

Presentation  
to the  
Standing Committee on Public Safety and National Security  
by  
Canadian Unitarians for Social Justice  
2016-10-19

Presented by Jack Dodds (member) and Margaret Rao (president).

My name is \_\_\_\_\_ and I am here on behalf of Canadian Unitarians for Social Justice. We are a faith-based organization which provides opportunities for Unitarian-Universalists and others to apply their religious, humanistic, and spiritual values to social action. Most Unitarian-Universalists agree that spiritual values are relevant to the everyday world and that a free and democratic society is a prerequisite for full spiritual development.

In our view, Canadians are held together by a number of defining ideas. The most important of these is the concept of democratic society. This does not refer just to our machinery of elections and government. It implies that power is vested in the people and that there is an equality of rights and privileges. It has a spiritual dimension: it is an expression of faith in the power of human beings to shape their own lives.

Social psychologist Tom Tyler has shown that “people comply with the law not so much because they fear punishment as because they feel that legal authorities are legitimate and that their actions are generally fair”. The perception of legitimacy depends on whether citizens are treated with proper respect, each with their own needs for dignity and privacy. These principles are intangible, but they are ultimately what has made Canadian society peaceful and safe.

Parliament's review of “Canada' National Security Framework” must honour the framework of ideas, the democratic vision, that underlies our government institutions. Minister Goodale, two weeks ago before this committee, seemed to commit the government to repealing the new provision that would allow violation of civil liberties based on a secret, one-sided court hearing. We salute the government for that commitment and strongly endorse it.

We continue to have concerns that, in shaping the legislation that governs our security apparatus, too much weight will be given to security experts and not enough weight will be given to the need to honour the democratic vision.

We recognize that security personnel are passionately committed to protecting Canadians from perils of all kinds. For certain, one of their fears is that our country will suffer some kind of damage or attack because they were not zealous enough in rooting out the wrong-doers. That is a heavy load to carry. South of the border, Michael Hayden, former director of both the CIA and the NSA, had a policy of “playing to the edge” of legality and it would be foolish to expect other security agency people to act differently. It is natural that in their minds, a small possibility of a real security failure should outweigh the possibility of long term damage to the intangible democratic spirit of our country. Yet, if that spirit is not honoured, if citizens feel that they are the subject of pervasive surveillance or worse, the result may be even more dangerous to national security in the long term. For that reason, Parliament must take responsibility for

placing clear limits on security agency behavior and provide the mechanism to enforce those limits.

Acknowledging equality as part of the democratic vision does not just mean that every person is treated equally. It also means that when citizens deal with the government, they do so on an equal footing. In the 801 years since Magna Carta, mechanisms have evolved to enable this vision. We require the government to obey the law just as citizens must. When citizens come into conflict with the government, they have access to impartial judges and juries and appear before them on an equal footing with their government adversaries.

We are concerned that present legislation and the green paper contemplate a creeping dilution of the equality between citizens and security agencies. Security agencies claim that they must operate in secret. But, court orders based on secret hearings which exclude the affected people are fundamentally incapable of delivering justice. This is even more true of extra-judicial authorization of privacy intrusions. Two weeks ago in this committee, witness Wesley Wark aptly described the present system as “paternalistic”, and these mechanisms fit that description.

We strongly endorse the government's commitment to a new parliamentary oversight committee. But that and other proposed oversight bodies do not reverse the trend towards paternalism.

To reverse the trend, Parliament should reaffirm that the only fully legitimate way to authorize searches or other actions against people is through court proceedings at which the affected person is represented. In cases like hearings for search warrants it may be necessary to keep the hearing secret, but in every case the affected party should be notified as soon as practical after the fact, providing an opportunity to challenge the court order. As well as creating a mechanism for accountability, this allows legislation to be refined by the development of case law.

We are concerned about the trend towards authorizing security agencies to act against people who may not have committed criminal acts. Counseling and conspiracy, as defined in the Criminal Code, provide a powerful basis to investigate and prevent acts of violence before they occur. Yet, recent legislation has added a shopping list of vaguely defined “activities that undermine the security of Canada” which can be used to justify information sharing. Other new provisions authorize “disruption” based on a low evidentiary threshold. This allows security agencies to build dossiers and intervene in the activities of citizens who are not performing criminal acts. In most cases the contemplated acts of disruption, if performed by a citizen rather than the government, would be criminal or illegal. This violates the democratic vision of equality between people and government.

This recent legislation has added to the fears of some citizens who are involved in social movements. In 2013, security agencies provided classified security briefings to Canadian energy companies. A classified RCMP report from 2014 uses hostile terms to describe lawful actions such as the use of social media to promote action on climate change and conflates violent actions with peaceful protests. The SIRC is currently investigating a complaint that citizens concerned about Enbridge Northern Gateway Pipeline were spied upon. There is palpable appearance of bias on the part of the security agencies which, combined with the new disruption powers, discourages people from participating in the democratic process.

Another major concern is that Minister Goodale, two weeks ago before this committee, focused on the so-called “going dark” phenomenon. This is the idea that security

agencies are unable to be effective because they are not able to access telecommunications of criminals. This argument has been widely used to justify demands for warrantless access to communications, a mandate for surveillance capabilities to be built in to telecommunications systems and a mandate for encryption “back doors”, all measures that facilitate mass surveillance.

It is not proven that these measures would improve security. The huge flood of data that would result and the problem of false positives make that questionable. But in any case, they would tilt the power balance away from citizens and towards the state, destroying the equality that is essential to the democratic vision, with a long term negative impact on the perceived legitimacy of government.

The vast majority of independent experts in the field of cryptography has stated repeatedly that encryption back doors cannot be provided to law enforcement without endangering everyone's security. More important, when citizens know that they have been deliberately deprived of the ability to communicate in private, it undermines their feeling that the government's power is legitimate. It is time to drop this idea.

Warrantless access has been discussed widely by the public. The overwhelming verdict in civil society is “come back with a warrant”. In a survey of Canadians commissioned by the Privacy Commissioner, a majority stated that they were “not comfortable” with government “requesting telcos to provide personal information without a warrant”. Canadians do not accept warrantless access as legitimate.

Finally, if a mandated surveillance capability were built into telecommunication systems, it would need to be used carefully in order to prevent abuse. No doubt those who propose such a development intend to use it carefully. But intentions can change overnight. Last week, south of the border, one presidential candidate told an audience of 65 million that if elected, he would use the power of his office to jail his opponent. In a robust democracy we should not create an infrastructure that could readily be misused by future governments or individual miscreants in any government.

While it is not surprising that security agencies would like to have “total information awareness”, the claim that criminals are “going dark” is exaggerated. Sixty years ago, people communicated over mechanically switched telephone lines and used manually sorted letter mail; financial transactions were made with cash and manually processed cheques; anyone could buy an airline ticket for cash and board without presenting any identification at all. There was no way to centrally access any of these systems. Collection of data required laborious manual work and (in the case of telephone surveillance) the installation of bulky equipment. In reality, the long term trend is towards increasing availability of data. The real challenge is to prevent its misuse.

In summary, Canadian Unitarians for Social Justice calls on Parliament to bring democratic control to security agency activities

- by acknowledging that there is a tension between those activities and the health of our democratic society;
- by setting clear limits on those activities to ensure that democratic ideals are honoured; and,
- by mandating proven transparency mechanisms so that citizens have the information they need to exert meaningful control of those activities.

Paraphrasing theologian Reinhold Niebuhr: Humankind's capacity for justice makes democracy possible; but its inclination to injustice makes democracy necessary. We should heed his words.