

Like many other human rights organizations around the world, the Ligue des droits et libertés and the International *Civil Liberties Monitoring Group* (ICLMG) are concerned about the erosion of fundamental rights since the terrorist attacks in the United States on September 11, 2001. Numerous governments took advantage of an atmosphere of fear and insecurity – often deliberately perpetuated – to considerably expand the powers of police forces. These powers led to the establishment of vast systems for surveillance and gathering information about citizens without their knowledge or consent.

Several measures threaten to impinge or curtail civil liberties.

- *Anti-terrorism Act*
- the mega-database on travellers
- the growing use of security certificates
- the introduction of biometric documents
- the gathering and sharing of information about citizens
- the surveillance of electronic communications
- the blacklist of airline passengers

These measures seriously disrupt our legal system and attack values entrenched in charter rights such as the presumption of innocence, the right to a fair trial, the right to a full and complete defence, the right to remain silent, the right to privacy and the right of asylum.

History shows that exceptional measures introduced in emergency situations and a climate of fear have paved the way for discriminatory practices and entailed serious abuses. Take, for example, the internment of Japanese-Canadians during World War II, or the Padlock Law under Duplessis in the 1950s.

La Fondation  
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CREATION  
OF A  
NO-FLY  
LIST  
IN CANADA

 LIGUE DES DROITS ET LIBERTÉS

The International Civil Liberties  
Monitoring Group

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## Creation of a no-fly list IN CANADA

A no-fly list is a list of persons banned from flying on commercial airplanes.<sup>1</sup> This measure was implemented in the United States after the September 11, 2001 terrorist attacks in New York City. U.S. security services draw up a list of people considered to be threats to air transportation. People on the list are prevented from boarding an aircraft. Approximately 44,000 people are on the U.S. no-fly list.<sup>2</sup>

The criteria used for placing someone on the list are not publicly known. When a mistake is made, it is very hard to have a name removed from the list. The names of passengers on all flights flying over U.S. territory are compared with the names on the no-fly list, regardless of whether the flight is actually going to a destination in the United States. There are 3,000 Canadian domestic flights and 1,000 international flights which fly over the United States each week on the way to destinations outside the US!

<sup>1</sup> Better known as the “no-fly list” in the United States. Canada has given the measure the much more palatable name of *Passenger Protect Program*.

<sup>2</sup> The CBS network in the United States obtained a copy of the list: <http://www.cbsnews.com/stories/2006/10/05/60minutes/main2066624.shtml>

### Did you know that...

**Evo Morales** (president of Bolivia), **Nabih Berri** (speaker of the Lebanese parliament) and the singer **Yusuf Islam** (formerly known as Cat Stevens) are on the U.S. no-fly list.

The list contains names as common as “**R. Johnson**” and “**T. Kennedy**” which correspond to dozens of individuals of the same name. U.S. Senator **Edward Kennedy** repeatedly had problems boarding flights in march 2004.

In January 2006, an Air Transat flight to Mexico was intercepted by U.S. fighter planes because it was carrying a **Canadian citizen of Lebanese** origin who was on the U.S. no-fly list.

**Maher Arar** and his entire family still can't travel to the United States because they are on the U.S. no-fly list even though Maher Arar was found to be innocent of all allegations against him.

### The no-fly list is only the first step

The no-fly list is only a preliminary step towards the implementation of even more sweeping plans announced by *Transport Canada*. These plans call for the name of each traveller to be checked against a computerized system which contains all available information about the traveller (travel habits, consumption patterns, knowledge, etc.). Based on this information, each person will be assigned a risk assessment – green, orange or red. A traveller who is given an orange or red rating would be subjected to additional searches and questioning, following which he or she might be banned from boarding.

### WHAT YOU CAN DO

- TALK ABOUT THIS TO PEOPLE AROUND YOU. We have to oppose it in large numbers.
- CONTACT YOUR FEDERAL MP: send a letter, e-mail or fax. Tell our elected representatives that you are opposed to the introduction of a no-fly list.
- STAY INFORMED ABOUT FURTHER DEVELOPMENTS.

### Did you know that...

In the United States, *The Automated Targeting System* searches through vast quantities of data to establish a “risk assessment” for hundreds of millions of people each year. This assessment will affect them for the rest of their lives since the information will be kept on file for 40 years. According to a report from the *Government Accountability Office* [the equivalent of our Office of the Auditor General], more than 30,000 travellers already have been falsely associated with terrorism as they crossed the border, took a plane or were arrested for a traffic offence.<sup>10</sup>

<sup>10</sup> [http://www.epic.org/alert/EPIC\\_Alert\\_yir2006.html](http://www.epic.org/alert/EPIC_Alert_yir2006.html), consulted on 09/01/2007

### Loss of rights, without trial

The information used to put a name on the list will be considered confidential for reasons of national security and international relations, especially if it comes from the U.S. *Transportation Security Administration*. Thus, a person specified on the basis of secret information may be deprived of his or her freedom of movement, without charges, without a trial, without access to the information held against him or her, and therefore without any way of setting the record straight. In the United States, pacifists and environmentalists have been prevented from flying. There is no provision for damages if it is proved that a mistake was made. For example, in November 2006, a businessman lost his job after he was refused the right to board a plane going to the United States.

### An incitement to racial profiling

The experience of the past five years has shown that Arab and Muslim communities are the primary victims of the new anti-terrorism powers given to police and intelligence services. There is every reason to think that this will be equally true for the no-fly list.

### Loss of rights without democratic debate

It is unacceptable that measures which infringe upon fundamental liberties are being established by simple regulation, without parliamentary debate, as if they were mere administrative changes. It is also unacceptable in a democratic society that a handful of public servants have the power to deprive their fellow citizens of their rights on the basis of secret information and without notifying them.

### The United States is calling the shots on security requirements

The Security and Prosperity Partnership is a tripartite agreement signed by the United States, Canada and Mexico. This followed the "Smart Border" agreements concluded by Canada and the United States after September 11, 2001. For the United States, the purpose of these agreements is to get its two trade partners to submit to new security requirements, such as biometric identity papers and measures for information sharing on security threats. For Canada, the goal is to keep trans-border trade flowing freely.

As a result of the new partnership, the Canadian government stated that Canada's no-fly program, the Passenger Protection Program "...would be a significant step towards achieving the goal of developing a comparable approach to passenger assessment, which the Security and Prosperity Partnership identified as a milestone for improved aviation security."<sup>3</sup>

<sup>3</sup> Canada Gazette Part 1, October 28, 2006, page 3470.

### How will the Canadian list be established? <sup>4</sup>

The *Specified Persons List* (SPL) will be drawn up by an *Advisory Group* composed of a senior officer of the *Canadian Security Intelligence Service* (CSIS), a senior officer of the *Royal Canadian Mounted Police* (RCMP), *Transport Canada* officials (if needed), and representatives from any relevant Canadian government department or agency. The list will include the name, gender and birth date of the specified persons. A person's name will be added to the SPL if there is information **suggesting** that the person **may pose** an immediate threat to aviation security. This is less stringent than the **reasonable grounds** now required by the Criminal Code for arresting someone.

The information used by CSIS and the RCMP can come from a foreign or multilateral intelligence or law enforcement agency, such as INTERPOL or the *Transportation Security Administration* (TSA), which is operates the no-fly list in the United States.<sup>5</sup>

<sup>4</sup> *Passenger Protect - Program Information Kit*, Transport Canada [http://www.tc.gc.ca/vigilance/spu/protection\\_passagers/menu.htm](http://www.tc.gc.ca/vigilance/spu/protection_passagers/menu.htm)

<sup>5</sup> *Passenger Protect - Questions and Answers*, Transport Canada [http://www.tc.gc.ca/vigilance/spu/protection\\_passagers/Q&R.htm](http://www.tc.gc.ca/vigilance/spu/protection_passagers/Q&R.htm)



## What happens at the airport?

Specified persons will not be notified that their names are on the list. Air carriers will be obliged to check and compare the names of all persons who look 12 years of age or older [the legal definition of an adult] with the SPL. If the person's name matches a name on the list, government-issued photo ID [or two pieces of ID without a photo] will be required for verification purposes.

The air carrier will immediately call a *Transport Canada* officer – on duty 24 hours a day. This officer will decide whether to issue an *Emergency Direction* stating that the person presents an immediate threat to aircraft security and should be prevented from boarding. *Transport Canada* will immediately inform the RCMP, and, if necessary the police force with jurisdiction at the airport.<sup>6</sup>

**“Excuse me, sir, there must be a mistake...”:**

## What can specified persons do?

To appeal being placed on the list, the specified person will have to apply to the *Office of Reconsideration*. He or she must submit a notarized document allowing the Office to verify the person's identity. The person can submit to the Office any written information relevant to his or her case. However, the individual won't have access to the content of his or her file, making it hard to know what is relevant or what allegations are contained in it. An adviser from outside the public service will examine all the information which was used to place the person on the list and prohibit them from boarding a flight. The advisor will verify the information provided by the applicant and submit a report to the Office of Reconsideration.

The *Office of Reconsideration* will make a recommendation to the Minister on the relevance of reconsidering the decision to put the name of the individual concerned on the list. If the applicant is not satisfied with the Minister's decision, he or she will have the option of taking legal action – for example, by challenging the decision in Federal Court.<sup>7</sup> This is obviously a procedure that will take time and financial resources.

<sup>6</sup> *Passenger Protect - Program Information Kit, op. cit.*

<sup>7</sup> *Ibid.*

## Abusive measures befitting a police state

**“They're preventing me from getting on the plane!”:**

### Loss of freedom of movement

Freedom of movement is a basic right in any democratic society: “Every citizen of Canada has the right to enter, remain in and leave Canada.” “Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right: (a) to move to and take up residence in any province....”<sup>8</sup>

Given Canada's geography, air travel is the most practical way of getting from one end of the country to the other. For all practical purposes, it's the only way to travel from continent to continent, and many people have to travel by air for their work. Given all the other measures already in place to ensure the safety of air transportation, the government has not proved that this new restriction on freedom of movement falls within “reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society,”<sup>9</sup> as stipulated by the Canadian Charter of Rights and Freedoms.

The government has failed to prove the necessity of this new measure, since the Criminal Code already allows authorities to arrest, formally charge and commit for trial an individual whom they have reasonable grounds to suspect has or will commit a criminal act. However, persons so charged have the right to due process under the law, unlike those whose names are placed on the Specified Persons List.

### The criteria for specifying an individual are vague, disturbing and not reasonable

The first criterion, “An individual who is or has been involved in a terrorist group, and who, it can reasonably be suspected, will endanger...,” is disturbing. The definition of terrorist activity in the Criminal Code is the one introduced by the *Anti-Terrorism Act*. This definition is so vague it can include forms of dissent having nothing to do with what is normally understood to be related to terrorism. The criterion does not require that an individual has been **found guilty** of having committed a terrorist act. It is enough that intelligence services believe a person “is or has been involved in a terrorist group” and in their opinion, “can reasonably be suspected, [he or she] will endanger....”

<sup>8</sup> Canadian Charter of Rights and Freedoms, Section 6

<sup>9</sup> Charter, Section 1