CONCLUSION AND RECOMMENDATIONS

The Committee recognizes that the responsibility bestowed upon a government to counter terrorism-threats and ensure the safety and security of individuals is a vital issue. The Committee is of the opinion that the measures taken to address these threats should respect the constitutionally protected rights and freedoms of Canadians. The "two responsibilities do not compete with each other, they are one and the same."[177] The enactment of additional national security measures should not lead to weaker human rights protections. To adhere to the *Charter of Rights and Freedoms* should not leave Canadians vulnerable to threats.

The decision to uphold human rights within Canada's national security framework should not be considered to hinder national security efforts, but should be recognized as a key component of it. As pointed out by some witnesses, to reject the false dichotomy that it has to be one or the other affirms that Canada's approach to national security is one grounded in full regard for human rights.[178]

In conclusion, the Committee recommends the following:

Recommendation 1

That the *Department of Public Safety and Emergency Preparedness Act* be amended to require the publication of the Public Report on the Terrorist Threat to Canada, and specifically include 1) performance indicators, 2), data on information sharing as it relates to the *Security of Canada Information Sharing Act*, and 3) the obligation that it be annually tabled in Parliament.

Recommendation 2

That building upon past experience, the Government of Canada increase funding for long-term research as well as the development of professional expertise, both within government and outside government, to understand and address new and evolving threats to national security.

Recommendation 3

That Public Safety Canada develop a community-based strategy for the prevention of radicalization to violence based on research data and focusing on best local practices. It should include programs for the empowering of youth and women, inclusion of marginalized persons and groups, and broad community and educational activities.

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177 SECU, Evidence, 1st Session, 42nd Parliament, 13 February 2017 (Alex Neve).

178 Ibid.

Recommendation 4

That counter-radicalization programs continue to include and expand efforts to stop groups that promote radicalization from gaining a foothold to spread their message of violence, or the precursors to violence.

Recommendation 5

That the Government of Canada increase its contribution to and promote the Communities at Risk: Security Infrastructure Program to help communities at risk of hate-motivated crimes improve their security infrastructure.

Recommendation 6

That the Government of Canada recognize that establishing a national security and intelligence committee of parliamentarians is a first step toward increasing the transparency and accountability of the security agencies and that other mechanisms must be considered in order to restore Canadians' trust in those agencies.

Recommendation 7

That the Government of Canada create an independent and external review body for the operations of the Canada Border Service Agency.

Recommendation 8

That the Government of Canada establish statutory gateways among all national public safety and national security review bodies in order to provide for the appropriate exchange of information, referral of investigations, conduct of joint investigations and coordination in the preparation of reports.

Recommendation 9

That the Government of Canada increase the funding of all public safety and national security review bodies to enable them to carry out their mandates effectively, matching the increase in activities of the agencies they oversee and to ensure the protection of Canadians' rights and freedoms.

Recommendation 10

That the Government of Canada establish a national security review office as the integrated review body for the bodies inside the government that have a national security mandate that are currently without a review body and that the national security review office act as a coordinating committee for the existing national security review

bodies. The national security review office should have the following mandate:

- to ensure that the statutory gateways among the independent review bodies operate effectively;
- to take steps to avoid duplicative reviews;
- to provide a centralized intake mechanism for complaints regarding the national security activities of federal entities;
- to report on accountability issues relating to practices and trends in the area of national security in Canada, including the effects of those practices and trends on human rights and freedoms;
- to conduct public information programs;
- to initiate discussion for co-operative review with independent review bodies for provincial and municipal police forces involved in national security activities.

Recommendation 11

That the reference to the *Canadian Charter of Rights and Freedoms* in section 12.1(3) of the *Canadian Security Intelligence Service Act* be repealed in order to remove the ability to violate the Charter.

Recommendation 12

That before the Canadian Security Intelligence Service engage in disruptive powers, the agency exhaust all other non-disruptive means of reducing threats.

Recommendation 13

That the Government of Canada ensure that section 12.1 of the *Canadian Security Intelligence Service Act* (CSIS Act) requires that all disruption activities that violate Canadian law necessitate a warrant and that the Minister's approval be obtained prior to the activity under section 21.1 of the CSIS Act.

Recommendation 14

That the *Canadian Security Intelligence Service Act* be amended in order to include a quarterly report on disruption activities for the Committee of Parliamentarians.

Recommendation 15

That the Government of Canada ensure that the Canadian Security Intelligence Service respect the traditional distinction between intelligence gathering and police disruptive operations by working in concert with the Royal Canadian Mounted Police and other police forces to assist in their investigations and the exercise of their disruptive powers, and not duplicate such investigations or powers.

Recommendation 16

That the Government of Canada restrict preventive detention to only exceptional, narrowly defined circumstances, and ensure conditions of those detained comply with Canadian and international standards on detention and due process.

Recommendation 17

That the Government of Canada study other measures that could be used instead of preventive detention.

Recommendation 18

That sections 83.3(2) and 83.3(4) of the *Criminal Code* be amended in order to remove the wording "may be" and "is likely to" applicable to recognizance with conditions and to replace them with the "balance of probabilities" concept.

Recommendation 19

That section 83.221 of the *Criminal Code* be amended in order to clarify the concept of "terrorism offences in general" and to consider replacing it with "terrorism offences", as defined in section 2 of the *Criminal Code*. Furthermore, the Government of Canada should consider applicable defences modeled after those in section 319(3) of the *Criminal Code* that prohibit the wilful promotion of hatred and contain a number of truth and fair comment defences.

Recommendation 20

That the Government of Canada ensure no Canadian is restricted from the legitimate exercise of their right to freedom of expression and freedom of association, and that it remove any provisions in current legislation that may be in contravention to the *Charter of Rights and Freedoms* or restrict the legitimate exercise of rights, particularly those of journalists, protesters, non-governmental organizations and environmental and Indigenous activists.

Recommendation 21

That the definition of "terrorist propaganda" in section 83.222(8) of the *Criminal Code* be amended in order to be limited to material that counsels the commission of a terrorist offence or that instructs the commission of a terrorist offence.

Recommendation 22

That the scope of activities subject to information sharing under the *Security of Canada Information Sharing Act* be narrowed so as to be consistent with all other national security legislation.

Recommendation 23

That the Government of Canada change the definition of an "activity that undermines the security of Canada" and revise the list of activities enumerated in section 2 of the *Security of Canada Information Sharing Act* in order to ensure that basic civil liberties such as freedom of expression, freedom of association and freedom of peaceful assembly are upheld.

Recommendation 24

That the Government of Canada ensure that protections guaranteed under the *Privacy Act* are not abrogated by the *Security of Canada Information Sharing Act*, thus ensuring Canadians' privacy is protected.

Recommendation 25

That the proposed Committee of Parliamentarians conduct an immediate review of the operational evaluation of the information exchange process included in the *Security of Canada Information Sharing Act*.

Recommendation 26

That the *Security of Canada Information Sharing Act* be amended in order to adopt a model of dual thresholds, one threshold of relevance for the disclosing institutions and a threshold of necessity and proportionality for the recipient institutions currently numbered at 17.

Recommendation 27

That the Government of Canada create an office of the national security compliance commissioner to review all national security information sharing activity between and among government departments and agencies, including Canadian Security Intelligence Service and the Royal Canadian Mounted Police, to ensure compliance with the *Charter of Rights and Freedoms* and all Canadian law.

Recommendation 28

That the Minister of Public Safety and Emergency Preparedness review the ministerial directives concerning torture to ensure that they are consistent with international law.

Recommendation 29

That sections 38 to 38.16 of the *Canada Evidence Act* be amended in order to repeal the two-court system for criminal cases and enable trial judges to review secret information and decide on matters of confidentiality.

Recommendation 30

That the *Canada Evidence Act* be amended in order to allow the court to appoint, upon request or automatically, special advocates, with the necessary security clearance, who will be given access to confidential government information and will be tasked with protecting the interests of the accused and of the public in disclosure proceedings.

Recommendation 31

That sections 83(1) and 85.4(1) of the *Immigration and Refugee Protection Act* be amended in order to give special advocates full access to complete security certificate files.

Recommendation 32

That the *Secure Air Travel Act* be amended in order to allow an individual who has been denied air travel to confirm with the Passenger Protect Inquiries Office that they themselves are or are not on the Canadian Specified Persons List, and that they do or do not share a name with an individual on the Canadian list.

Recommendation 33

That the *Department of Public Safety and Emergency Preparedness Act* be amended to provide that Public Safety Canada's annual report to Parliament include the number of individuals on the Specified Persons List.

Recommendation 34

That the Government of Canada enhance the operations of the Passenger Protect Program in order to prevent false positive matches with individuals with the same or similar names.

Recommendation 35

That the Government of Canada create an expeditious redress system to assist travelers erroneously identified as a person on the Specified

Persons List (known as "false positives") and that it continue to work with foreign governments in order to assist Canadians whose names appear on these governments' lists.

Recommendation 36

That the *Secure Air Travel Act* be amended in order to require the Minister of Public Safety to respond to an administrative recourse under the Act within 90 days. If the Minister does not respond within the prescribed time period, the individual will be automatically removed from the Specified Persons List.

Recommendation 37

That the *Secure Air Travel Act* be amended in order to provide for the nomination of a special advocate to protect the interest of individuals who have appealed to have their name removed from Specified Persons List.

Recommendation 38

That the Government of Canada ensure effective safeguards in the Passenger Protect Program against any unfair infringements on individuals' legitimate right to liberty, freedom of movement, privacy and protections from discrimination on the basis of national or ethnic origin, religion, sexual orientation, or any other characteristic protected by law.

Recommendation 39

That at this time, and following the Supreme Court of Canada's decision in *R. v. Spencer*, no changes to the lawful access regime for subscriber information and encrypted information be made, but that the House of Commons Standing Committee on Public Safety and National Security continue to study such rapidly evolving technological issues related to cyber security.

Recommendation 40

That the Communications Security Establishment, in acting upon the requests of other national security agencies regarding the surveillance of private communications and the gathering and retention of metadata, work only with appropriate warrants from the agencies making such requests.

Recommendation 41

That cyber security strategies need to adopt a whole of government approach, such as the GCHQ (UK Government Communications Headquarters) approach.