increases in overseas visa offices to help assess visitor visa applications, nor were there any plans to improve the monitoring of visa compliance. As an example, Rekai pointed out that between July 2001 and February 2002, we lost track of 118 Tunisians who entered Canada as foreign students but who had effectively vanished (Rekai, 2002).

In a subsequent CD Howe paper, American economists Gary Hufbauer and Jeffery Schott recommended that a number of measures be taken among the NAFTA partners (Canada, US and Mexico), including agreement on visa-waiver country lists, length of stay, watch lists for potentially troublesome visitors, and electronic access to each other's immigration records (Hufbauer and Schott, 2004). While such proposals would need to be examined carefully and would very likely attract criticism from those in Canada who place a high priority on demonstrating our independence by having distinct and different immigration policies, such sharing of information and standards would be of significant value from a security perspective.

At the present time, for example, Canada does not require visas for visitors from the Republic of Korea, while the United States does. As a result, large numbers of Korean nationals come here every year for the sole purpose of entering the United States illegally. According to US government intelligence obtained by a Denver newspaper, 400 to 500 Koreans a month are smuggled across the Canadian border into the US, of whom about half are women bound for indentured servitude at Korean-run massage parlours around the United States (Finley, 2005). Whether Canada is prepared to make concessions to American interests in this area, however, remains to be seen. The newspaper quotes Stephen Heckbert, spokesman for the Department of Citizenship and Immigration, as stating that Canada is a trading nation and he doesn't see any reason to change visa-waiver deals done in the 1990s with South Korea and other countries. He added that Canada needs to expand its economy and will do so through trade while respectful of the fact that national security has moved further up the agenda in the United States. In the words of one American commentator, “while Canada grows increasingly open at its airports, US authorities grow increasingly closed along the border” (Finley, 2005).<sup>19</sup>

If Canada is to exercise adequate control over who enters its territory and confirm the departure of those who are supposed to leave, it will have to introduce systems similar to those now being put in place by the United States. This will involve taking biometric measurements when people are issued visas at our missions abroad. These will then be relayed to a central database so that when the person comes into the country, officials can confirm that the individual using the visa is the same one to whom it was issued. Biometric scans of visitors can be taken and sent to the central database for confirmation when they leave the country. While it is not absolutely essential that the Canadian data-

base be integrated with that of the US, doing so would obviously have advantages. Both countries, for example, could benefit from having a common watch list. The establishment of such a system in Canada would not only protect Canadians, but would reassure our American partners that we are not making it easy for people to enter our country who could pose a threat to them.

In early 2005, a high-level task force of Canadians, Americans, and Mexicans, including former Deputy Prime Minister John Manley, released a series of similar recommendations in relation to a common continental security perimeter to be established by 2010. Their specific proposals include convergence of visa waiver countries, synchronized entry screening and tracking procedures for people, sharing of data about the entry and exit of foreign nationals, and the integration of biometric watch lists (Council on Foreign Relations, 2005).

While the task force envisages trilateral movement towards a continental security regime, it would be in Canada's interests to move without delay towards more integrated bilateral arrangements with the United States. Although the latter obviously has some common concerns about its northern and southern borders, there are also significant differences. The United States has to contend with much larger flows of illegal immigrants across its border with Mexico and receives less cooperation from that country than it does from Canada in terms of helping to prevent illegal entry. On the other hand, because of its large immigration program, Canada has a much more diverse population and one more likely to contain individuals disposed to committing terrorist acts against the United States than does Mexico. In the circumstances, Canada should pursue closer bilateral integration with the US on border security as a matter of urgency.

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“Once past the post at a Canadian port of entry, a visitor is basically off the radar screen for tracking purposes.”

—Peter Re kai,  
CD Howe Institute paper

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19 An example of less than adequate Canadian control over the movement of Korean nationals on its territory was to be seen in the case of Tongsun Park. Park was being sought by the FBI and a world-wide warrant had been issued by Interpol for his arrest in connection with charges that he had acted as an unregistered foreign agent in the United States for Saddam Hussein's regime in Iraq in relation to the UN Oil-for-Food investigation. In early January 2006, Park was on a flight from Canada to Panama that stopped in Mexico City. Acting on the Interpol warrant, Mexican authorities removed him from the plane and sent him to Houston, where he was arrested. The question remains as to why Canada authorities had not taken any action to detain him when he was in this country—particularly since the Canadian government was well aware of his activities given allegations that senior Canadians had been connected with his business deals (McLeod, 2006).

## Factors Militating Against Canada Taking a Tough Line on Terrorism

In the foregoing sections I have described the extent to which Canada has failed to take adequate measures for dealing with terrorists—in securing its borders against their entry and in detaining or removing them once their presence is discovered. While Canada is certainly not the only country with less than perfect performance in this regard, it has arguably one of the weaker records among Western countries. Why should this be the case?

### *Politicians soft on terrorists*

In addition to the major influence that interest groups such as lawyers and refugee advocates have on the formulation of refugee policy as discussed above, the Liberal party, which left office in early 2006, showed that it was less than enthusiastic about taking a tough stand on terrorism if it thought that this may cost it electoral support. The most egregious example of this was its failure to designate the Liberation Tigers of Tamil Eelam (LTTE) as a terrorist group despite the fact that the United Kingdom and the United States have done so and that the Canadian Security Intelligence Service has unsuccessfully recommended to the Cabinet on three separate occasions that such action be taken by Canada. A paper published by CSIS in the winter of 1999 on the operations of the Liberation Tigers of Tamil Eelam, stated that “because the Tigers have been able to run effective propaganda campaigns which have successfully mobilized significant sectors of the overseas Tamil diaspora in their favour, politicians have become increasingly reluctant to support tougher actions against the LTTE for fear that this would impinge on their local electoral support base” (Chalk, 1999).

The prescience of this assessment became clear a few months later when then-Minister of Finance Paul Martin, accompanied by the Minister of International Development, Maria Minna, spoke at dinner given by a group identified in CSIS reports and by the US State Department as a front for the LTTE (Bell, 2000a). When Martin was subsequently criticized in Parliament for attending the function, he defended his actions by claiming that “anybody who attacks a group of Canadians, whether they are Tamils or anything else, who gather at a cultural event and basically try to link them with terrorists, that is not the Canadian way” (*National Post* editorial, 2001). His cabinet colleague, Solicitor General Lawrence MacAuley, whose responsibilities included the RCMP and CSIS, reinforced this explanation by suggesting that “it is irresponsible for any Member (of Parliament) to try to link terrorism with ethnic communities” (Naumetz, 2001). Maria Minna was more explicit when she described opposition criticism on this issue as “pure racism” (*National Post* editorial, 2005).

The government, however, refused to acknowledge the distinction between cultural and terrorist groups and the issue was allowed to die down—at least for a while. It was briefly revived in March of the following year when an access to information request by the Canadian Alliance Party revealed that Paul Martin had been warned in an official memo two days before the event of the terrorist connections of the organizers of the dinner (Bell, 2001) and when the former head of CSIS and former deputy foreign minister, Reid Morden, publicly expressed concern over the reluctance of the Liberals to get tough on terrorism out of fear of losing support from ethnic groups (Fife, 2001).

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The government has thus far resisted all efforts to ban the LTTE (Liberation Tigers of Tamil Eelam) despite the facts that it is one of the most ruthless terrorist organizations in the world, that it has been banned in the UK and US for some time, and that CSIS has recommended it be outlawed in Canada.

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Paul Martin and Maria Minna, moreover, have not been the only politicians to attend Tamil Tiger-related functions. Toronto MP Bill Graham (subsequently foreign minister and then defence minister) attended a major rally in February 1998 and expressed support for the Tigers' struggle. Another Liberal MP from Toronto, Jim Karygiannis, has probably been the most loyal supporter among Canadian political figures. Nor have prominent members of other political parties been exempt from associating themselves with terrorist-related events if they thought political profit was to be made. Jack Layton, leader of the federal New Democratic Party, for example, has also attended rallies associated with the LTTE.

The Liberals justified their refusal to designate the Tamil Tigers as a terrorist group by claiming that by doing so it could jeopardize peace talks between the Tigers and the Sri Lankan government. Critics, however, point out that as long as the Tigers can continue to operate in Canada with a good deal of impunity—including fundraising among the largest expatriate community of Sri Lankan Tamils in the world—their interest in reaching a peaceful solution to their differences with the Sri Lankan government is considerably reduced.

One final point worth noting with regard to the Tamil Tigers and their supporters is that their influence on the Canadian policy has, if anything, increased over the years. Back in 1986 a defamation campaign was launched against the Sri Lankan high commissioner in Ottawa as a means of rekindling sympathy for 152 Tamil refugee claimants who were found to have lied when they claimed that they had fled here directly from Sri Lanka to escape persecution. (It turned out that they had been living safely in Germany for several years but decided to move on to Canada to take advantage of our more generous refugee provisions.) On that occasion, the Canadian government held firm and refused to ask the Sri Lankan envoy to leave. In 2005, however, another defamation campaign was

mounted, on this occasion against the Sri Lankan government's new nominee as high commissioner and on the same grounds that were used in the 1986 campaign, i.e., that because the man in question was involved in military operations against Tiger insurgents, he was a war criminal. This time Ottawa buckled and turned down the nomination (Collacott, 2005).

### ***Being Canadian takes priority over being a suspected terrorist***

Former Prime Minister Jean Chrétien was a strong proponent of the notion that Canada's commitment to multiculturalism and diversity went a long way to reducing sympathy for extremism in the country. At a conference in New York on terrorism in September 2003, he offered to share with other countries our experience in this regard (Chrétien, 2003). The prime minister had, in fact, already demonstrated that he believed Canada led a somewhat charmed existence and that our tolerance and openness infected all those who had made the decision to become Canadians. In 1995 he personally intervened with Pakistan's prime minister to have Ahmed Said Khadr released from custody because he was a Canadian citizen. Khadr had immigrated to Canada from Egypt and stayed here long enough to acquire citizenship and a Canadian passport. He then spent most of his time abroad serving radical causes but invoked his Canadian citizenship when he found it convenient. In 1995 he was arrested by the Pakistani authorities on suspicion of financing the bombing of the Egyptian embassy in Islamabad in which 17 people were killed and 60 injured. Following his release by Pakistan at Prime Minister Chrétien's request, he continued his activities in support of terrorists groups, becoming a suspected senior member of al-Qaeda and eventually being killed when one of their compounds was attacked in October 2003. He also produced a family that had no shortage of terrorist supporters and sympathizers. For Prime Minister Chrétien, however, the fact that someone had taken out Canadian citizenship took priority over the possibility they might be a terrorist.

The official inquiry concerning the circumstances surrounding the removal of Maher Arar to Syria also reflects the emphasis placed on the importance of Canadian citizenship in comparison to having possible terrorist connections. Maher Arar was detained in September 2002 at JFK airport in New York while en route from Tunisia to Canada. The United States government was concerned about his possible ties with al-Qaeda and had him removed to Jordan and subsequently to Syria, where he was detained for a year. Arar claims he was tortured while in Syrian custody and, following his release and return to Canada, accused Canadian authorities of being complicit in his detention and interrogation and, by implication, his alleged torture.

While the United States government maintains that it was fully within its rights to remove Arar to Syria since he was a citizen of that country as well as Canada and because, in the judgement of US authorities, there were reasonable grounds to investigate further the possibility that he had ties with terrorists, the Canadian inquiry has concentrated on whether Canadian officials failed in their responsibilities to protect his rights as a citizen. An interesting reflection of the extent to which being a citizen takes priority over security issues is the fact that all 18 organizations granted Intervenor Status at the inquiry maintain that Arar was unjustly treated by the Canadian government. They found such common cause on this issue, moreover, that they set up a common Internet web site to convey their views to the public (to be found at: <http://www.bccla.org/temp/050509leaflet.pdf>)

## Making Clear What We Expect of Newcomers

Greater emphasis has been given in recent years to the rights of newcomers than to their obligations to Canada. This has in all likelihood been a contributing factor in encouraging some of them to treat this country as a convenient and generous base from which to engage in or mount support for their favourite conflicts abroad. While most Canadians are committed to the idea that Canada should welcome immigrants from around the world and from different religious and ethnic backgrounds, there should be no misunderstanding about the importance of their fully accepting Canadian principles and values. If they find such acceptance difficult, they should not come here in the first place. While it will often not be easy to identify those who do not share our values—or, for that matter, even to determine how such a judgement can best be made—when someone applies to come here, there should be no problem in our making clear what is expected of them and that, if they fail to live up to our expectations, they will be removed from Canada.

When those granted permanent residence status reach the stage of applying for citizenship, they should be required to take an oath swearing that they are not only fully committed to Canadian values and will give their complete allegiance and loyalty to Canada, but that their actions in the future will reflect these commitments. At the present time, naturalized Canadians can have their citizenship revoked if it is proven that they obtained it under false pretences—a process that has been applied mainly in the case of individuals who failed to indicate they had been involved in war crimes when they applied to become Canadians. In like manner, someone who has sworn to uphold Canadian values and principles and be loyal only to Canada and who subsequently acts in a manner that is in serious conflict with these commitments—such as involvement in or support for terrorist activities—should also have their citizenship withdrawn.

A proposal along these lines has, in fact, already been floated when Peter MacKay, the deputy leader of the Conservative Party when it was in opposition, recommended that Ottawa revoke the citizenship of Fateh Kamel at the time that the latter returned to resume residence in Canada after spending several years in a French prison following his conviction on terrorist charges, as mentioned earlier in this paper (Bell, 2005b). MacKay, moreover, appears to have public support for such a recommendation, judging by a poll in 2005 that found that three out of four Canadians would support revoking the citizenship of people who obtain it and go on to commit serious crimes, are involved in terrorism, etc. (*Vancouver Sun*, 2005).

A more comprehensive package along these lines was proposed by British Prime Minister Tony Blair in the wake of the bombing in London in July 2005. He indicated he would seek to put in place measures under which anyone who preaches hatred or violence could be deported, those linked to terrorism would be automatically refused asylum, and steps would be taken to make it easier to strip naturalized citizens of their British citizenship if they preached violence. Blair added that his government was prepared to amend human rights legislation if legal challenges to his proposed measures proved insurmountable. In this regard, he indicated that he was hoping that by winning pledges from countries that deportees would not be subjected to inhumane treatment, Britain would be able to pursue a more robust policy in removing people. Such an agreement has already been reached with Jordan, and London is talking to Algeria, Tunisia, and Egypt (Bellaby, 2005). A news report in August 2005 indicated that Britain intended to remove a total of 500 Muslim extremists (United Press International, 2005).

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There should be no misunderstanding about the importance of newcomers accepting Canadian principles and values. If they find such acceptance difficult, they should not come here in the first place.

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Peter MacKay proposed that Canada follow the UK's lead by declaring that it, too, would expel those who glorify, justify, and foment terrorist violence and ethnic hatred. The then deputy prime minister, Anne McLellan, however, responded to MacKay's remarks by indicating that she had no plans to introduce additional anti-terrorism measures and argued that Canada had already "struck the right balance" (Bell, 2005d). The sort of measures proposed by Prime Minister Blair might well, however, be particularly difficult to implement in Canada given the challenges which would almost certainly be launched under the Charter of Rights. The fact is, nevertheless, that Canada along with other countries have entered what is for all practical purposes a state of war with terrorist groups such as al-Qaeda and may well continue to find themselves in this situation for the foreseeable future. In the circumstances, we will have to accept that there will have

to be compromises between the anti-terrorism measures necessary to ensure the safety of Canadians and human rights laws as they would be applied under less challenging circumstances. Human rights will remain a high priority for Canadians but the security of Canadians and the country itself are of paramount importance. If a country cannot defend itself effectively, it will not be in a position to preserve or promote human rights.

### ***The need to reassess and redefine multiculturalism policy***

A major impediment to putting in place requirements that newcomers make a clear commitment of loyalty to Canada and to Canadian values is the way in which official multiculturalism policy is interpreted. Most Canadians find little difficulty in supporting the principle that people of different religious, ethnic, and racial backgrounds should be treated as fully equal and valued members of our society. Official multiculturalism policy has, however, gone well beyond this and has in many respects actively encouraged newcomers to preserve the national identities they possessed before coming to Canada and to regard themselves first and foremost as members of their distinct ethnic communities.<sup>20</sup>

Worth noting in this regard are the views of former Prime Minister Pierre Trudeau, who is widely regarded as one of the principal architects of multiculturalism policy when it was launched in the early 1970s. When asked in 1995 what he thought of how the policy had evolved in the intervening years, Trudeau responded to the effect that it had been twisted to celebrate a newcomer's country of origin rather than a celebration of the newcomer becoming part of the Canadian fabric (Cobb, 2005). A similar assessment was made by former senior public servant Bernard Ostry, who played a major role in designing and launching multiculturalism policy. According to Ostry, while the policy was intended to assure new citizens full participation in the nation's life, some now consider it to have had the opposite effect—that it has encouraged minorities to retreat to their own corners (Ostry, 2005).

Current official Canadian multicultural policy encourages newcomers to preserve their cultural and ethnic identity as a contribution to the Canadian "mosaic." Not surprisingly, this is frequently accompanied by the retention of old loyalties and hostilities brought with them from their former homelands. Such policies have been fostered in an atmosphere in which ethnic identity is often treated as virtually sacrosanct and, in concert with this, Canadian authorities have been reluctant to look too closely into whether

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20 The nature as well as the drawbacks of official multicultural policy has been amply described by a number of well-known Canadian writers. Notable among them are Richard Gwyn in *The Unbearable Lightness of Being Canadian*, Neil Bissoondath in *The Cult of Multiculturalism: The Selling of Illusions*, Jack Granatstein in *Who Killed Canadian History?* and Daniel Stoffman in *Who Gets In?*

activities are taking place within ethnic communities that are in conflict with Canadian interests and values.

The result of official multicultural policy has been that the commitment of newcomers to Canada is in many cases subordinated to the loyalties and enmities they developed before arriving on our shores. Such an attitude is accepted, if not welcomed, by those who consider it arrogant of Canadians to impose their values and loyalties on newcomers. It is also useful to politicians who exploit immigrants by encouraging their organization into ethnic voting blocks in order to win party nominations, elections, or support for candidates for party leadership. The *quid pro quo* for such support is that the politicians, if successful, find ways of providing special benefits to ethnic groups that back them.

In relation to how much we can reasonably expect of immigrants of different backgrounds when it comes to feeling Canadian and identifying with Canada, it is only fair to recognize that many, and particularly to those who arrived here as adults, may find it difficult during the remainder of their lives to feel as completely at home and as attached to Canada as they do their former homelands. By the same token, there should be no confusion about where their loyalties lie: if they have chosen to become Canadian, their allegiance must be to Canada. Jack Granatstein described the consequences of promoting multicultural policy among immigrants in his book *Who Killed Canadian History?* He observed that “no one should be surprised... that the Croatian defence minister is a Canadian who returned ‘home’ (i.e., to Croatia) when the civil war erupted in Yugoslavia. No one should find it unusual that Serbian and Croatian Canadians, born in Canada, returned ‘home’ to fight against the boy they went to high school with” (Granatstein, 1998, pp. 16 and 17).

Similar outcomes from the pursuit of official multicultural policy were recorded by Carol Off in her book *The Ghosts of Medak Pocket: The Story of Canada's Secret War*. In an interview following the book's release, Off told *Vancouver Sun* columnist, Daphne Bramham, that it was Croat-Canadians who stoked the fires of nationalism from the safety of a community centre in Norval, Ontario. They clamoured for Canada to send a peacekeeping force into an extremely dangerous situation. And when the Canadian soldiers were fired on, it was by a Croatian force whose arms were paid for largely by Canadians running grocery stores and pizza places in spots like Mississauga and Ottawa and smuggled in by Croat-Canadians (Bramham, 2004).

Having said this, it should also be pointed out that most children of immigrants, who were either born here or came when they were very young, for the most part do consider themselves as very much Canadian. While they may still maintain and enjoy some of the traditions their parents brought with them, they regard themselves as Canadians and their loyalties are to this country. Current official multicultural doctrine, nevertheless,

encourages them to look at themselves as hyphenated Canadians, who draw their identity largely from the cultures their parents brought with them from abroad.

Some newcomers as well as multicultural enthusiasts regard with apprehension the suggestion that un-hyphenated Canadians actually have a national identity of their own and harbour suspicions that such a notion masks an attempt to resuscitate the white Anglo-Saxon, male-dominated society that characterized Canada until a few decades ago. Given such suspicion, it is not unusual for multiculturalism critics to be labelled as racists. The fact is, however, that few of those who believe that Canadian culture and identity are something more than the sum total of the pieces of a mosaic are seeking to turn the clock back to a time when some races were considered superior and others inferior. Most Canadians are committed to the idea that Canada is now a multi-ethnic, multi-racial society where people of all backgrounds are welcome and are equally valued. Such acceptance does not, however, mean that Canada has no existing national identity into which immigrants should integrate, even though this identity continues to evolve and is often enriched by the contributions of newcomers.

Even at very senior levels of government, however, claims are made that challenge the idea that there is really anything such as a Canadian identity in the usual sense of the word and, if it does exist, it is something that transcends traditional definitions and makes Canada somehow unique. Before becoming prime minister, Paul Martin espoused such a view when he declared that, as the world's first post-modern country, it would be up to Canada to shape the future of global government. Speaking at the University of Toronto Convocation in September 2002 he declared that, whereas immigration had not changed the "core identities" of the US or European countries, immigrants to this country were "in the process of changing and enriching fundamentally" Canada's identity. Martin explained that the United States, as the dominant world power, wasn't interested in seeking a new model of global governance, and neither were the Europeans, who were busy building Europe, nor were the countries of the Far East, which were too busy with old rivalries, and nor were Latin America and Africa, which were mired deep in economic problems and poverty and misery.

According to Paul Martin, Canada alone had the capacity to understand the direction the world must go and Canadian political leaders, more than any others, understood the necessity of coming together and governing ourselves "as one humanity" (Canadian Press, 2003). One might speculate as to how many other countries are likely to emulate us and become post-modern countries by casting off the bonds of traditional national identity. If Paul Martin is correct in his description of Canada, in all probability we will continue to enjoy our uniqueness in this regard since others may conclude that such an achievement is almost a guaranteed route to loss of national cohesion and eventual disintegration as a nation.

All of this is not to suggest that Canadian identity is something that can be easily defined. No two Canadians would probably come up with exactly the same description. Difficulties in producing a precise definition aside, most Canadians would still subscribe to the view that there is some mix of shared values, tradition, and outlook that define us as a nation. In Canada's case, arriving at an agreed definition would also involve the added complication of having to take into account the partially separate identities of the two founding peoples—anglophone and francophone Canadians—not to mention those who hold that aboriginal peoples have an identity distinct from both. What is clear, however, is that while Canadian society may be enriched by traditions brought from other countries, its identity should not be confused with those of other nations. Russians, Indians, French, Jamaicans, Chinese, Nigerians, etc. already have their own countries and, when they come here to stay, they must be prepared to become simply Canadians—not hyphenated Canadians.

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Three out of four Canadians support revoking the citizenship of people who obtain it and go on to commit serious crimes, are involved in terrorism, etc.

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Nor, indeed, are Canadians in general supportive of official multiculturalism and the extent to which it promotes the preservation by newcomers of their original identity and culture. A *Globe and Mail*/CTV poll in 2005, for example, found that only 20 percent of those surveyed agreed with such an objective, while 69 percent thought that we should be encouraging immigrants to integrate and become part of the Canadian culture (Curry and Jimenez, 2005). A survey carried out for the Dominion Institute by the Innovative

Research Group found that, contrary to a common impression in Canada, there was not a very wide difference between the attitudes of Canadians (who are supposedly supporters of the cultural mosaic) and Americans (supposedly advocates of the melting pot) on these issues. The survey found that 70 percent of Canadians and 76 percent of Americans thought that immigrants should adapt to their new country's way of life, with only 20 percent of Canadians and 17 percent of Americans advocating that they should sustain the culture of their countries of origin (Innovative Research Group, 2005).

There was little evidence, however, that the Liberal government that left office in early 2006 was moving towards any major changes to official multicultural policy. As long as it believed that the current approach would yield dividends in terms of increasing its electoral support in various urban constituencies, it was not prepared to consider changes even if they would better serve the interests and wishes of Canadians. It remains to be seen whether the newly-elected Conservative government will address this issue.

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## Working With the Muslim Community in Canada to Fight Terrorism

Since the events of 9/11, many members of the Muslim community have felt less secure than previously about their full acceptance in Canadian society. Canadian authorities and Canadians in general are faced with a two-fold challenge: how to reassure Canadian Muslims that they are fully valued and welcome members of our society, while at the same time developing means of identifying and dealing with terrorists and supporters in their midst.

### ***Members of the Muslim community are not the only terrorists in Canada***

In this regard it must be recognized that Islamic extremism is certainly not the only source of terrorism on our soil. Previous sections of this paper have referred to the presence of other terrorists in Canada, notably those seeking independent Sikh and Sri Lankan Tamil states. According a Toronto police Tamil task force report, there were as many as 8,000 members of "Tamil terrorist factions" in that city in the year 2000 (Bell, 2000b). In comparison, the number of Islamic terrorists in Canada is almost certainly very much smaller. The reason why the latter receive so much attention is that they pose a much greater threat to Canada and the United States, i.e., while Sikh and Tamil terrorists are concerned about the establishment of independent homelands and have directed their violent activities principally against Indian and Sri Lankan targets, al-Qaeda and similar Islamic extremist groups aim at the destruction of Western states in their present form. It should also be emphasized that, while concern over the threat from Islamic terrorists is justified, they and their sympathizers form only a small minority of Muslims in Canada and the United States.

Research indicates, nevertheless, that most terrorist attacks in Western countries in recent years have been carried out by Muslims immigrants. A survey carried out by Robert L. Leiken of the Nixon Center, for example, showed that of 212 suspected and convicted terrorists implicated in North America and Western Europe since the first World Trade Center bombing in 1993 through to December 2003, 86 percent were Muslim immigrants while the remainder were mainly converts (8%) and African-American Muslims (Leiken, 2004 p. 6).

### ***Muslim communities in North America and Europe***

Since September 11, 2001, the nature of the terrorist threat in Western countries has been evolving. The attacks in New York, Washington, and Pennsylvania were carried out

by individuals who had entered the United States for the specific purpose of committing acts of terror. In the Madrid train bombings in March 2004, most of those involved in the attack were foreigners who had been recruited locally. In the case of the London bombings in July 2005, most of the perpetrators were not only locally-recruited, but were British-born.

This did not come as a surprise to intelligence and law enforcement officials who had been monitoring the activities of al-Qaeda and like-minded terrorist groups. It has been anticipated that, as Western nations tightened up on the screening and tracking of people entering their territory, terrorist organizations would increasingly seek out people already within their borders to carry out attacks. The recruitment of individuals who have grown up in Western countries, speak the local language without a foreign accent, and have Western citizenship and passports is also an advantage in terms of their relative ease of movement across borders into other countries.

A further factor that makes European Muslim communities more likely breeding grounds for extremists is that they are composed, in large measure, of immigrants from a relatively small number of countries; in the case of the UK, from Pakistan and Bangladesh; in France, from Algeria and Morocco; in Germany, from Turkey; and in Spain and the Netherlands, from Morocco. In combination with limited economic opportunities, this concentration on a smaller number of countries of origin has encouraged the formation of ethnic enclaves and reduced both the need and opportunity for integration into mainstream society. In North America, in contrast, Muslim immigrants come from backgrounds that are more ethnically and linguistically diverse.<sup>21</sup> Because of this relative diversity, the term “Muslim community” in this paper is used rather loosely and refers simply to people in Canada who regard themselves as Muslims rather than to a single cohesive community. A common feature of the community, besides being Muslim, is that most of its members are fairly recent immigrants or their children (although a small proportion have been in Canada for several generations).

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21 That said, in Canada's case Montreal is somewhat of an exception since many members of its Muslim community are from the French-speaking countries of North Africa, i.e., Morocco, Algeria, and Tunisia. Added to this is the fact that many are refugee claimants and, not having to meet the standards of skilled immigrants, are often less well-off economically. In consequence, there has been a greater tendency towards the formation of ethnic enclaves among Muslim newcomers in Montreal than elsewhere in Canada, thus creating more fertile ground for the recruitment of terrorists. A significant proportion of the identified and suspected al-Qaeda-related terrorists in Canada have, in the event, made their base in Montreal.

### ***Terrorist groups seed home-grown jihadis***

As noted above, refugee claimants such as Ahmed Ressam and his colleagues have not been the only source of Islamic extremists in this country. Some, such as the Jabarra brothers (Bell, 2004e) and the Khadr brothers, spent much of their youth in Canada and acquired their terrorist sympathies in a number of ways—particularly, in the case of the Khadr brothers, from their father. As noted in the May 2005 Integrated National Security Assessment Centre report referred to above (INSAC, 2005), such individuals are an asset to groups such as Al Qaeda in conducting operations abroad because of their familiarity with Canadian customs, and excellent English and/or French language skills that allow them to pass as average Canadians. The current director of CSIS, Jim Judd, testified before a Senate committee in March 7, 2005 that increasing numbers of terrorists were being found in the second generation of immigrant families in Western countries, including Canada (Judd, 2005).

### ***Extremists in mosques and Islamic schools***

A related area that Canada should be examining more carefully is the extent to which extremists have been penetrating mosques and attempting to recruit potential terrorists there. Although no comprehensive data is available on this subject, there is sufficient anecdotal evidence to give rise to concern. One such example is the case of a Vancouver-based mosque leader, Sheik Younos Kathrada, who laced his Islamic lectures with racial slurs against Jews and urged his followers to go to “the front lines” to seek martyrdom in a jihad. Rudwan Khalil Abubaker, who grew up in Vancouver and who appears to have taken Kathrada’s teachings seriously, was subsequently reported by Russian authorities to have become an explosives expert and was among four rebels killed in a shootout in Chechnya (Hume, 2004).

Nor was this example of the presence of an extremist cleric in a Canadian mosque an exception. A Canadian university professor who is himself Muslim has estimated that 90 percent of the new mosques constructed in Canada since 1990 are dominated by the radical Saudi-based Wahhabi sect (Gunter, 2004). Extremists have also sought to reach young Muslims growing up in Canada through Islamic schools, as happened in Ottawa when two teachers in such a school were suspended after the *Ottawa Citizen* pointed out that they had encouraged the incitement of hatred against Jews (O’Neill, 2005). In another instance, a former teacher at an Arab school in downtown Calgary described how school administrators and faculty maintained on the one hand that Islam was a peaceful religion, but at the same time took pains to justify the actions of Palestinian suicide bombers and made it clear that the Americans deserved the attacks of September 11 (Parker, 2004a). Questions have also arisen concerning the school associated with the Salaheddin mosque in the Toronto suburb of Scarborough, the mosque attended by the

Khadr family. A former principal of this school has been detained since 2001 by the Canadian authorities on suspicion of having terrorist connections (Shephard, 2004).

### ***Wahhabi influence***

In a study published in the *Canadian Foreign Policy Journal* in 2004, Professor Martin Rudner, the founding director of Carleton University's Canadian Centre of Intelligence and Security Studies, reported that "many, if not most, Arab and Muslim religious and education institutions in Canada are still financed largely by Islamic charitable organizations based in Saudi Arabia" and that such funding brought with it "teachers, clerics, and materials that infused mosques, schools, publications, and other communal institutions with an extremist and militant Islamic purview, characteristic of the Wahhabi creed" (Rudner, 2004, page 20). Professor Rudner added that terrorists have embedded themselves in Canada's Arab community, where they seek to recruit and raise funds, and which they use as a base for activities against the United States and its allies. He also warned of a new danger from Islamic terrorists seeking to gain knowledge of weapons of mass destruction at Canadian universities and research institutions and observed in this respect that there was "no mechanism available to limit the access of students or researchers from suspect countries or affiliations to the study of such sensitive subjects as nuclear science and engineering, chemical, and biological toxins, cryptology, or other academic fields that can have a dual use for military or terrorist application" (Rudner, 2004, p. 21). Canada, moreover, is not the only Western country whose Islamic institutions have been heavily infiltrated by extremists financed in many cases from Saudi Arabia. A 2005 study released by Freedom House provides considerable detail on the extent to which this has taken place in the United States (Freedom House, 2005).

### ***The importance of strengthening ties with the Muslim community***

If we are to succeed in reassuring Canadian Muslims that they are full and valued members of Canadian society, considerable effort will be required both on their part and that of mainstream society. This is important not only because Canadians strongly support such inclusion on the basis of fundamental human rights and fairness, but also in relation to national security. If we fail to convince Canadian Muslims that they are fully accepted in our society, the resulting sense of isolation and alienation and could contribute to the creation of more fertile grounds for those attempting to recruit extremists in this country.

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***We need the help of the Muslim community in identifying extremists***

In building bridges with Muslims in Canada, there is no doubt considerable scope for intelligence and law enforcement authorities to develop greater cultural awareness and sensitivity in terms of working with minority communities. For their part, Muslims must also be prepared to be open and forthcoming about potential problems in their midst. In Britain, initiatives in this direction were taken almost a year before the London bombings when, in August 2004, 13 leading imams told Muslim communities to be vigilant for terrorists in their midst and issued a guide to every Muslim household calling on them to report suspicious activities to police on an anti-terrorist hotline (Ruffort and Taher, 2004). Canadians should not be reticent about asking members of the Muslim or any other community to willingly volunteer to our security authorities information they may possess regarding terrorists or terrorist supporters. The result of our past reluctance to make such demands is obvious from the freedom that extremists have enjoyed in being able to move around unhampered in Canadian society. The result can be seen in the ease with which extremists were able to intimidate virtually anyone they wished to target in the Sikh community prior to the Air India bombing and, even when the case was brought to trial more than a decade and a half later, were still able to threaten witnesses for the prosecution.

***Muslim moderates are being intimidated by extremists***

While it is generally assumed that a large majority of Muslims in this country accept Canadian values, there are also indications that those with less moderate views are able to intimidate those inclined to a more liberal and open approach. A Canadian *Time* magazine article in May 2004 observed that “while condemning extremism, the silent majority [of the Canadian Muslim community] has taken a live-and-let-live stance towards the radical groups” (Frank, 2004). The article quotes best-selling author Irshad Manji as stating that “30 years of official multiculturalism have fostered a non-interference pact between groups in Canada” and that Muslims who would otherwise publicly criticize the status quo have been silenced by threats of persecution (Frank, 2004).

In Canada, however, it is by no means certain that some government leaders even want minority communities to be frank and open about such issues—particularly if doing so would cut across political party interests aimed at promoting a strong ethnic identity and cohesiveness in order to deliver votes at election time. An example of such reluctance was reflected in a statement by the then-minister of immigration, Joe Volpe, following publication in March 2005 of reports detailing an RCMP investigation into a Liberal Member of Parliament for alleged immigration irregularities in issuing visas to participants in Sikh sports events in Canada. Volpe urged a gathering of 5,000 Sikhs in Toronto not to air their dirty linen in public, but to keep discussions “inside the family” (Jiménez, 2005d).

### ***Building bridges with the Muslim community***

The task of establishing meaningful contacts within the Muslim community and reassuring its members that they are fully accepted and valued members of Canadian society will require patience and good judgement. While various groups and individuals have presented themselves as bridge-builders between the community and Canadian authorities and society, considerable care should be taken in assessing the motives and objectives of those involved. At least one such organization, the Canadian Council for American-Islamic Relations (CAIR-CAN) has been notably successful in positioning itself to play such a role. It has sought to establish its credentials as a moderate player by such acts as condemning anti-Jewish statements by members of the community, the firebombing of a Jewish school in Montreal, and, in the wake of the London bombings, by getting 120 imams from across Canada to sign a statement rejecting extremism and terrorism.

With such a track record CAIR-CAN has been welcomed by mainstream organizations and media eager to establish closer relations with the Muslim community. For example, in 2004 the group's chairperson, Sheema Khan, was elected to the board of directors of the Canadian Civil Liberties Association and invited to speak at the Canadian Bar Association's Canadian Legal Conference in September. She has had a regular column in the *Globe and Mail* and CAIR-CAN representatives have been invited on numerous occasions to meet with government officials to discuss anti-terrorism legislation and related issues. Such meetings have included a consultation with Deputy Prime Minister Anne McLennan and with Prime Minister Paul Martin. Martin Rudner, cited earlier in this paper as a leading expert on Islamic extremism in Canada, was quoted in 2004 as stating that it was vital to engage moderate groups—and he believes that includes CAIR-CAN—in the fight against terrorism and that the latter should be seen as a bridgehead into Canada's Islamic immigrant community (Parker, 2004b).

At the same time, questions have been raised by critics about whether CAIR-CAN has motives and objectives other than that of a moderate bridge builder with non-Muslim Canadians. Some of the allegations made against CAIR-CAN and a related organization in the United States, the Council on American-Islamic relations (CAIR) were contained in a suit filed against the two groups by the family of a former FBI counterterrorism official killed in the 9/11 attacks. The suit alleges that CAIR and CAIR-CAN “aided, abetted, and materially sponsored terrorism” as well as “actively sought to hamper government anti-terrorism efforts” by spreading propaganda against police and intelligence agencies, and by levelling false accusations of slander against commentators and media outlets. “Their goal is to create as much self-doubt, hesitation, fear and name-calling, and litigation within police departments and intelligence agencies as possible so as to

render such authorities ineffective in pursuing international and domestic terrorist entities” (Bell, 2005c).

The suit goes on to claim that CAIR and CAIR-CAN use “psychological warfare” and disinformation on behalf of Islamic extremists. “They are the intellectual ‘shock troops’ of Islamic terrorism. In the years and months leading up to the terrorist attacks on September 11, 2001, these organizations were very effective in helping to ensure that North American law enforcement and intelligence officials were sufficiently deaf, dumb, and blind to help pave the way for the attacks on the United States... the role played by these entities is an absolutely essential part of the mix of forces arrayed against the United States as they help soften up targeted countries so as to facilitate and enhance the likelihood for a successful attack” (Bell, 2005c).<sup>22</sup>

Other issues raised by critics involve questions regarding the terrorist connections of a number of senior personnel in CAIR and whether it is, in fact, a separate organization from CAIR-CAN. On the latter point, CAIR-CAN maintains that it “shares close but distinct relations” with the American organization (CAIR-CAN), is “legally and operationally distinct” and “enjoys complete autonomy in its administration and decision-making functions” (Parker, 2004b).

Doubt, however, has been cast on the assertion that the two organizations are separate and distinct *inter alia* by the fact that CAIR-CAN’s own website and e-mails have contained statements such as “CAIR-CAN is the only official Canadian office of CAIR” and “the Canadian arm of the Council on American-Islamic Relations” and that, on CAIR’s website, CAIR-CAN is listed as a chapter of the organization in between the listings for CAIR New York and CAIR California (Parker (2004b). A further indication that that they are not separate groups is to be found in a trademark legal proceeding in 2003, when Sheema Khan swore an affidavit in which she declared that CAIR-Canada was the Canadian chapter of CAIR and originated in the following manner: “I formed the Ottawa chapter of CAIR UNITED STATES and became Director. We were known as CAIR OTTAWA and in June 2000, we filed a non-profit incorporation with Industry Canada.”

22 The views expressed in the suit are not limited to the plaintiffs in the above-mentioned legal suit. Steven Pomerantz, former Assistant Director and former Chief of the Counterterrorism Section of the FBI, stated in 1998 that “It is clear from a review of CAIR’s statements and activities that one of its goals is to further the agenda of radical Islamic terrorist groups by providing political support. By masquerading as a mainstream public affairs organization, CAIR has taken the lead in trying to mislead the public about the terrorist underpinnings of militant Islamic movements, in particular, Hamas... CAIR is but one of a new generation of new groups in the United States that hide under a veneer of ‘civil rights’ or ‘academic’ status but in fact are tethered to a platform that supports terrorism. The degree to which these groups are able to deceive the American public and intimidate writers and counter-terrorist officials will be a significant ingredient in whether this country will be rendered more vulnerable to terrorism in future years” (Pomerantz, 1998).

The affidavit goes on to state that under the terms of a trademark licence, “CAIR United States has direct control over the character and quality of all activities” of her group including the use of its trademark and trade name (Frum, 2005).

The question of just how close the two groups actually are is important because of evidence that prominent CAIR members have been connected in one way or another with terrorism. Various critics have alleged that CAIR was created in large measure by members of the Islamic Association for Palestine, considered to be a front group for the terrorist organization Hamas.<sup>23</sup>

While CAIR officials have in the wake of 9/11 avoided statements suggesting they support terrorist groups such as Hamas or praising suicide bombers, further questions have been raised about their connections with terrorism following the arrest and conviction of a number of their senior members on terrorism charges. These include Randall Todd Royer, who served as CAIR’s National Communications Specialist and Civil Rights Coordinator and who was sentenced to 20 years in prison in 2004 on charges he and sent several members to Pakistan to join Lashkar-e-Taiba, a Kashmiri terrorist group with reported ties to al-Qaeda (US Dept. of Justice, 2004a). In 2005, Ghassan Elashi, who was a board member of the Texas chapter of CAIR, was convicted of channelling funds to a high-ranking official of Hamas, Mousa Abu Marzook (US Dept. of Justice, 2004b; US Dept. of Justice, 2005).<sup>24</sup>

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23 CAIR was created in 1994 by three individuals associated with the Islamic Association of Palestine (IAP), an organization regarded as having close ties to the terrorist group, Hamas. Former Assistant Director of the FBI in charge of counterterrorism, Oliver Revell, for example, has described the IAP as a Hamas front: “It’s controlled by Hamas, it brings Hamas leaders to the US, it does propaganda for Hamas” (Kaufman, 2004). Two of the three founding members of CAIR, Omar Ahmad and Rafeeq Jaber, had been presidents of the IAP, while the third, Nihad Awad, had served as its public relations director. The IAP distributed Hamas books, magazines, and communiqués and, under the name of Aqsa Vision, has produced and distributed a video for Hamas in which it takes credit for executions, torture, and terrorist activities. Nihad Awad, currently Executive Director of CAIR, stated at a meeting at Barry University in 1994 that he was a supporter of the Hamas movement (Awad, 1994), while in November 1999, CAIR President Omar Ahmad addressed a youth session at the IAP annual convention in Chicago, where he praised suicide bombers: “Fighting for freedom, fighting for Islam—that is not suicide. They kill themselves for Islam” (Mobray, 2005).

24 Connections between CAIR and terrorism have also been made by senior elected representatives in the United States. Speaking during the Senate Subcommittee on Terrorism, Technology and Homeland Security’s September 10, 2003 hearing, Senator Charles Schumer (Republican-NY) said to a witness: “you point out that the Islamic Development Bank has given large sums of money to CAIR, which we know has ties to terrorism.” At the same September 10, 2003 hearing, Senator Richard Durbin (Democrat-IL) noted that, “I would hope that if there was a future hearing involving this, Mr. Chairman, that other than the CAIR organization, which apparently from what I have read is unusual in its extreme rhetoric and its association with groups that are suspect there are many mainstream groups of Muslim Americans who fully support this war against terrorism and I

Another concern raised by critics is the efforts of CAIR-CAN to exaggerate the extent to which Muslims in Canada have been victimized by the events of 9/11 and to call attention to what they claim is a major increase in anti-Muslim acts. In September 2002, for example, Riad Saloojee, the executive director of CAIR-CAN, declared in connection with a survey it had carried out that “there was a very well-documented, anti-Muslim hate wave that swept through Canada, and Muslims had their faith and their identity called into question” (Seeman, 2002). Doubts, however, have been raised about both the methodological soundness of the survey as well as the inclusion of questionable cases. Furthermore, it is also worth noting that while there was a spike in anti-Muslim acts in the two months following September 2001, the frequency of such acts diminished significantly after that and remains far below the number of anti-Jewish acts that have taken place, even though there are twice as many members of the Muslim faith as there are Jews in Canada (Silver, Warren, *et al.*, 2004).

Despite this, efforts to claim that that Muslims have been among the principal victims of the events of 9/11 appear to have had some success. For example, in January 2004, the head of the RCMP, Commissioner Giuliani Zaccardelli, told a crowd of 7,000 gathered for a conference on reviving the spirit of Islam that there had been “a backlash of violence and of vandalism” and that Muslims across Canada have faced blunt discrimination since the attacks of Sept. 11, 2001 (Canadian Press, 2004).

Perhaps encouraged by such comments, CAIR-CAN has persisted in its allegations that Muslims and people of Arab background in Canada are being targeted and victimized. In December 2004, when it was revealed that five people, including an immigration department official, had been charged with accepting bribes for expediting visa applications from Arabs, CAIR-CAN declared in a statement that it was “alarmed” and “shocked” that a senior immigration official “would allegedly participate in a scheme to exploit members of the Muslim and Arab communities” and that “this issue raises renewed concerns regarding the protection of the rights of non-citizens in Canada” (*National Post* editorial, 2004c). The statement conveniently overlooked the fact that three of the five people charged, including the ringleader of the operation, were Arab-Canadians. As the *National Post* noted in commenting on the case, if there were any grounds for the “renewed concerns” raised by CAIR-CAN, it was that Arab-Canadians were abusing Arabs from abroad, and that, as such, allegations of discrimination by Canadian authorities were absurd (*National Post* editorial, 2004c).

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would hope that they would be invited to speak to their heartfelt beliefs about this effort...” (US Senate Subcommittee on Terrorism, 2003). A month after this hearing, the chair of the subcommittee, Senator Jon Kyl (Republican-AZ), stated that “groups such as the Saudi-backed Center for American-Islamic Relations (CAIR) (whose terror-related activities are being scrutinized by my subcommittee as well as the federal government) have been quick to accuse investigators of Muslim bias. Yet three of CAIR’s top leaders were arrested this year on terror-related charges. CAIR declined an invitation to appear before my subcommittee to answer questions” (Kyl, 2003).

Another theme that CAIR-CAN has promoted is that drawing a connection between terrorists who claim inspiration from Islam and with the religion itself constitutes a form of bigotry and prejudice against Muslims. CAIR-CAN chairperson Sheema Khan, for example, has accused Daniel Pipes, a critic of Islamic extremism, of being an Islamophobe. In response, Pipes pointed out that, while he is concerned over threats from radical Islam, he does not harbour similar concerns about Islam in general. In Pipes' view, to label him an Islamophobe is to imply that everyone who is critical of Islamic extremism is anti-Islam—which is a convenient way of trying to deter people from discussing Islamic extremism (Pipes, 2005).

On this question, observers have noted that religiously-based fanaticism has also surfaced from time to time among Christians, Jews, Hindus, and other faiths and that, even though most adherents of these religions do not agree with such radical interpretations, the fact is that extremists do sometimes justify their actions on the basis of their religious convictions, and Islamic terrorists are no different in this respect (May, 2005). CAIR-CAN has, nevertheless, enjoyed considerable success in confronting those who suggest there is any connection between terrorists inspired by their interpretation of Islam and the religion itself. In January 2000, at a time when CAIR admitted to having only three or four active members in Canada, it organized a write-in campaign objecting to a skit on CBC-TV's *The Royal Canadian Air Farce* in which a terrorist was depicted in Arab garb. CAIR argued that "the sketch painted a broad-brush portrait of an entire group of people" and was able to elicit an apology from the CBC (Gatehouse, 2000).

CAIR-CAN has also been successful in launching campaigns against organizations and individuals who refer to Muslims in a manner that they claim is less than totally respectful. In April 2005 it extracted an apology from the Canadian Imperial Bank of Commerce (CIBC) when one of the bank's senior economists, Jeffrey Rubin, published an article referring to earlier oil shocks and speculating that "this time around there won't be any tap that some appeased mullah or sheik can suddenly turn back on" (CAIR-CAN, 2005). CAIR-CAN argued that such phraseology constituted "stereotyping of Muslims and Arabs" and was able to get CIBC not only to apologize but to promise to provide Rubin with sensitivity training to ensure such a situation did not occur again (Freeze, 2005b). In the circumstances, CAIR-CAN has been able to hold Canadian institutions to much higher standards when they make humorous references to Muslims than when such references are made to other religious and ethnic groups. What CAIR-CAN can certainly be given credit for is having accurately identified the propensity of mainstream Canadians to respond meekly and uncritically to accusations that they have been guilty of lack of sensitivity to minority groups.<sup>25</sup>

Where CAIR-CAN has failed to obtain apologies from those who in its view have not shown sufficient respect for Muslims or for the organization itself, it has been prepared to launch legal action to shut down critics. This happened following an interview on

Ottawa radio station CFRA in April 2004 in which a former CSIS official, David Harris, referred to the links between CAIR (USA) and terrorism, as well as to those between CAIR and CAIR-CAN, and suggested that CAIR-CAN should clarify where it fits into this larger picture. CAIR-CAN thereupon served both CFRA and Harris with a notice of libel for having damaged its reputation (Parker, 2004b). While CFRA quickly capitulated and issued the apology demanded (they also ceased interviewing Harris while continuing to give air time to CAIR-CAN representatives), Harris decided to fight the suit on the basis that his comments were fully justified. The case has yet to come to trial.

CAIR-CAN has been actively involved in supporting individuals detained on suspicion of terrorist activities. An example of this is Mohammad Momin Khawaja, whose case is described above. To the extent that CAIR-CAN is successful in promoting the idea that suspected terrorists are being pursued in large measure because they are Muslims, there could be increasing reluctance on the part of Canadian security agencies to investigate cases of terrorist suspects within the Muslim community, even though it is in this area where the most serious threats to Canadian and American security are to be found. And in this respect they could well receive a sympathetic reception at the political level. As discussed earlier, government leaders, including former Prime Minister Paul Martin, have been quite prepared to associate with a front group for the Tamil Tigers and deflect opposition objections by arguing that criticism of such a group amounts to rejection of an entire minority community.

Clearly there remains much work to be done in establishing better communications and cooperation with members of the Muslim community. The extent to which this can be achieved will depend partly on the skill and sensitivity of the Canadian security authorities. However, it will also depend in large measure on the readiness of the members of the community itself to make clear their loyalty to Canada by not only condemning terrorism in general terms, but also in coming forward with specific information regarding evidence of extremists in their midst. Without such cooperation it will be more difficult to establish the kind of relationship between members of the community and mainstream society that both wish to see in place. We certainly need a response from Cana-

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25 Success in the use of intimidation tactics, albeit not involving CAIR-CAN, was also to be seen in incidents that took place at Concordia University in Montreal in 2002 and 2004. In the first, anti-Israeli demonstrators rioted at the site where a speech was to be given by former Israeli prime minister, Benjamin Netanyahu, forcing the cancellation of the event. Two years later, when the same campus organization that invited Netanyahu asked another former Israeli prime minister, Ehud Barak, to give an address on campus, the university administration withheld permission for the speech to be delivered on campus on the grounds that it could not guarantee security. Those who demonstrated against Barak being allowed to speak apparently believed that the freedoms available to them in Canada gave them the right to interfere with the expression of views they did not agree with, and the university was not prepared to challenge them on this score.

dian Muslims that has more substance to it than that suggested in August 2005 by Wisam Nasr, head of CAIR's New York office, when he was quoted as stating that "our best defense in this so-called war on terrorism is public relations" (Jacoby, 2005).

## Concluding Comments and Recommendations

### *The refugee determination system*

This paper has examined a range of problems relating to inadequacies in Canada's ability to deal with terrorists entering Canada, from the removal of those already here, to the more effective monitoring of the capacity for extremist groups to enlist new members and supporters from within our territory. Particularly close scrutiny has been given to the failings of refugee determination system. While relatively few of those making refugee claims in Canada turn out to be terrorists, the system has, nevertheless been the principal conduit through which the latter have entered the country and is justifiably regarded in the United States as a weak link in continental security. Our refugee system, moreover, is arguably one of the most dysfunctional in the world and badly in need of reform quite apart from issues of terrorism. One major improvement that is needed is the reduction in access to the system of people who should not be entitled to make claims because they arrived through safe third countries, or originated from safe countries. Other required reforms include introducing a process that ensures much faster disposition of cases so that final decisions can be reached within weeks rather than years, as well as greater use of detention for failed claimants whose identity or risk to national security is in doubt as well as for those ordered removed.

### *Visitors and permanent residents*

Canada also needs to set up a system similar to the one the United States is putting in place to record the entry and departure of visitors, including foreign students and temporary workers. The establishment of such a system is necessary for our own security since we should know who is on our soil, and who should have left but has not done so. A well integrated system with appropriate biometric measures would also make it easier to identify undesirables and prevent them from entering. Significantly more resources must be made available for the visa delivery program abroad if we are to have reasonable assurances that it is not vulnerable to malfeasance and abuse by criminal and terrorist elements.

***Do our immigration policies need to be the same as those of the United States?***

In the wake of the events of September 11, 2001, there has been a good deal of discussion about the extent to which Canadian immigration policies need to resemble those of the United States. It has been suggested that, if we had a continental perimeter based on identical policies, there would be far less need to scrutinize closely the movement of people across our common border. Those who oppose such proposals have often done so on the grounds that our immigration policies reflect basic Canadian values and that to change them to accommodate American concerns over security would constitute an erosion of Canadian sovereignty.

While it is neither necessary nor practical to have completely common immigration policies in order to achieve better levels of security, there are certainly some aspects in which greater coordination would make sense. For example, common integrated databases that could provide real time information on the movement of people in and out of both countries would be in our mutual interest. To put such a system in place, a number of issues would have to be resolved, such as the differing standards our two countries might use to place someone on a watch list. It would also be useful to reach as much unanimity as possible on the list of countries whose nationals require visas to enter our territories.

One major area where there could be a significant divergence in immigration policy is that of the selection and admission of permanent residents, although there would probably be some aspects in which agreement on comparable, if not identical standards, would be important. If, for example, Canada applied significantly less stringent standards in identifying and weeding out applicants with criminal or terrorist connections, the Americans would no doubt be concerned, and could well reflect this concern by imposing tighter controls along our common border. On the other hand, there is no reason why Canada cannot continue to maintain its own policies in areas such as annual levels of immigration, and regulations determining the selection of skilled immigrants, sponsored relatives, etc. Only if Canada and the United States were to agree to combine their economies in a common market that included free movement of labour across their common border would it become necessary to adopt common standards, for example, the selection and numbers of skilled immigrants—and, in such an eventuality, the reasons for doing so would be economic rather than for security.

In addition to improving controls over who enters and leaves the country, policies in other areas also need to be changed if Canada is to deal effectively with the prospect of extremist groups increasingly recruiting terrorists from within our ethnic communities. In particular, current multicultural policy has to be revised so that, while we continue to welcome people of different backgrounds from all over the world, there is a much clearer

expectation that newcomers will be committed to Canadian values and be loyal to Canada. While this applies to people of all ethnic and religious backgrounds, special attention must be given to working with Muslims since their community is the source of the terrorists who pose the greatest danger to our national security.

Nor is there a lack of public support for change. As noted above, one recent poll indicated that a large majority of Canadians believe we should encourage immigrants to integrate and become part of Canadian culture (Curry and Jimenez, 2005). A poll conducted in August 2005 also found that 81 percent of those surveyed thought that Canada should jail or deport anyone who publicly supports terrorists or suicide bombers, while 62 percent believe a terror attack will occur in the country within the next few years and only 25 percent believe Canada is well prepared (Clark, Campbell, 2005).

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If a country cannot defend itself effectively, it will be in no position to preserve or promote human rights.

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Senior officials have also been frank in expressing their concerns about the risk of terrorist attacks. In May 2004, in the wake of the Madrid bombings, the outgoing head of CSIS, Ward Elcock, told a parliamentary committee that it was “no longer a question of if, but rather of when and where we will be specifically targeted” by Osama bin Laden’s terrorist network. He went on to state that al-Qaeda had directly threatened Canadians twice in as many years, adding that Canadian authorities had in some cases prevented terrorist attacks or the preparation for terrorist attacks (Sallot, 2004). Later that year, another senior official essentially repeated what Elcock had said about the threat level. Robert Wright, the prime minister’s national security advisor, told a security and intelligence conference in October 2004 that it would be “absurd” to believe terrorists will not attack Canada. “Osama bin Laden has publicly identified Canada as a country he believes his followers should attack,” he said. “He ranked Canada as fifth out of seven countries and every other country on that list has already been attacked” (Bell, 2004f).

Despite such estimates of the threat and the evidence that that our defences are seriously deficient, it is far from clear that the government is prepared to take the measures necessary to prevent attacks. This is particularly the case in areas such as immigration, and refugee and multiculturalism policy, where groups with vested interests have long enjoyed a major influence in determining what these policies will be. In addition to special interest groups, political parties themselves—and especially the federal Liberal party—have developed a strong interest in shoring up electoral support from immigrant communities by means of adopting policies often not in the best interests of Canadians in general and which may have negative implications for security.

### *The loss of sovereignty issue*

One objection that has been raised by opponents of closer security cooperation with the United States is that such a course of action would constitute a loss of Canadian sovereignty. This argument is particularly popular among those who believe that Canadian identity is defined to a large extent by demonstrating that we are different from the Americans. The fact is, however, that virtually all the measures we should be taking to bring our security up to a more acceptable level are those we should be taking in our own best interests, quite apart from the fact that they will also serve to reassure the Americans that they are not exposed to undue risks from our side of the border. Our failure to control our borders more effectively when it comes, for example, to the ease of entry of refugee claimants, in fact constitutes an erosion of our sovereignty rather than a meaningful expression of the Canadian value of openness that some refugee activists would have us believe.

Greater harmonization of border controls with the United States does not, moreover, mean that all our policies in this area have to be identical. As suggested above, it would make considerable sense to implement technology and procedures similar to those the Americans are putting in place to keep track of who enters and leaves their territory. On the other hand, as argued above, there is no need to have common standards for how we select skilled immigrants.

### *Implications for trade with the United States*

A paramount concern for Canada should be the effect that another major terrorist attack on the United States or, for that matter, one on Canada, is likely to have on our bilateral trade. Organizations representing the Canadian private sector have not been reluctant to convey to the government the extent of their worries in this regard and have called on Ottawa to give greater priority to strengthening our security measures.<sup>26</sup> Canada is, in fact, far from being the only Western country that has major problems with foreign terrorists on its soil. What distinguishes Canada from the others is that we have a common 8,000 kilometre border with the United States as well as an economy that would suffer severely if our common border were to close or become badly constricted for more than a

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26 Both the heads of major corporations as well as industry and trade umbrella organizations such as the Canadian Council of Chief Executives (D'Aquino, 2003) have called for greater emphasis on a common security perimeter for Canada and the United States that would reduce the need for high levels of security along our common border. A survey taken not long after 9/11 indicated that 74 percent of 250 Canadian chief executives polled supported the idea of a common set of rules for people entering Canada—visitors, immigrants and refugees—in order to protect Canadian access to the US market (Kuitenbruower, 2001).

very brief period. As Frank McKenna, our former ambassador to the United States, pointed out, Canadian/American trade comprises only 4.2 percent of the US gross domestic product, but 52 percent of ours (McKenna, 2005). Any extended border closure would, therefore, inconvenience some American industries and border states, but would devastate the Canadian economy.<sup>27</sup>

### ***In the event of another major attack in the United States***

Should there be another major terrorist attack on the United States, it is virtually certain that there would be an immediate tightening of border controls and a dramatic slowdown of commerce across our mutual border, as occurred after 9/11. How long this would last and how damaging it could be to our economy would depend on a number of factors. One of these will almost certainly be the extent to which the United States has reason to think there is a significant terrorist threat on our side of the border. If it is not clear to the United States that we have taken serious measures to reduce this threat, we should expect a further hardening of the border on the American side. We should, furthermore, be prepared for the likelihood that multinational corporations with interests in the North American market will decide that, notwithstanding, it is safer to locate their production facilities on the US side of the border rather than in Canada. Even without another attack, if Canada fails to take adequate measures to reassure the Americans that we are coming to grips with issues relating to the presence of terrorists on our soil, they will continue to strengthen security along our border to the extent that foreign investors will think twice about setting up shop in Canada rather than in the United States.

### ***In the event of an attack in Canada***

Canadians should also not underestimate the impact that a major terrorist act on our side of the border could have on trade with the United States. Ahmed Ressam's cell had been considering Canadian targets but proceeded on the assumption that, once the materials for the bomb had been assembled in Canada, they would be able to smuggle them into the United States without too much difficulty. Now that the Americans are strengthening their controls along our border, it is quite conceivable that the next time Islamic extremists in Canada plan an attack, they will find it easier to carry it out here rather than attempt to cross the border. If one does take place here, we should be pre-

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27 There have been a number of useful analyses of the extent of the impact on Canada of border closure. Particularly worth noting in this regard are a CD Howe paper by Danielle Goldfarb and William B.P. Robson in its Border Papers series (Goldfarb and Robson, 2003) and an article by Fred McMahon in *Fraser Forum* (McMahon, 2003).

pared for the likelihood that the United States will be just as concerned about the terrorist threat from Canada as they would have been had an attack been organized here and taken place on American soil—and we should expect similar consequences in terms of border closure.

### ***Canadians fail to grasp the extent of American concern over terrorism***

Many Canadians continue to have difficulty appreciating the extent to which Americans are concerned about the threat of terrorist attacks and are resolved to take extensive measures to protect themselves against it. Canada's former ambassador in Washington, Frank McKenna, aptly described the depth of this concern when he stated that "the world changed for the United States on September 11. Canadians know that intellectually. But it is hard to appreciate the depth of the trauma that the United States of America experienced on that fateful day. It has changed America, probably forever. Americans are now consumed with the need to protect their physical and economic security. This trumps all other issues in Washington, and everything that we do in terms of the relationship between Canada and the United States has to be understood through that prism" (McKenna, 2005).

### ***The Americans also have problems protecting their borders***

Having said this, it must be acknowledged that the Americans themselves continue to have major problems implementing some of their own border controls. While they have made significant progress in strengthening their borders, a great deal remains to be done and it will be several years at least before all the currently planned systems are fully in place. A useful summary of both progress and problems in this area can be found in a paper by Jessica M. Vaughn for the Center for Immigration Studies (Vaughn, 2005). An important difference between Canadian and US attitudes on these issues is that the Americans appear determined to strengthen their border with us even if it takes a good deal of time and money to do so. In contrast, we have shown considerably less interest in exercising more effective control over who gets into Canada. The gap between what the United States is doing to increase security along its borders and the steps Canada is taking will become increasingly apparent in the years to come and, unless the threat from terrorism unexpectedly diminishes, our failure to demonstrate that we are serious about protecting our borders could cost us dearly, particularly in the area of trade.

One issue in particular causes many Canadians to wonder about the extent to which the Americans themselves are really concerned about border security. This is the fact that the United States has made only limited attempts to stop hundreds of thousands of people from entering illegally from Mexico every year. Because of this, many Canadians find

it difficult to take seriously American criticisms that Canada is not doing enough to protect itself from the presence of terrorists. In this regard there have been indications that the United States may be considering measures to tighten up its southern border. According to recent polls, there is certainly no doubt that this is what a large majority of Americans want.

On August 23, 2005, Homeland Security Secretary Michael Chertoff announced that his department would build camps for the detention of illegal migrants, speed up deportations by providing more judges and lawyers, and raise the number of officers tracking down fugitives ignoring expulsion orders. This followed the declarations of emergencies earlier that month by border states Arizona and New Mexico, who stated that the massive influx of illegals was bringing border security to near collapse (Lipton, 2005). Significant action by the United States in securing its border with Mexico would certainly help to clear up any doubts in the minds of Canadians about the resolve of Americans to protect their territory.

### ***Canada must get its priorities straight***

Finally, it should be noted that our relations with the United States are already sufficiently complicated and there is no reason to make things more difficult by failing to take action in areas where we should be doing so in any event for our own security. At the present time, Canada has no shortage of trade and other bilateral issues to be resolved and we have, regrettably, succeeded in eroding much of the good will at senior levels of the US administration that we will need if we are to advance our interests in an effective manner. Many of the decision makers in Washington are currently less than enamored of Canada because of the inept way in which we reached decisions on participating in the war in Iraq and missile defence as well as the fact that we are getting what largely amounts to a free ride in terms of North American military defence. As a matter of urgency, therefore, the Canadian government should address the various issues of border security identified above. If we wait until the next major terrorist attack in North America before taking action, the costs to Canada could well be devastating.

## Appendix A: Refugee Acceptance Rates

The following table provides figures on the number of asylum seekers who were granted Convention Refugee status, the number rejected, and the percentage accepted in the principal countries granting permanent resettlement to asylum seekers. The statistics are based on the data in the United Nations High Commission for Refugees publication *2003 Global Refugee Trends*.

### Acceptance Rates of Refugee Claimants in 2003

Receiving country	Total of claims accepted and rejected	Claims accepted	Claims rejected	Percentage of claimants accepted as Convention Refugees (%)	Population in mid-2004 (millions)
Australia	12,633	1,099	11,534	9.5	19.9
Austria	7,035	2,084	4,951	8.2	8.1
Belgium	7,039	1,384	5,655	10.3	10.3
Canada	35,675	17,682	17,993	49.6	32.5
Denmark	5,996	724	5,272	12.0	5.4
Finland	1,160	8	1,152	0.7	5.2
France	99,108	13,167	85,941	13.3	60.4
Germany	66,138	3,136	63,002	4.7	82.4
Ireland	10,640	1,195	9,445	1.2	4.0
Italy	3,832	625	3,207	16.3	58.7
Netherlands	22,064	1,127	20,937	5.1	16.3
New Zealand	1,434	137	1,297	9.5	4.0
Norway	9,217	577	8,640	6.3	4.6
Spain	2,588	238	2,350	10.1	40.3
Sweden	35,498	648	34,850	1.8	9.0
Switzerland	23,512	2,641	20,871	1.2	7.5
UK	123,931	19,711	104,220	5.9	60.3
USA	74,381	24,036	50,345	32.3	293.0
Totals	541,881	90,219	451,662		721.9

#### COMMENTS

a) Canada's acceptance rate of 49.6 percent compares with an average of 16.6 percent for all the countries listed above. If Canada's totals are not included, the approval rate for the remaining 17 countries is 14.3 percent. Canada's acceptance rate in 2003 was, therefore, almost three-and-a-half times the average rate of the other countries.

b) Canada's share of the population of the above countries is 4.5 percent. Our share of asylum seekers who were granted permanent resettlement as Convention refugees in these countries was 22 percent, i.e., on a per capita basis, we accepted almost five times the average of all the countries in the above table.

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**Martin Collacott** was born in Vancouver and holds degrees in philosophy from the University of Toronto. After completing his university studies he worked for the Toronto YMCA and then as Citizenship Adviser for the Ontario Department of Education. In both capacities he took a particular interest in building bridges between communities with different ethnic and religious backgrounds. Following this he spent five years in North Borneo training teachers in Chinese schools in the teaching of English as a second language.

He joined the diplomatic service in 1966 and was posted to Saigon, Hong Kong, Beijing, Lagos, and Tokyo. During this period he also served as the Chinese-speaking member of the Canadian team that negotiated the establishment of diplomatic relations with the People's Republic of China. In the latter part of his career he was Canadian High Commissioner to Sri Lanka, and Ambassador to Syria, Lebanon, and Cambodia. As Director General for Security Services at headquarters in Ottawa he coordinated counterterrorism policy and represented Canada at international meetings on this subject as well as chaired the Economic Summit Counterterrorism Experts Meeting and the Canada-USA Bilateral Consultative Group on Counterterrorism.

Following his retirement from the Department of Foreign Affairs he took part in a number of projects in Asia related to conflict resolution, human rights, and governance. In recent years he has devoted his time to the reform of Canadian immigration and refugee policy and has written and spoken extensively as well as testified before parliamentary and congressional committees in Ottawa and Washington on these topics. He is currently a Senior Fellow at The Fraser Institute in Vancouver.

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