

BY EMAIL

March 9, 2016

The Honourable Ralph Goodale
Minister of Public Safety
269 Laurier Avenue West
Ottawa, ON K1A 0P8

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Dear Minister:

Re: The necessary components of an effective and integrated national security accountability framework for Canada

We are writing on behalf of the undersigned civil society organizations to call upon the federal government to commit to building an effective national security accountability framework for Canada. We are pleased at how expeditiously you have pursued inquiries into various models of parliamentary committee oversight. However, it is our united view, from civil society organizations with experience in national security accountability, that a parliamentary committee alone will be entirely inadequate in addressing the accountability deficit that was exposed during the Arar Inquiry and has persisted ever since. Specifically, we call upon the federal government to commit, at a minimum, to the integrated accountability components described by Professors Craig Forcese and Kent Roach in their paper “Bridging the

National Security Accountability Gap: A Three-Part System to Modernize Canada's Inadequate Review of National Security".

We are writing with a sense of urgency, fearful that the government's public pledge to create a parliamentary committee may signal the limited extent of the reform agenda in this matter. It is necessary for us to say from the outset that if a parliamentary committee is the only new accountability mechanism introduced, true accountability will not be achieved.

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While every aspect of government requires accountability, national security accountability faces a combination of challenges that are entirely unique. It is unique in the secrecy that is often necessary in its operations and even in its reporting. It is unique in the seriousness of the consequences that flow from failure to adequately monitor performance and efficacy. And it is unique in the seriousness of the human rights violations that flow from failures to mitigate the risk of abuses which have disproportionately impacted Canada's Muslim, Arab, and South Asian communities who have faced heightened suspicion by the security establishment and negative stereotyping in society.

In addition to these perennial challenges, agencies with responsibilities for national security are increasingly integrated and their powers and authorities have seen very significant expansion, sometimes into arenas that are entirely unprecedented in Canadian law. At the same time, there have been no commensurate increases in accountability.

Simply put, there is no means of providing effective accountability in this environment except through a thoroughly integrated accountability framework that involves both oversight and review. The need for both oversight and review has been emphasized in recent UN reviews of Canada's human rights record. In a 2012 review, the

UN Committee against Torture noted with concern that the Arar Inquiry proposal for “a model of comprehensive review and oversight of law enforcement and security agencies involved in national security activities” had not been implemented. And a 2015 review by the UN Human Rights Committee highlights “the lack of adequate and effective oversight mechanisms to review activities of security and intelligence agencies, and the lack of resources and power of existing mechanisms to monitor such activities.”

This is the approach recommended by Professors Forcese and Roach. They propose a three-part accountability framework consisting of the following:

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First, a committee of parliamentarians with robust access to secret information, charged primarily with strategic issues, including an emphasis on “efficacy” review – that is, focusing on the overall efficiency and effectiveness of Canada’s [Security and Intelligence] community, laws and policies. In designing this committee of parliamentarians, we must be attentive to three pivotal design aspects: good people; good resources; and good access to secret information.

Second, a consolidated and enhanced expert review body – a “super-SIRC” – with robust access to secret information, capable of raising efficacy issues but charged primarily with “propriety” review – that is, focusing on whether the [Security and Intelligence] community comply with law, policy and directives, and also empowered to hear complaints concerning [Security and Intelligence] community conduct.

Third, an independent monitor of national security law built on the UK and Australian model, with robust access to secret information and charged with expert analysis of Canada’s

proposed or actual anti-terrorism and national security legislation.

By every possible measure Canada's current national security accountability mechanisms are woefully inadequate: assessments by national inquiries, disfavoured comparisons with other countries, profound public mistrust. A parliamentary committee would be an important piece of addressing this, but in itself, fails to remedy some of the most egregious accountability failures, such as the complete absence of review bodies for some of the agencies involved in national security, like the Canada Border Services Agency ("CBSA"). While the national security landscape in Canada and beyond is increasingly integrated, our current review mechanisms are 'siloed' and, in cases like the CBSA, non-existent.

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To be clear, we are not asking the government simply to adopt the Forcese/Roach proposal. How the three components of their framework are to operate should be a question for the promised consultation on national security. Our point is that a baseline commitment to no less than the three-part approach is needed to ensure genuine and effective accountability. We urge you to make this commitment as a critical step to making an appropriate response to the Arar Commission findings and restoring the trust of Canadians in their national security agencies.

Sincerely,

Amnesty International Canada
British Columbia Civil Liberties Association
British Columbia Freedom of Information and Privacy Association
Canadian Civil Liberties Association
Canadian Association of University Teachers
Canadian Council of Refugees
Canadian Muslim Lawyers Association
International Civil Liberties Monitoring Group

Lawyers Rights Watch Canada
Ligue des droits et liberties
National Council of Canadian Muslims
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