



Monday, Nov 22

Civil liberties under threat

McGill hosts symposium on counter-terrorism and human rights

By [Humera Jabir](#)

Published: Mar 8

Extraordinary renditions, spurious security certificates, and overseas torture have raised new concerns about the status of human rights in an era of heightened anti-terrorism protections. At a symposium held at the Faculty of Law last Friday, leading policy-makers, lawyers, and academics addressed the need to critically revisit Canada's national security policy and to return to fundamental principles of human rights.

"People actually [have had] their lives ruined by a certificate which turns out to be bogus in the end. This is a real problem. We have preventative arrests, jail for people who are not charged...let alone convicted.... These are things which were unimaginable in the Canadian fabric 20 years ago. They were just not possible," said Simon Potter, a member of the Canadian Bar Association, and fellow of the American College of Trial Lawyers.

"I don't want to argue here whether these things are necessary.... My point is that necessary or not, they are dangerous and we have to be alert," said Potter.

Also present at the symposium was Maher Arar, arguably Canada's best-known victim of outsourced torture. Wrongly labeled an Islamic extremist, Arar was deported to Syria by the American government in 2002 based on information provided by Canadian officials. Arar was held for over a year, and tortured during his detention. Prime Minister Stephen Harper issued a formal apology five years later.

Arar addressed the growing list of Canadians who have been victims of security intelligence failures. "Here in Canada we are all aware now of at least five or six cases where there is either direct or indirect complicity of the Canadian government: Abdelrazik, El Matti, Almalki, Nureddin. One can only ask the question, what are the other cases we haven't heard about?" said Arar, commenting on how the lives of these men have been "destroyed" by their experiences.

"Taxpayers' money was wasted going after the wrong people.... Would we have had a better return on our investments if our security agencies used standards existing for these cases, along with our solid legal system? Maybe it is time to revise our counter-terror strategy in light of what we have learned,"

he said.

Many of the panels focused on how Canada's national security policy should be changed.

Safia Lakhani, one of the symposium's organizers, commented that the event was about looking forward and improving responses to the current security environment.

"Security certificates [make this discussion] especially timely. They have been thrown out by the courts, upping the measures the government would take. It's the same with national security policy.... It's at a turning point, a crossroads, and what matters is where we are going with it," Lakhani said.

With Parliament back in session, speakers also discussed potential changes to security legislation in coming months.

According to Craig Forcese, associate professor of public international law and national security law at the University of Ottawa, the government has promised to "modernize" judicial codes to fight terrorism, and laws on preventative detention are on the table.

"There is the old adage about the democratic state that we always fight the instruments of chaos with one hand tied behind our back, and that is true and a necessary reality in a democratic state," said Forcese.

"It's a question of balancing the legitimate objective of grappling with terrorism against the equally legitimate objective of preserving the rule of law and the democratic institutions we are habituated to."

Forcese emphasized that terrorism is a security reality that states must be equipped to address. He added though that many of the instruments currently available are insufficiently nuanced to deal with threats, and made the case for moderate preventative detention measures.

"It is possible to arrive at situations where the government has a real cogent and compelling fear of terrorism activity.... My view is that it is best to have a very modest system with checks and balances rather than putting the onus on law enforcement to protect us and then not give them the tools to do that, then driving them to contort those tools in manners that abuse process," Forcese added.

Julian Falconer, a lawyer who represented Maher Arar and Suaad Mohamud, a Canadian mother who was stranded in Kenya after her passport was rejected by Canadian officials, also commented on the need to achieve a balance between genuine security concerns and respect for civil liberties.

"There was a time when someone had a Canadian passport, it meant something. If you were a Canadian citizen and you were stranded abroad, the existence of that Canadian passport was your insurance that the Canadian government was expected to go to bat for you, and far more often than not they did," said Falconer, citing Mohamud, Arar, and Omar Khadr as examples.

Falconer also referred to recently prorogued legislation related to the international transfer of offenders, which deals with the treatment of individuals in custody abroad and their right to return to Canada. He expressed dismay that the amendments proposed by the government would further limit the rights of Canadians, and give the executive branch the discretion to deem someone unworthy of assistance.