



National ID Cards and the Arar Case

By Dr. Lorne Foster

At present there is a debate going on in England surrounding the adoption of biometric ID cards that is almost identical to the one Immigration Minister Denis Coderre is trying to win in Canada.

As in Canada, British human rights activists and a number of government cabinet ministers have lined up against the idea, cautioning it would cost billions, represent an invasion of civil liberties, and in the end fail to actually combat crime or terrorism as advertised.

But also, as in Canada, neither criticism nor political resistance has deterred the minister in charge. British Home Secretary David Blunkett (Coderre's British counterpart) recently announced that he is taking a gradual approach, with full introduction of the compulsory cards taking up to 10 years and only after cabinet votes on the proposal again. In the meantime, Mr. Blunkett said the government would begin building a database to support a national system and would first change passports and drivers' licences to include biometric information that allows fingerprint or iris recognition.

To underscore his case, the British Home Secretary even resorted to a bit of now familiar "Coderre-like" logic: "No one has anything to fear from being correctly identified, but everything to fear from their identity being stolen or misused ... Privacy and confidentiality would be an essential part of the system."

This debate over national ID cards is clearly intensifying and being entrenched along the lines of "national security versus individual rights" on a global scale, with no resolution in sight.

However, if the world really wants to learn from the Canadian experience about the relationship between identification techniques and civil liberties (the power of the state versus the rights of the individual) they would need to look no further than the case of Maher Arar.

Mr. Arar, a 33-year-old dual Canadian-Syrian citizen and Ottawa engineer – who was arrested during a stopover in New York Sept. 26, 2002 and later deported against his will to his native Syria where he was tortured for ten months before his return to Canada – recently ask Canada's privacy watchdog to investigate "illegal" government leaks about his case. Toronto lawyer Lorne Waldman said the flow of Arar's personal information violates the Privacy Act, and he has insisted some details "almost certainly" originated from the Mounties.

Mr. Waldman has written letters on behalf of his client to interim privacy commissioner Robert Marleau and RCMP Commissioner Giuliano Zaccardelli pressing for "a public inquiry to look at everything that happened in this case, from beginning to end."

Moreover, there are other constitutional issues brought into play by this case as well.

Section 6 of the Canadian Charter of Rights and Freedoms guarantees to every citizen the right to enter, remain and leave Canada. And Canada has a correlative duty to admit any Canadian citizen. This means that once the United States decided to remove him, Mr. Arar had a legal right to enter Canada even if he were suspected of terror-related wrongdoing, and Canada

had a legal obligation to admit him. Canada now has an extremely expansive anti-terrorist law with wide-ranging powers of surveillance and enforcement. If Mr. Arar was suspected of breaking any of Canada's laws, Canada could have deployed its justice system against him, in Canada.

It is on this account that a growing number of concerned Canadians believe there are many questions about the Arar's case – particularly about Canada's role in gathering and furnishing information to U.S. authorities – that need to be addressed by an independent inquiry with the authority to subpoena witnesses and compel disclosure of evidence. Since the RCMP Complaints Commission lacks these powers, it is not the appropriate venue to bring the relevant facts to light.

Meanwhile, (even) without subscribing any culpability in the Arar case, our Canadian experience already defies the familiar Coderre-like political logic that “no one has anything to fear from being correctly identified.” Indeed, it is our experience that the more confidential the information government spy agencies and security forces have at their discretion, the greater is the potential for serious inaccuracies, significant disruption and grievous harm to individuals.

While some contemporary politicians will continue to suggest otherwise, it behooves us to remember, throughout the upcoming twists and turns in the global biometric ID card debate, that experience will always prescribe the urgency of protecting individual rights against the mute obstinacies and overwhelming administrative power of the state.