



The Proposed Identity Card: a Major Change in Relations Between the Citizen and the State

Brief to the Standing Committee on Citizenship and Immigration

**Ligue des droits et libertés
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Foreword

The *Ligue des droits et libertés* is an independent, non-partisan, non-profit organization founded in 1963. Its objectives are to defend and promote the universal and indivisible rights recognized in the International Bill of Human Rights. The *Ligue des droits et libertés*, a member of the International Federation for Human Rights (FIDH), is one of the oldest rights organizations in the Americas.

Introduction

In the fall of 2002, Minister Denis Coderre launched the idea of an identity card, also called a citizenship card, to facilitate border crossings for Canadians at the U.S. border. He maintained that such a card had become more appropriate since the war on terrorism, adding that, “things have changed since September 11”¹.

On December 6, 2002, John Manley and Tom Ridge, the director of *Homeland Security*, agreed on a 30-point Smart Border Action Plan². The first point concerns biometric identification. Both countries agreed to adopt technology that was “compatible and interoperable”, and to introduce cards that could store various types of biometric data. The new Canadian permanent resident card can incorporate biometric technology. As presented, the purpose of the plan was to meet the requirements of the United States rather than any need felt in Canada. According to Minister Coderre, the card represented a “Canadian” solution to the entry and exit requirements of the United States, to prevent the targeting of citizens of any particular nationality, because everyone would have to present the same card. However, the Minister never explained how the fact that everyone would be presenting the same card would prevent American border guards from focusing special attention on citizens who were nationals of certain countries. After all, Canadian citizens who were born in Muslim countries are now harassed at the border, even though they hold a Canadian passport like all other citizens of this country.

Since then, the Minister has changed the focus of his comments somewhat,³ concentrating on other aspects of the identity card, which according to him would provide benefits to Canadians. According to Mr Coderre, the ID card would protect Canadians against theft of identity and fraud: “...any debate about ID cards should not centre exclusively on issues of national security. Far more important are the issues of citizenship and entitlement to services... biometrics have the potential to benefit individuals and society and indeed could have privacy enhancing capabilities.”⁴ Here again, the Minister does not provide any support whatever for his statements.

We know almost nothing about what the features of the identity card would be and how it would be used. The only thing about which we can be certain is that the card would include biometric data, given the avowed interest of Minister Coderre in such technologies and agreements signed with the United States. However, the basic questions surrounding the introduction of an ID card remain unanswered:

¹ Marco Fortier, *Création d'une super carte d'identité*, Journal de Montréal, November 15, 2002.

² Department of Foreign Affairs and International Trade, *Smart Border Action Plan*, Status report, December 6, 2002., <http://www.dfait-maeci.gc.ca> .

³ Address by Denis Coderre at the *Public Policy Forum on the issue of a national identity document*, Ottawa, Ontario, February 27, 2003.

⁴ Ibid.

1. Would the card be compulsory? If so, as of what age?
2. Would people be required to carry the card at all times? Would failing to have the card with you constitute an offence, such as driving without a licence?
3. **Who** would be entitled to demand that that people show their card? Would refusal to do so constitute an offence? Punishable in what manner?
4. Under what **circumstances** could presentation of the card be required?
5. What biometric data would be incorporated into the card? An iris scan? Fingerprints? A facial image?
6. Will a microprocessor be built into the card? What data would be included in the microprocessor? Criminal record? Health record? Marital status? Employment?
7. Would the card provide access to central data records? If so, which ones?
8. Who would have access to these data records?
9. Would there be a mechanism to prevent unauthorized people from requesting presentation of the card? If so, how would it work?
10. Would Canadians be able to check the accuracy of the data?
11. Will there be an agency responsible for protecting citizens against abuse? What powers would it have?

The list of questions above shows just to what extent the ID card raises fundamental issues about the relationship between the citizen and the State in a democratic society.

A Major Change in Relations Between the Citizen and the State

In Canada, an identity card requirement would constitute a major change in the relationship between the citizen and the State. In those societies that are part of the Anglo-Saxon tradition of freedom, like Canada, England and the United States, citizens are not required to carry identification and are not required to disclose their identity to officials of the State unless being arrested. We are required to show a licence only when we engage in a specific activity that requires such a licence (driving, hunting, etc...). The primary purpose of verification by a government official is not to check our identity, but to ensure that we are legally authorized to engage in the activity in question. Furthermore, other documents, like health insurance cards, give us access to specific services. Here again, the primary purpose of these documents is not to identify us. The ID card is a completely different kind of document. **Its sole purpose is to identify us.** It introduces the idea that henceforth, citizens must be able to identify themselves at all times, and it challenges the right to anonymity that is one of the principles of our democratic system.

Indeed, in those states where identity cards have become an accepted part of everyday life, citizens are required to carry their card and show it on request. It enshrines the idea that citizens are answerable to the State in their everyday activities.

The Canadian Charter (ss. 7 and 8) and the Quebec Charter (s. 5) protect the right to privacy. According to the Supreme Court of Canada⁵, the right to freedom under s. 7 of the *Canadian Charter of Rights and Freedoms* goes beyond the straightforward concept of a lack of physical constraint and protects a limited sphere of personal autonomy in which individuals may make intrinsically private decisions without the intervention of the State, that is to say in the enjoyment of individual dignity and independence.

In *Dyment*⁶, La Forest J. wrote that the concept of privacy “is at the heart of liberty in a modern State” (p. 427) and that it “is based on the notion of the dignity and integrity of the individual.” (p. 429). In *Aubry v. Editions Vice-Versa Inc.*⁷, the Court states that if the purpose of the right to privacy under s. 5 of the Quebec Charter is to protect a sphere of individual autonomy, it must include the ability to control the use made of one’s image because the right to one’s image is based on the notion of individual autonomy, i.e. to control one’s identity.

Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint. Coercion includes not only . . . blatant forms of compulsion . . . [but also] includes indirect forms of control which determine or limit alternative courses of conduct available to others.

The introduction of a compulsory identification card raises a fundamental question of principle that must not be skirted by a debate on purely practical and technical issues raised by the introduction of such a card.

⁵ *Godbout v. Ville de Longueuil*, [1997] 3 S.C.R. 844.

⁶ *R. v. Dyment*, [1998] 2 S.C.R. 417

⁷ *Aubry v. Editions Vice-versa Inc.* [1998] 1 S.C.R. 591

The Dangers Inherent in an Identity Card

The idea of an optional identity card does not strike us as credible in the least. If identity cards are to provide the solution to problems of identification, as Mr Coderre claims, how could they be optional? All citizens who do not have their card will be treated as suspects, and dealt with accordingly. **It must be taken for granted that if an ID card is introduced, it will necessarily be compulsory.**

Mr Coderre's statements show us that the proposed ID card will contain biometric data, probably iris scans and fingerprints. The biometric data stored on a card may be used for checking purposes or for checking and identification. In the first instance, the biometric data on the card would be compared to the bearer, as read by a machine, to check that the card indeed belongs to the person carrying it. This would mean that there would be no need to refer to a database. In the latter instance, the bearer's biometric data would be compared to data in a file with a view to identifying the bearer by comparing his biometric data to all of the data in the file. In view of the Department's objectives, we suspect that the card would be used for identification purposes. Indeed, without a central database containing all the biometric data for all cardholders, it would be impossible to make sure that an individual was not providing him or herself with several identities, based on the same biometric data. The plan would require all citizens to file their fingerprints, iris scans and (probably) their facies in a police file. Once the principle of a biometric file for everyone in the population is admitted, what is there to prevent, once the technology allows it, the use of the ultimate biometric data for each person, namely the genetic code contained in DNA? Now DNA is not simply a means of identification: it defines our biological being and reveals some of our most intimate characteristics.

In the end, what is there to prevent the police from using biometric data, particularly fingerprints, in investigations of all kinds? All it will take is one infamous crime to raise the public's indignation for the police to succeed in convincing the people that it is in the public interest for them to have access to these records. At best, one could require that they obtain a legal warrant. **The establishment of such records is the prerogative of police states. Should a free and democratic society embark on such a path?**

An ID card would constitute a strong temptation to increase the level of surveillance and monitoring of citizens who travel even within the country. Megafiles on travellers are already a first step in this direction. Will "an internal visa" for Canada be introduced?

It must not be forgotten that the Ontario Court of Appeal reminded us in April in *Brown*⁸, that "racial profiling" by police departments is unfortunately a reality in Canada. Many police officers are likely to see the ID card as an opportunity to intervene with citizens to check their ID, whereas under normal circumstances, there would be no reasonable grounds for them to do so. Some social or ethnic groups, street people and young people will very likely become targets of these identification checks.

⁸ *R. v. Brown*, [2003] O.J. No. 1251, April 16, 2003.

The sharing of these records is also a matter of concern. The sharing of criminal records by police departments and surveillance teams from various countries, in particular in the United States, has already proved to be a major source of problems for a number of Canadians. Some Canadians are denied entry into the United States because they were arrested 20 or 30 years ago on minor offences, for which they were acquitted, or for which they have served a sentence. What has happened in such instances to the right to rehabilitation? The possibility that foreign authorities, in particular in the United States, will be able to obtain such records, whether legally or illegally, is worrisome. In this connection, the recent awarding of the contract to conduct the census of Canada's population to a U.S. firm close to the Pentagon is hardly reassuring.

Imperfect Technology

Contrary to what the Minister, Denis Coderre, has said, a biometric card will cause citizens a great deal of trouble. When attempts are made to use biometric cards to identify a person by comparing that person's biometric data to the data for a large number of people in a database, many errors occur. According to tests carried out by the Pentagon's Army Research Laboratory, biometric technologies are far less reliable than the manufacturers of these technologies would have us believe. The Pentagon tested two eye scan systems, *Visionics FaceIt* and *Iridian*, on a group of 270 people. The *Visionics FaceIt* correctly identified people in 51% of cases and the *Iridian* system in 94% of cases, although the latter manufacturer claims a success rate of 99.5%.⁹ Facial recognition was the worst, with an error rate of approximately 50%. It is important to add that the success rate drops as the sample size increases. In the proposed card system, the sample size would be tens of millions of people. The implications are enormous. What would happen when the system says that the person at the border or at the airport is not the person being claimed, or worse still, when the data match the data for someone who is wanted? Apart from the humiliation involved, how long will a person be held before the error is corrected? Will people from Muslim countries be given special treatment once again? Even a system that would correctly identify people 99.99% of the time would still give 1,000 false alarms for each 10 million travellers. Not to mention the fact that there would be complications for those whose biometric parameters have changed as a result of aging, illness or accidents (amputation, burns, etc.). Errors in identification would lead to even more serious consequences for people as a result of the fact that police departments tend to put their blind faith in these forms of technology.

The unreliability of biometric technologies would also have consequences when police departments use biometric data to identify suspects in the course of their investigations. How many people would be wrongly suspected, with all of the attendant consequences?

Before the era of information technology and electronic communications, an ID card was simply a document attesting to the identity of the bearer, and containing a limited amount of information such as an address and occupation. Incorporating a microprocessor into the card makes it possible to build a phenomenal amount of information about the bearer,

⁹ <http://www.wired.com/news/politics/0,1283,50470,00.html>

including a criminal record (at the request of police departments), driving record, medical record, etc. Public and private firms will be tempted to pressure cardholders to provide access to their records in exchange for services (insurance, accommodation, employment, etc.).

The proliferation of ways in which monitoring and surveillance can be performed through ID cards will result from the methods made available by new technologies resulting from electronic and IT developments. The fact that the planned card being suggested by the Minister is not accompanied by any specifications indicating the features of the proposed card forces us to envision all the possibilities. In any event, functions that are not built into the card at the time it is introduced could easily be added afterwards.

A Bogus Solution to Security and Identity Problems

The proposed identification card would not be very useful in combating terrorism. Some of those who defend the biometric ID card claim that the biometric characteristics of travellers could be compared to those of known terrorists stored in databases. However, this would first require that terrorists have been identified beforehand and second, that their biometric data have been obtained. Let's get serious: the terrorists who committed the attacks of September 11 had, to the best of our knowledge, entered the United States legally using their own identities. Their criminal intentions were clearly not known at the time they got onto the aircraft. The existence of an ID card would not have done anything to alter what happened.

Furthermore, many experiments have demonstrated that biometric readers can easily be defeated. For example, Mr Tsutomu Matsumoto, a security researcher at Yokohama University, was able to fool a fingerprint reader 8 times out of 10 by using a gelatine "finger" – consisting of ordinary jujube candies – on which he had transferred a fingerprint taken from a glass¹⁰. Not only that, but the evidence was easy to swallow after fooling the reader. The example of computer hackers who endlessly create new viruses and succeed in breaking into protected IT systems also clearly demonstrates that no technologies are foolproof.

Lastly, the identity card is supposed to solve the problem of reliability for so-called "primary" documents – birth certificates, permanent resident cards, citizenship cards – used to obtain so-called "accessibility" documents such as health insurance cards, driver's licences, etc. The ID card would thus become the new primary and "secure" document. And yet, on the basis of what documents will people be able to obtain a new card, if not the current documents that are to be replaced by the card? What is to prevent someone living under a false ID to obtain an identity card using this false ID and attaching documents that match his false ID?

¹⁰ Tom Sandage, *The Economist*, November 1, 2002, <http://www.cfo.com/Article>

Astronomical Costs

Although there are many other reasons besides the cost involved to reject the projected ID card, the *Ligue des Droits et Libertés* cannot ignore this aspect of the issue. All project cost estimates are in billions of dollars. The *Ligue des Droits et Libertés* is an agency that works to promote and defend the fundamental rights of the *Universal Declaration of Human Rights*. These rights do cover not only civil and political rights, but also economic, social and cultural rights. In a context in which the effective economic and social rights of Canadian citizens are under pressure in Canada, it would be a scandal for such amounts to be spent on such a project. If the plan goes forward, the rights and freedoms of Canadians would be doubly abused.

Conclusion

In short, the proposed identification card involves serious problems with respect to rights and freedoms, without providing a useful solution to the problems of identity and security. It would also challenge the right to privacy, anonymity and even the presumption of innocence.

As Mr Coderre said, “things have changed since September 11”. Indeed, Canadians have had their civil rights interfered with as never before, as demonstrated by the abrogation of a number of principles of fundamental justice in Bill C-36 and the establishment of a megafile on travellers. Other projects are in the works, such as plans to monitor all electronic communications, known as “legal access”. The imposition of a biometric identity card would be another major step towards a society in which citizens’ movements, behaviour and communications would be under surveillance. Are we prepared to sacrifice our freedoms for an illusion of security? Do we want to create conditions in which the privacy of all citizens is subject to police surveillance?

If the biometric ID card is introduced, we will be no more secure, but we will certainly be less free.