

# Discourses of Fear and Victimization: The Impact of National Security Legislation on the Tamil Canadian Community

Presented by

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## TABLE OF CONTENTS

ACKNOWLEDGMENTS .....	ii
TABLE OF CONTENTS .....	iii
LIST OF TABLES .....	v
LIST OF FIGURES .....	vi
ABSTRACT .....	vii
ABRÉGÉ .....	viii
INTRODUCTION.....	1
CHAPTER 1: DISCOURSES OF NATIONAL SECURITY AND TERRORISM.....	5
A. Overview of National Security Measures in Canada.....	5
<i>i. What is National Security?</i> .....	5
<i>ii. Threats to National Security – The Discourse of Terrorism</i> .....	6
<i>iii. Analyzing National Security Legislation</i> .....	8
<i>iv. The Anti-Terrorism Act</i> .....	10
<i>v. The Canadian definition of Terrorism</i> .....	11
<i>vi. Listing Terrorist Entities:</i> .....	13
<i>vii. Criticisms of the Listing Process</i> .....	16
<i>viii. Listing of the LTTE and the World Tamil Movement</i> .....	19
B. Overview of Tamils in Canada and the Liberation Tigers of Tamil Eelam (LTTE) .....	21
<i>i. The Tamil-Canadian Diaspora</i> .....	21
<i>ii. The LTTE and the Ethnic Conflict in Sri Lanka</i> .....	22
C. National Security/Human Rights Discourse.....	23
<i>i. Security in Freedom and Freedom of Security</i> .....	23
<i>ii. The False Dichotomy of Human Rights and Security</i> .....	24
CHAPTER 2: DISCOURSES OF FEAR, SECURITY AND TERRORISM .....	27
A. Defining Threats .....	29
<i>i. Definitions of Terrorism</i> .....	29
<i>ii. Domestic and International Definitions of Terrorism</i> .....	30
B. The Psychology of Fear.....	32
<i>i. Fear of Terrorism as a “Moral Panic”</i> .....	33
<i>ii. Application of Moral Panics to Terrorism</i> .....	35
C. Fear and “Errorism” .....	37
<i>i. Manufacturing fear: the misinformation age</i> .....	37
<i>ii. Case Study: The National Post Targeting of the Tamil Community</i> .....	38
D. Policing Fear .....	41
<i>i. Policing National Security</i> .....	41

ii. Resource Allocation.....	44
E. The Politics of Fear.....	46
i. Eradicating or Managing Fear: .....	48
ii. National Security and Diasporas.....	53
A. Victimization and Fear – “The Cult of True Victimhood” .....	57
i. Defining Victim.....	57
ii. Anti-Victimization Backlash.....	58
iii. Victimization and Terrorism: The Nation as Victim.....	60
B. Victimization and the Savage-Victim-Savior Metaphor .....	61
i. The Savage .....	62
ii. The Victim.....	63
iii. The Savior.....	65
iv. Case Study: Human Rights Watch Report on LTTE Fundraising in the Tamil Diaspora .....	66
C. Victimization and Human Rights: The Impact of National Security Discourse on the Tamil-Canadian Community in Toronto .....	67
i. Methodology: .....	68
ii. Views on National Security .....	71
iii. Perceptions and Experiences of Discrimination .....	71
iv. Case Study: Targeting Tamil Students Associations .....	78
CHAPTER 4: DISCOURSES OF AGENCY AND HUMAN RIGHTS .....	83
A. Breaking the Cycle of Fear and Victimization .....	83
i. Definition of Agency.....	83
ii. Agency in the Security Discourse .....	86
iii. Tamil-Canadian community’s perceptions of agency.....	87
iv. Advocacy in the Tamil-Canadian Community .....	88
v. Case Study: Community Use of Public Spaces.....	97
B. Political Advocacy or Legal Advocacy? .....	100
i. National Security in the Courts .....	101
ii. Political Advocacy in the Tamil Canadian community.....	105
iii. The FACT Dinner.....	105
iv. National Post Coverage of Tamils at the Liberal Convention.....	107
v. Tamil Political Involvement .....	108
CONCLUSION .....	111
LIST OF REFERENCES .....	114
LEGISLATION.....	114
APPENDIX A.....	120
APPENDIX B.....	121

## LIST OF TABLES

Table 1: International and Domestic Definitions of Terrorism – Fear .....	32
Table 2: Stages of Moral Panic, Terrorism and Actors .....	36

## LIST OF FIGURES

Figure 1 – The Interconnectedness of Security, Human Rights and Development .....	25
Figure 2: The Cycle of Fear and Victimization .....	28
Figure 3: Places of Personal Experiences of Discrimination.....	73
Figure 4: Perceptions of Discrimination by Age .....	77
Figure 5: Breaking the Cycle of Fear and Victimization - Agency .....	86

## ABSTRACT

National security discourses have a significant impact on migrant, refugee and immigrant communities. This thesis will address the impact that national security legislations have on vulnerable ethnic communities using the Tamil community in Canada as a case study. In highlighting concerns about rashly buying into the dominant discourses of terrorism and security, critical insights into how laws and policies impact community groups and society as a whole will be raised by exploring the discourses of fear and victimization. In particular, two important questions will be addressed. Firstly, how does the dominant discourse on fear of terrorism in national security legislation impact on the victimization of community groups, such as Tamil-Canadians? And secondly, what methods should be employed by communities so that the cycle of fear and victimization can be broken to enable the community to act with agency and resist these dominant discourses?

## ABRÉGÉ

Les discours présentés par la Sécurité nationale ont un impact significatif sur les itinérants, les communautés de réfugiés, et immigrants. Cet exposé adressera l'impact que les législations de la sécurité nationale ont sur la vulnérabilité dans les communautés ethniques, utilisant la communauté Tamoule au Canada comme une étude de cas. En soulignant les inquiétudes concernant imprudemment accepter les discours dominants de terrorisme et de sécurité, un aperçu critique dans comment les lois et les politiques influent les groupes de communauté et la société comme un ensemble sera élevé en explorant les discours de crainte et de persécution. En particulier, deux questions importantes seront adressées. Premièrement, comment le discours dominant sur la crainte de terrorisme dans la législation de sécurité nationale influe-t-il sur la persécution de groupes de communauté, comme Tamoul-Canadiens? Et deuxièmement, quelles méthodes devraient-ils être employés par les communautés pour que le cycle de crainte et de persécution puisse être cassé pour permettre à la communauté d'agir avec l'agence et s'opposer à ces discours dominants?



## INTRODUCTION

While the discourses surrounding terrorism and security has attracted academic interest for many decades, an explosion of research on terrorism and counter-terrorism measures has since emerged as a result of the tragic events of September 11, 2001. Many of these articles, which provide a critical analysis on “the war on terror” focus on balancing civil liberties and national security interests, in particular privacy rights.<sup>1</sup> Other academic works of interest address the human rights implications of the security agenda such as issues of racial profiling of Muslims and Arabs.<sup>2</sup> However, there is little discussion about two important societal factors that influence the discourse of terrorism and national security, (1) the influence of society in shaping the creation of anti-terrorism legislation; and (2) the impact such legislation in turn has on society. In order to look at these two powerful influences this thesis will focus on two particular manifestations within legislative policy-making in the context of national security measures derived from societal influences: fear and victimization.

The objective of this thesis is to critically assess the public and legal discourse around national security and terrorism in a climate dominated by fear. It also seeks to explore the interactive nature of law in society by looking at the impact of national security legislation on community groups, using the Tamil Canadian community as a case study. Many societal actors impact how laws are shaped and implemented, such as politicians, the media, law enforcement agencies and the general public. In turn, these laws have a significant impact on society. Nowhere is this interactive nature of law more clear than in the field of

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<sup>1</sup> Conor Gearty, "Reflections on Civil Liberties in an Age of Counterterrorism" (2003) 41 Osgoode Hall L.J. 184; Jon B. Gould, "Playing with Fire: The Civil Liberties Implications of September 11th" (2002) 62 Public Administration Review 74; Carol W. Lewis, "The Clash between Security and Liberty in the U.S. Response to Terror" (2005) 65:1 Public Administration Review 18; David Loukidelis, "Solutions do exist in the security versus privacy debate" (2005) 25:14 The Lawyers Weekly; Kent Roach, "Did September 11 Change Everything? Struggling to Preserve Canadian Values in the Face of Terrorism" (2002) 47 McGill L.J. 893.

<sup>2</sup> Reem Bahdi, "No Exit: Racial Profiling and Canada's War Against Terrorism" (2003) 41 Osgoode Hall L.J. 293; Faisal A. Bhabha, "Tracking 'Terrorists' or Solidifying Stereotypes? Canada's Anti- Terrorism Act in Light of the Charter's Equality Guarantee" (2003) 16 Windsor Rev. Legal Soc. Issues 95; John Boccabella, "Profiling the Anti-terrorism Act: Dangerous and Discriminatory in the Fight Against Terrorism" (2003) 9 Appeal 17.

national security, which has provoked a surge of newly enacted legislation in the last decade.

By looking at public, legal and policy discourses, such as terrorism, security, fear, victimization, and finally agency, it appears that these elements become a driving force in the formulation of national security legislation. These discourses also raise important issues such as; who is protected by anti-terrorism legislation and who in turn, is victimized by such laws? Vulnerable community groups, predominately ethnic, new immigrant and refugee groups are often the first targets of such security measures and become negatively impacted. Two important questions are raised by these discourses. First how does the dominant discourse on fear of terrorism in national security legislation impact the victimization of community groups, such as Tamil-Canadians? And second, what methods should be employed by communities so that this cycle of fear and victimization can be dismantled to enable the community to act with agency and resist these dominant discourses?

This thesis uses discourse analysis to present the concepts of terrorism, national security, fear, victimization and agency. In particular it utilizes the critical form of discourse analysis in order to explore the relations between discourse, power, dominance, and social inequality. Michael Foucault defines discourse as "systems of thoughts composed of ideas, attitudes, courses of action, beliefs and practices that systematically construct the subjects and the worlds of which they speak."<sup>3</sup> Discourse analysis is important particularly in relation to issues of national security and terrorism, in order to critically assess the basic assumptions of these complex concepts. Throughout this thesis, various discourses will be discussed including public discourse and legal discourse; however the main focus of this thesis will be around the public discourse and interaction between national security, fear and victimization that can lead to negative impacts on vulnerable community groups.

My thesis consists of four main parts. The first part will discuss the Discourse of **National Security and Terrorism** and sets out the national security

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<sup>3</sup> Michael Foucault, *The Archeology of Knowledge* ( New York: Pantheon, 1972) .

landscape in Canada. Since the Tamil-Canadian community is examined as a case study to explore the impact of national security legislation on vulnerable ethnic communities, a brief overview of the Tamil-Canadian community and the Liberation Tigers of Tamil Eelam is provided to contextualize the remaining parts of the thesis.

The second part looks at the **Discourse of Fear and Terrorism**. In the security discourse, laws are often created as a reactive measure to neutralize a perceived threat in society. The media and security agencies have an influential role in determining how threats are perceived by the public. In turn, the public discourse of fear shapes how legislation is drafted and implemented by the government. This thesis looks at fear as a primary emotional response to a perceived danger (whether real or imagined). Fear of terrorism has created an anxious security conscious society that is more prone to react emotionally than rationally and, thus, may lead to the enactment of national security legislation that is poorly designed.

The third part of this thesis focuses on the **Discourse of Victimization** where the impact of national security legislation is examined through examining a case study on the Tamil-Canadian community. Here, fear and victimization are portrayed as part of a vicious cycle that reinforce each other and results in profound human rights implications. Since the listing of the Liberation Tigers of Tamil Eelam (LTTE) and the World Tamil Movement as terrorist organizations by the Canadian government, there has been a significant impact on Tamil-Canadian community groups and individual Canadians of Tamil ethnicity. Anecdotal evidence and a survey administered to the Tamil Canadian community in Toronto are presented and discussed in this chapter to provide concrete examples of the serious impact that national security discourse has and continues to have on the community.

The fourth and final section looks at the **Discourse of Agency** discussing methods that the Tamil-Canadian community can utilize to move beyond victimization and act with agency. The two main options discussed are (i) political engagement, and (ii) advocacy through the legal system. Political and legal

advocacy are by far not the only avenues to express agency, however, they are reflective of two important societal institutions (the legislature and the courts) that have a significant impact on law-making functions of the State.

## CHAPTER 1: DISCOURSES OF NATIONAL SECURITY AND TERRORISM

*"Those who are willing to sacrifice Essential Liberties in the name of Temporary Security deserve neither"*

Benjamin Franklin

### A. Overview of National Security Measures in Canada

#### *i. What is National Security?*

Concepts such as "threats to the security of Canada" and "terrorist activity" are widely used in legislation and policy documents to describe the ideas behind interests of national security; however, there is no actual definition of what national security means in any Canadian legislation. An explicit understanding of what is meant by "national security" from a Canadian policy perspective emerged only after the Government of Canada set out its first comprehensive policy on national security in 2004.<sup>4</sup> The Canadian government's Policy on National Security, adopts a "threats-based" definition of national security stating that: "national security deals with threats that have the potential to undermine the security of the state or society".<sup>5</sup> These may include human, biological, environmental, health and other threats that "require a national response, as they are beyond the capacity of individuals, communities or provinces to address alone".<sup>6</sup> There are a plethora of events that can fall under the purview of the "national security" definition. For example, the snowstorm that paralyzed the city of Toronto in 1999 and resulted in the Mayor of Toronto calling for military assistance could be classified as an "environmental" threat under this definition of national security. On the other hand, there are events that have widespread societal implications that are not included in the definition of national security. Economic crises, and massive unemployment, such as the case of the Great

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<sup>4</sup> Canada, *Securing an Open Society: Canada's National Security Policy*, (Ottawa: Privy Council Office, 2004). [Open Society] For the first time in Canadian political history, a comprehensive national policy on "national security" was drafted in 2004. The purpose of this document was to articulate "core national security interests and proposes a framework for addressing threats to Canadians."

<sup>5</sup> *Ibid.* at 3.

<sup>6</sup> *Ibid.*

Depression have the potential to “undermine the security of the state or society.”<sup>7</sup> However, government policies that address national security interests often refer to a limited definition of the “physical” security of the nation. While there are problems with this definition of national security, these are the ideas that frame the Canadian discourse on security and lay at the foundation of measures enacted to preserve national security in Canada that will be further discussed.

*ii. Threats to National Security – The Discourse of Terrorism*

Craig Forcese describes “national security threats” as “those posed by low-probability, high-consequence events that risk producing significant political turmoil.”<sup>8</sup> Terrorism can be described as one of these types of events.<sup>9</sup> When one thinks of the concept of “national security” certain key words, such as terrorism often come to mind. Terrorism is perceived as being a significant, if not the greatest, national security threat that Canada faces.<sup>10</sup> Since terrorist attacks have the potential to inflict widespread and indiscriminate damage on any section of the population there is more collective anxiety over the possibility of terrorist threats than the mere routine and ordinary causes of death and destruction.<sup>11</sup>

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<sup>7</sup> The level of poverty in our nation is often described as a “state of emergency” by anti-poverty activists. Toronto Disaster Relief Committee, Media Release, “State of Emergency Declaration”. (October 1998), online: TDRC <<http://tdrc.net>>.

<sup>8</sup> Craig Forcese, *National Security Law: Canadian Practice in International Perspective*, (Toronto: Irwin Law, 2008) at 6 [Forcese].

<sup>9</sup> According to Nassim Nicholas Taleb’s Black Swan theory, these large-impact, hard to predict, and rare events are beyond the realm of the normal expectations, such as September 11. Nassim Nicholas Taleb, “The Black Swan: The Impact of the Highly Improbable”. *The New York Times*. (22 April 2007).

<sup>10</sup> In an April 1, 2003 speech to the Parliamentary Sub-Committee on National Security, the Director of Canadian Security intelligence Service (CSIS), W.P.D. Elcock stated “Early in the 1990s, terrorism began to emerge as the greatest threat to Canadian security”. W.P.D. Elcock, Director Canadian Security Intelligence Service, (Appearance before the Parliamentary Sub-Committee on National Security, 1 April 2003), online: CSIS <<http://www.csis-scrs.gc.ca>> [CSIS: speech]

<sup>11</sup> Westerners are more likely to be killed in motor vehicle accidents or chronic medical illnesses such as heart disease or diabetes than as a result of by terrorist attacks. Michael L. Rothschild, “Terrorism and You – The Real Odds.” *The Washington Post*. (2 November 2001).

Terrorism is not a new concept, nor is it a post-September 11<sup>12</sup> phenomenon in Canada. Two events are often cited as Canada's most profound national security incidents. The first occurred during the 1960's, when Canada experienced its own domestic attacks by the *Front de Liberation du Quebec* (FLQ) and culminated in the 1970 "October Crisis" where Prime Minister Pierre Elliot Trudeau invoked the controversial *War Measures Act*.<sup>13</sup> The second incident occurred in 1985, when an Air India flight originating in Canada was bombed by a Canadian-based group killing all 329 passengers on board, the largest death toll from a single terrorist incident prior to 9-11.<sup>14</sup>

As we have seen from these incidents, the threat of terrorism "can have a serious impact on the safety of Canadians and on the effective functioning of our society"<sup>15</sup>. As a result Canada has become increasingly preoccupied with national security issues. In particular, four aspects of terrorism that affect Canadian interests are outlined in Canada's National Security Policy. At the top of the list is the threat posed by "religious extremism".<sup>16</sup> The network of groups that form Al-Qaeda is specifically listed in the policy document as a threat to Canadian security interests.<sup>17</sup> Another threat to Canadian national security is described as "violent secessionist movements". The policy states that "major secessionist movements from other countries have been active in Canada in a variety of ways".<sup>18</sup> A third source of terrorism listed as posing a threat to national security in Canada is "state-sponsored terrorism", which affects Canada's security and prosperity.<sup>19</sup> And finally, "domestic extremism" is listed as a source of terrorism that affects Canadian security. This can include and has been interpreted by

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<sup>12</sup> On September 11<sup>th</sup>, 2001 two commercial passenger airline jets crashed into the World Trade Centre twin towers, another crashed into the Pentagon, and a third plane allegedly headed for the White House, crashed on route in a field in Pennsylvania. This attack is referred to in the remaining sections as "9-11".

<sup>13</sup> Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *A new Review Mechanism for the RCMP's National Security Activities* (Ottawa: Public Works and Government Services Canada, 2006) at 29-30. [Arar Commission, Policy]

<sup>14</sup> *Ibid.* at 47-49.

<sup>15</sup> Open Society, *supra* note 4 at 6.

<sup>16</sup> In particular, "Sunni Islamic Extremism" is often singled out by security agencies as the "primary focus" of counter-terrorism resources.

<sup>17</sup> Open Society, *supra* note 1 at 6.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

security intelligence agencies as including such groups as animal rights movements, Aboriginal groups, and anti-globalization activists.<sup>20</sup> However, the policy also notes that domestic extremism is “not very prevalent in Canada”, but “in some cases resulted in violence and has threatened Canadians, including immigrant communities and religious minorities.” The primary cause of anxiety and fear to Canadian national security is derived from the first two threats: religious extremism and violent secessionist movements.

### *iii. Analyzing National Security Legislation*

Since the focus of this thesis is to explore the impact of national security legislation, it is useful to examine in more detail Canada’s national security landscape. Forcese suggests a typology that looks at the three main functions of national security legislation. First, there is national security legislation that is designed to establish new national security powers of the government.<sup>21</sup> These types of legislations authorize the government to pre-empt or respond to possible national security threats. Such powers can be used both in times of emergencies, such as the *War Measures Act*, or during non-emergency times, such as the *Canadian Security Intelligence Service Act*.<sup>22</sup> Legislation of this nature can create or establish institutional frameworks for combating national security threats, such as intelligence agencies, governmental departments, etc. During the last decade, a number of new national security laws and institutions have been established, some of which will be a focal point of analysis throughout this paper.

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<sup>20</sup> The 2005 Annual Report of CSIS describes under the category “domestic extremism” groups such as “neo-Nazis and violent fringe elements of single-issue groups from the ecological, animal-rights and anti-globalization movements.” CSIS, Annual Report (2005). While Aboriginal groups have been listed in previous additions of the CSIS Annual report (1999-2000), they were more recently added to the Canadian Armed Forces counter insurgency manual. “Radical natives are listed in the Canadian army’s counterinsurgency manual as a potential military opponent, lumping aboriginals in with the Tamil Tigers, Hezbollah and the Islamic Jihad.” Bill Curry, “Forces’ terror manual lists natives with Hezbollah” *The Globe and Mail*, (30 March 2007).

<sup>21</sup> Forcese, *supra* note 8 at 7.

<sup>22</sup> *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23



Another function of national security laws involves penalizing national security threats.<sup>23</sup> This function of national security legislation serves to criminalize certain acts that are detrimental to national security interest as well as punish those who perpetrate them. The incorporation of terrorist crimes into the Canadian *Criminal Code*<sup>24</sup> is an example of such measures. Also included in this category are pre-emptive measures to screen out possible security threats through various immigration and administrative legislation such as the *Immigration and Refugee Protection Act*<sup>25</sup> and the *Citizenship Act*<sup>26</sup>. The controversial security certificate process is exemplary of this objective.<sup>27</sup>

Further, current national security laws limit government obligations. Based on national security grounds the public's right to obtain information through the *Access to Information Act*<sup>28</sup> can be limited.<sup>29</sup> On the other hand, national security can also be utilized to allow "select, national security-motivated interception, collection and disclosure of information that would otherwise be protected" by provisions in the *Privacy Act*<sup>30</sup>. National security can be used as a justification to deny individuals the rights they would normally have, such as, the right to access evidence against them in a criminal proceeding. National security can also be used to justify infringement of an individual's privacy rights, through means such as wiretapping and surveillance. These measures have been

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<sup>23</sup> Forcese, *supra* note 8 at 7.

<sup>24</sup> *Criminal Code*, R.S.C. 1985, c. C-46 [*Criminal Code*].

<sup>25</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA].

<sup>26</sup> *Citizenship Act*, R.S.C. 1985, c. C-29.

<sup>27</sup> IRPA, *supra* note 25 at ss. 33, and 77-85. The Government can remove a person considered to be a security threat by issuing a Security Certificate signed by the Solicitor General and the Minister of Citizenship and Immigration, and endorsed by a judge of the Federal Court. Foreign nationals who are the subject of a Security Certificate are automatically detained. Permanent residents may be detained on a case-by-case basis. If the Federal Court decides that the certificate is unreasonable, it is quashed. If the court decides that it is reasonable, the certificate becomes an order for removal of the person. The court's decision can't be appealed. Since 1978, security certificates have been issued 28 times (of these, 25 of the individuals were of Muslim or South Asian background, including two Tamils). Currently, Hassan Almrei; Mohammad Zeki Mahjoub; Mahmoud Jaballah; Adil Charkaoui; Mohamed Harkat; and Manickavasagam Suresh all have security certificates issued against them.

<sup>28</sup> *Access to Information Act*, R.S.C. 1985, c. A-1.

<sup>29</sup> Forcese, *supra* note 8 at 8.

<sup>30</sup> *Privacy Act*, R.S.C. 1985, c. P-21

consistently and routinely used against individuals accused of posing a security threat to Canada.

Legislation designed with a national security purpose encompasses many, if not all of these functions. A key piece of national security legislation that will be analyzed in this thesis is the *Anti-Terrorism Act*<sup>31</sup> (ATA). The ATA was an omnibus bill that created widespread and sweeping governmental powers, criminalized acts of terrorism, and relieved the government of certain obligations in prescribed circumstances.

#### *iv. The Anti-Terrorism Act*

The ATA was drafted, debated and passed into Canadian law all within the span of three months.<sup>32</sup> While Canadian parliamentarians have vocalized the need for domestic anti-terrorism laws in Canada for years, it was not until the events of 9-11 that the Canadian government was propelled into action. As the twin towers collapsed, killing over 3000 innocent civilians, the American psyche was permanently scarred. While it may be a cliché, the world did indeed change on that fateful day; for perhaps the first time in modern history, a substantial violent attack against a sole superpower was carried out by an enemy that could not be defeated quickly through a reactive (and more life-consuming) use of military force. While national security has always been an important domestic policy, after 9-11, the global national security era was born. Combating terrorism has since become a prominent aspect of domestic policies and a lasting legacy of 9-11. Canada, like many other nations around the world was compelled into action and responded to the 9-11 attacks by enacting the ATA.

There are several key aspects of the ATA that will be referred to throughout this thesis. However, there are two aspects that will be the focal point

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<sup>31</sup> *Anti-Terrorism Act*, S.C. 2001, c. 41 [ATA].

<sup>32</sup> Bill C-36 was introduced and read for the first time in the House of Commons on October 15, 2001. It was debated at second reading on October 16, 17, and 18, 2001. The Bill was referred to the House of Commons Standing Committee on Justice and Human Rights on October 18, 2001. The Bill was amended at the Committee stage and reported back to the House of Commons on November 22, 2001. Further debates on the amended Bill occurred in the House of Commons on November 26, and 27, 2001. The third reading of the Bill occurred on November 28, 2001, and the Bill was passed by the House of Commons on this date. The Anti-Terrorism Act received Royal Assent on December 18, 2001.

of analysis, which are as follows: (1) the definition of terrorism, and (2) the process of listing terrorist groups.

*v. The Canadian definition of Terrorism*

Although there is no definition of the word “terrorism” in Canadian legislation, subsection 83.01(1) of the *Criminal Code*, defines the elements that make up a “terrorist activity”. The definition is composed of two parts. The first part incorporates the activities encompassed in a number of UN anti-terrorism conventions and protocols to which Canada is a party.<sup>33</sup> The second part of the definition is the “made-in Canada” approach, which includes a specific definition of what constitutes as “terrorist activity”. There are several components of the definition of “terrorist activity” including:

- (b) an act or omission, in or outside Canada,
  - (i) that is committed
    - (A) in whole or in part for a political, religious or ideological purpose, objective or cause, and
    - (B) in whole or in part with the *intention of intimidating the public*, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada, [Emphasis added]
  - and
  - (ii) that intentionally

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<sup>33</sup> *Convention for the Suppression of Unlawful Seizure of Aircraft*, 16 December 1970, 860 U.N.T.S. 105, (entered into force 14 October 1971); *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, 23 September 1971, 974 U.N.T.S. 178, (entered into force 26 January 1973); *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, 14 December 1973, 1035 U.N.T.S. 167, (entered into force 20 February 1977); *International Convention against the Taking of Hostages*, G.A. Res. 146 (XXXIV), U.N. GAOR, 34th Sess., Supp. No. 46, at 245, U.N. Doc. A/34/46 (1979), (entered into force 3 June 1983); *Convention on the Physical Protection of Nuclear Material*, 3 March 1980, T.I.A.S. 11080, (entered into force 8 February 1997); *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, 10 March 1988, 1678 U.N.T.S. 221, 27 I.L.M. 668 (1988), (entered into force 1 March 1992); *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf*, done at Rome on March 10, 1988; *International Convention for the Suppression of Terrorist Bombings*, G.A. Res. 164, U.N. GAOR, 52nd Sess., Supp. No. 49, at 389, U.N. Doc. A/52/49 (1998), (entered into force 23 May 2001); *International Convention for the Suppression of the Financing of Terrorism*, G.A. Res. 109, U.N. GAOR, 54th Sess., Supp. No. 49, U.N. Doc A/54/49 (Vol. I) (1999), S. Treaty Doc. No. 106-49 (2000), 39 I.L.M. 270 (2000), (adopted 9 December 1999 and entered into force 10 April 2002)

(A) causes death or serious bodily harm to a person by the use of violence;  
 (B) endangers a person's life;  
 (C) causes a serious risk to the health or safety of the public or any segment of the public;  
 (D) causes substantial property damage, whether to public or private property, of causing such damage is likely to result in the conduct or harm referred to in any of the clauses A) to (C); or  
 (D) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C)

and includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counseling in relation to any such act or omission, but , for grater certainty, does not include an act or omission that is committed during an armed conflict and that, at the time and in the pace of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of their official duties, to the extent that those activities are governed by other rules of international law.

A key component of the Canadian definition of terrorist activity includes the mental element of “intimidating the public”. This intent requirement outlined in subsection 83.01(1)(b)(i) is the *mens rea* of the offense, while the *actus reus* is outlined in subsection 83.01(1)(b)(ii). The elements of this definition have been challenged in the Canadian courts. For example, the “motive” element, namely an act undertaken for “political, religious or ideological purpose, objective or cause”, was struck down by the courts in *R. v. Khawaja*.<sup>34</sup>

It is important to note that the ATA does not criminalize mere membership in a “terrorist entity”.<sup>35</sup> However, in an attempt to proactively dismantle terrorist groups to prevent them from committing acts of violence, the ATA criminalizes a broad range of involvement with terrorist groups.<sup>36</sup> In doing so, the definition of “terrorism offence” under section 2 of the *Criminal Code* is:

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<sup>34</sup> *R. v. Khawaja*, 2006 OJ 4245, 42 C.R. (6th) 348 (Ont. Sup. Ct.) [Khawaja]. Mohammad Momin Khawaja was the first person to be charged under the “terrorism” provisions of the Criminal Code. In striking down a portion of the definition of “terrorist activity” that dealt with purpose and motive Justice Rutherford determined “the focus on the essential ingredient of political, religious or ideological motive will chill freedom protected speech, religion, thought, belief, expression and association, and therefore, democratic life; and will promote fear and suspicion of targeted political or religious groups, and will result in racial or ethnic profiling by governmental authorities at many levels.” at para. 73.

<sup>35</sup> Forcese, *supra* note 8 at 282.

<sup>36</sup> *Ibid.* at 282-283.

- (a) an offence under any of sections 83.02 to 83.04 (terrorism financing) or 83.18 to 83.23 (participating, facilitating, instructing and harboring);
- (b) an indictable offence under this or any other Act of Parliament committed for the benefit of, at the direction of or in association with a terrorist group;
- (c) an indictable offence under this or any other Act of Parliament where the act or omission constituting the offence also constitutes a terrorist activity; or
- (d) a conspiracy or an attempt to commit, or being an accessory after the fact in relation to, or any counseling in relation to, an offence referred to in paragraph (a), (b) or (c).<sup>37</sup>

Many of these new terrorism offences are built around the concept of “terrorist groups”, thus, the question of who or what is a terrorist group becomes of central importance in the discourse of terrorism.

#### *vi. Listing Terrorist Entities:*

Organizations or individuals can be listed as a terrorist entity in Canada by two means: (1) the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism,<sup>38</sup> and (2) the ATA provisions now incorporated into the *Criminal Code*. On October 4, 2001, Canada implemented the United Nations Suppression of Terrorism Regulations (UNSTR) in response to the UN Security Council Resolution 1373 requiring UN member states to adopt strong measures against terrorist financing. The adoption of these regulations also included a schedule of 140 individuals and organizations listed by the Government of Canada<sup>39</sup> as well as incorporated over 480 names of organizations and individuals on the UN Consolidated list.<sup>40</sup> The UNSTR

<sup>37</sup> *Criminal Code*, *supra* note 24, s. 2.

<sup>38</sup> Canada, *Regulations Implementing the United Nations Suppression of Terrorism Regulations*, S.O.R./ 2001-390.

<sup>39</sup> A person or group is placed on the UNSTR list if the United Nations Security Council agrees to list an individual or entity pursuant to the UN Afghanistan Regulations, which permits the listing of individuals or groups associated with the Taliban or Osama Bin Laden. Alternately, a person or group may be placed on Canada’s UNSTR list based on a recommendation by Department of Foreign Affairs Canada. The Liberation Tigers of Tamil Eelam (LTTE) was added to Canada’s UNSTR on November 1, 2001. (FAC). Usually this process begins when FAC receives notification of another country’s intention to list a terrorist entity. FAC convenes an interdepartmental meeting to discuss the proposed listing and provides its recommendation to the Governor-in-Council.

<sup>40</sup> The UN Consolidated List consists of five sections; (a) the list of **individuals** belonging to or associated with the **Taliban** (142 individuals); (b) the list of **entities** belonging to or associated with the **Taliban** (none); (c) the list of **individuals** belonging to or associated with the **Al-Qaida** organisation (228 individuals); (d) the list of **entities** belonging to or associated with the Al-Qaida organisation (112 entities); and (e) **individuals and entities** that have been **removed**

primarily targets listed organizations for financial aspects of terrorist financing, while the ATA provisions of the criminal code offer a wider spectrum of terrorism offenses. Thus, even before the ATA was introduced, Canada has the power to list entities and individuals as “terrorist” for the purposes of financing terrorism under the UNSTR regulations.<sup>41</sup>

However, the ATA introduced for the first time in Canada a general domestic list of terrorist entities, giving the Canadian government the power to list individuals and groups because of their involvement or association with terrorism. There are currently 41 organizations listed as “terrorist entities” in Canada, the vast majority of these are Islamic or South Asian based groups.<sup>42</sup> The legal definition of a “terrorist group” in the Act includes:

- (a) an entity that has as one of its purposes or activities facilitating or carrying out any terrorist activity, or
  - (b) a listed entity
- and includes an association of such entities<sup>43</sup>

The word “entity” is further defined to mean “a person, group, trust, partnership or fund or any unincorporated association or organization”<sup>44</sup> and a “listed entity” means “an entity on a list established by the Governor in Council under section 83.05.”<sup>45</sup> Section 83.05 (1) empowers Cabinet to list an entity by regulation if

on the recommendation of the Minister of Public Safety and Emergency Preparedness, the Governor in Council is satisfied that there are reasonable ground to believe that

- (a) the entity has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity; or
- (b) the entity is knowingly acting on behalf of, at the direction of or in association with an entity referred to in paragraph (a).<sup>46</sup>

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**from the list** pursuant to a decision by the Al-Qaida and Taliban Sanctions Committee (11 individuals and 24 entities); The Consolidated List of the United National Security Council’s Al-Qaida and Taliban Sanctions Committee, as of January 16, 2008.

<sup>41</sup> The Liberation Tigers of Tamil Eelam (LTTE) was added to Canada’s UNSTR on November 1, 2001.

<sup>42</sup> Of these organizations 22 are “Islamic” based organizations in the Middle East, Asia or Africa; 6 are Palestinian organizations; 4 are based in Central or South America; 3 are Sikh; 2 are Tamil, and 1 each are Japanese; Kurdish; Jewish; and European (Basque).

<sup>43</sup> *Criminal Code*, *supra* note 24 at s. 83.01(1).

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.* at s. 83.05(1).

There are several actors involved in the listing process, including security agencies and government officials. The information that is presented to Cabinet for consideration is based on reports from security intelligence agencies. Once an entity is suggested for listing, the Canadian Security Intelligence Service (CSIS) prepares a Security Intelligence Report (SIR) dossier on that entity.<sup>47</sup> The SIR is considered by the Minister of Public Safety, who then makes a recommendation to the Governor-in-Council concerning whether or not the entity should be listed.<sup>48</sup> If the Minister makes a recommendation that an entity should be listed, Cabinet will follow through with the recommendation. In the listing process, the standard of proof is based on “reasonable grounds to believe”, which the Supreme Court of Canada describes as being established where “there is an objective basis...which is based on compelling and credible information.”<sup>49</sup>

The consequences of being a listed entity are severe. Not only in terms of criminal sanctions, but also the stigma of being listed by the Canadian government as a terrorist group. There are some procedural safeguards put into place to correct errors as well as provide entities with an opportunity to challenge the listing. For example, the listing process includes the possibility of de-listing based on a Ministerial Recommendation.<sup>50</sup> The listed entity may apply to the Minister for a decision on “whether there are reasonable grounds to recommend to the Governor in Council that the applicant no longer be a listed entity.”<sup>51</sup> If this process fails, listed entities have the right to judicial review within 60 days of the listing.<sup>52</sup> Upon the application of the listed entity, the designated judge of the Federal Court shall determine whether the Minister’s decision is “reasonable on the basis of the information available to the judge.”<sup>53</sup> If the designated judge determines that the Minister’s decision is not reasonable, the judge must “order that the applicant no longer be a listed entity.” In addition, there is a two year

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<sup>47</sup> Security Intelligence Review Committee (SIRC), *Annual Report 2006-2007*, (Ottawa: Public Works and Government Services Canada, 2007) at 50.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Charkaoui v. Canada* (Citizenship and Immigration), [2007] SCC 9 at para 39.[Charkaoui]

<sup>50</sup> *Criminal Code*, *supra* note 24, s. 83.05(2)

<sup>51</sup> *Ibid.*

<sup>52</sup> *Criminal Code*, *supra* note 24, at s. 83.05(5).

<sup>53</sup> Kent Roach, September 11: Consequences for Canada, (Montreal: McGill-Queen's University Press, 2003) at 37.

review period after which a listed entity must be reviewed to determine “whether there are still reasonable grounds for any entity to be a listed entity.”<sup>54</sup>

#### *vii. Criticisms of the Listing Process*

Despite these “safeguards”, there are several strong criticisms of the listing process. First, with regard to the delisting process, to date, no organization that has been listed has utilized these procedures to become delisted. While proponents of the listing process argue that not utilizing the safeguards made available, such as the delisting process, could be interpreted as an admission of being a terrorist group, these procedures are not practical in nature. The time limit to judicially review the listing is a short period of time; 60 days. Since all but one of the listed organizations are foreign based entities, it is more challenging for them to engage the Canadian judicial system to make an application for de-listing. Those seeking delisting would have to retain a Canadian lawyer to assist them, and presumably the list of lawyers willing to represent “terrorist groups” is small. Furthermore, even if an organization or individual is removed from the list, the stigma of having been on the list in the first place may be severe and irreparable.

Also, there are serious concerns about the transparency and openness of the listing process. While there are safeguards in place after the listing has occurred, there are minimal safeguards prior to the listing. For example, those who are placed on the list do not receive notice that they are being considered for listing nor are they able to make submissions or intervene on their own behalf prior to the listing. Thus, once an entity is placed on the list and published in the gazette, most of the damage to reputation has already been done. It is only after the fact, after the listing has been public, that such entities are able to challenge the listing. Furthermore, listed organizations that do choose to judicially review the listing have to base their defense on only a summary of the information used in consideration of their listing.

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<sup>54</sup> *Criminal Code*, supra note 24, s. 83.05(9).



A major criticism of the listing process is the nature of the groups listed. As previously stated, “domestic terrorism” is espoused as being a significant threat to national security interests. Among those groups described as being potential threats include; white supremacist groups; extremist environmental, animal rights, and anti-globalization. Yet, with the exception of one group (the World Tamil Movement, recently added to the list in June 2008), all of the 41 groups listed are foreign based entities, many of whom do not even operate within Canada and have no interest in Canada. It is perhaps surprising that a “Canadian” list of terrorist entities does not include more domestic groups, which is more likely to pose a direct violent threat to Canadian national security.<sup>55</sup> Instead the list is filled with foreign entities, most of which have no interests in Canada. Perhaps this is a reflection that the construction of the list of terrorist entities is largely based on external foreign policy influences, such as that of the U.S., rather than on the basis of legitimate threats posed to Canadian national security.

Also notable is the failure to list States that engage in “state-sponsored terrorism”, despite “state-sponsored terrorism” being listed as a source of terrorism in the National Security Policy. Again, this is a result of the highly politicized nature of the listing process. It would certainly cause an international diplomatic uproar if a State were to be included in such a list of terrorist entities.<sup>56</sup> There is also an absence of groups and entities that are sponsored by States and act as agents of the State, such as paramilitary groups. For example, the Karuna faction that split from the LTTE, which is a paramilitary group that is known to

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<sup>55</sup> The author is certainly not advocating for the inclusion of domestic terrorist groups such as those listed above to be included in the list, but is merely pointing out that domestic groups are more likely to pose a direct violent threat to Canadian interest than foreign based groups that do not have a network or funding base in Canada. However, there are a whole new set of criticisms and challenges when criminalizing domestic groups in this manner including Charter issues.

<sup>56</sup> For example, when a Foreign Affairs manual on “Torture Awareness” was inadvertently leaked to the media that included the U.S., Guantanamo Bay and Israel, on the list of countries where torture may be practiced, the government quickly backtracked by stating they were included on the list as a mistake, when pressured by the Ambassadors of the U.S. and Israel to account for the incident. Michelle Sheppard, “Ottawa reversed torture stance” *The Toronto Star* (20 January 2008).

have support from the Government of Sri Lanka, is not listed as a terrorist entity, despite the fact that the LTTE is listed.<sup>57</sup>

Another criticism concerns the materials that are used in consideration of whether an entity should be listed. As previously outlined, security agencies have a prominent role in the listing process. The Security Intelligence Report (SIR) provided by CSIS forms the basis upon which the Minister makes the recommendation to consider listing an entity. However, security intelligence gathering agencies, including CSIS and the Royal Canadian Mounted Police (RCMP) have been widely criticized for their blunders, errors, and incompetence, such as those concerns expressed by the McDonald Commission, the Air India Commission and the Arar Commission.<sup>58</sup> There are cases in which mistaken surveillance footage has been presented as evidence in court proceedings on security matters.<sup>59</sup> Also, since all of the listed groups are foreign based entities, the sources of information are often obtained through third parties, such as foreign intelligence services. Foreign intelligence sources often have an interest at stake, especially when the entity being considered is a secessionist movement seeking independence from the very State that is supplying the intelligence information. Materials that are referred to in security intelligence reports also include newspaper clippings, and internet searches, sometimes based on unreliable sources of information.

Perhaps the strongest criticism of the listing process is that the entire process of listing designated terrorist groups is highly politicized. A large number of the listed entities (22 of them) are Islamic organizations, while another 6 are

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<sup>57</sup> The Karuna group, led by V. Muralitharan, a.k.a. Karuna, a former commander with the Liberation Tigers of Tamil Eelam (LTTE), split from the Tamil Tigers in 2004 and now cooperates with the Sri Lankan military in their common fight against the LTTE. In fact, the leader of the Karuna group, obtained a diplomatic passport from the Government to flee Sri Lanka and is currently in the U.K., where the government is considering indicting him with war crimes charges. Human Rights Watch "Complicit in Crime: State Collusion in Abductions and Child Recruitment by the Karuna Group" (24 January 2007) online, <<http://www.hrw.org>>

<sup>58</sup> Royal Commission of Inquiry Into Certain Activities of the Royal Canadian Mounted Police, *Freedom and Security under the Law* (Ottawa: Supply and Services, 1981) [McDonald Commission]; Commission of Inquiry into the Investigation of The Bombing of Air India Flight 182, *The Families Remember*, vol 1 (Ottawa: Public Works and Government Services, 2008) [Air India Commission]; Arar, *supra* note 13.

<sup>59</sup> Colin Freeze, "Agency submits wrong evidence" *The Globe and Mail*, (5 December 2007).

Palestinian groups. Another 3 groups are Sikh based groups, and two of the groups are Tamil, including the only domestic group listed. That corresponds to 80% of the listed groups being Middle Eastern or South Asian. In terms of the types of threats posed by these groups, the vast majority of the listed entities would fall under the category of “religious extremism”. Islamic groups are clearly over-represented in the group of listed entity listing process, which can be subject to the claim of religious/racial profiling.

There are thousands of secessionist movements worldwide seeking independence through armed struggle, however, there are only a handful of such groups on the Canadian list of terrorist entities. How one group is chosen over other groups to become a listed entity is clearly a political decision. To illustrate, the Liberation Tigers of Tamil Eelam (LTTE), was placed on the Canadian list of terrorist entities in April 2006, largely due to political pressure. For years prior to the listing of the LTTE, there was much debate amongst parliamentarians about whether the LTTE should be deemed a terrorist group or not. The issue became a heated debate between Liberal MPs and Conservative MPs, who felt that the Liberal government was in the back pocket of the Tamil Canadian community to secure this voting block. When listing the LTTE, the Minister of Public Safety, Stockwell Day, stated that “the decision to list the LTTE is long overdue and something the previous government did not take seriously enough to act upon.”<sup>60</sup> This statement in and of itself highlights the politicized nature of the listing process.

#### *viii. Listing of the LTTE and the World Tamil Movement*

On April 8 2006, the newly elected conservative government used the listing powers to name the Liberation Tigers of Tamil Eelam (LTTE) as a listed terrorist entity in Canada. The Canadian government stated: “[i]n listing the LTTE, the Government of Canada conducted an extensive analysis of security information and intelligence to ensure the stringent legal test outlined in the

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<sup>60</sup> Public Safety and Emergency Preparedness Canada, “Canada’s new government lists the LTTE as a terrorist organization” News Release (10 April 2006), online: <<http://www.publicsafety.gc.ca>>. [Public Safety: 10 April 2006].

*Criminal Code* was met.”<sup>61</sup> In listing the LTTE, the Canadian government describes the LTTE as:

a Sri Lankan-based organization which advocates the creation of an independent homeland in the north and northeastern part of Sri Lanka which it has called “Tamil Eelam”. Its war against the government of Sri Lanka has been fought on three fronts: a political campaign, guerrilla warfare, and a terrorist campaign. The LTTE is committed to using a variety of terror tactics in order to achieve its objectives, including attacking political, economic, religious and cultural targets, as well as targeting civilians. The LTTE’s campaign has included plans to create Tamil-only northern and eastern provinces, and to this end it has aggressively expelled non-Tamils from these regions. The LTTE also endeavours to eliminate moderate Tamils and other Tamil militant groups that compete with it for influence and power within the Sri Lankan Tamil community.

However, many members of the Tamil Canadian community and the Tamil Diaspora around the world view the LTTE as freedom fighters. The review of the listing of the LTTE was conducted on November 9, 2006. While the LTTE was also on Canada’s list under the UNSTR in November 2001, it was not until the LTTE was formally and very publicly placed on the list of terrorist entities under the ATA regulations that the Tamil community in Canada was impacted.

On June 16, 2008, two years after the listing of the LTTE, the Minister of Public Safety announced that the World Tamil Movement, a non-profit community organization legally incorporated in Ontario in 1986, would be added to the list of terrorist entities.<sup>62</sup> This is the first instance that a domestic community based group was designated as a terrorist entity in Canada. The legal implications of this listing are profound, as the ATA provisions have a far-reaching and widespread impact on the ability of the organization to continue to function. Several Tamil-Canadian community organizations responded to the listing of the WTM, stating that “...the Tamil Canadian community feels they are being unfairly targeted and victimized by this action,” and “...is concerned that the listing of the WTM will have a deeper impact on members of the Tamil Canadian community.”<sup>63</sup> The remaining sections of the thesis will look at the impact that

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<sup>61</sup> *Ibid.*

<sup>62</sup> Public Safety Canada, “The Government of Canada lists the World Tamil Movement as a terrorist organization” News Release, (16 June, 2008), online <[www.publicsafety.gc.ca](http://www.publicsafety.gc.ca)>.

<sup>63</sup> Canadian Tamil Congress. “Tamil Canadian urge for even-handed approach to Sri Lanka conflict”, News Release, (18, June 2008), online <[www.canadiantamilcongress.ca](http://www.canadiantamilcongress.ca)>.

such listings have on the Tamil Canadian community. However, before we engage in that discussion, background information about the Tamil Canadian community and the LTTE is warranted.

## B. Overview of Tamils in Canada and the Liberation Tigers of Tamil Eelam (LTTE)

### *i. The Tamil-Canadian Diaspora*

Tamil is an ethnic and linguistic identifier, and can be categorized as one of the major languages of the world.<sup>64</sup> Tamils originate from South Asia, mainly from the Southern Indian state of Tamil Nadu and Sri Lanka. The Tamil Diaspora community can be found in many parts of the world, including Malaysia, Singapore, Canada, the US, Australia, New Zealand, the United Kingdom, and several European countries.<sup>65</sup> In Canada, there are approximately 200,000 Tamil-Canadians according to community estimates, the largest Tamil Diaspora outside of South Asia.<sup>66</sup> Tamils in Canada are highly concentrated in urban city centers, such as Toronto, Ottawa, Montreal, and Vancouver; however, increasingly the Tamil community is migrating to suburban areas, such as the Markham and Durham region. According to the latest census figures, approximately 95,000 Tamils currently reside in the Greater Toronto Area (GTA), and Tamil is among the top 10 mother tongues in the GTA.<sup>67</sup>

The Tamil Canadian community is a relatively young community, mostly arriving in Canada in the last 20 years. Many younger members of the community are either second generation Canadians or have spent most of their lives growing up in Canada. While the vast majority of Tamil-Canadians arrived in Canada after 1983, there was a small established group of students and professionals

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<sup>64</sup> Raymond G. Gordon, (ed.), *Ethnologue: Languages of the World*, 15th ed. (Dallas: SIL International, 2005).

<sup>65</sup> Rudramoorthy Cheran, *Diaspora circulation and transnational as agents for change in the post conflict zones of Sri Lanka*, online: Berghof Foundation for Conflict Management, <<http://www.berghof-foundation.lk>>.

<sup>66</sup> Frances Henry & Carol Tator, *Discourses of Domination: Racial Bias in the Canadian English-Language Press* (Toronto: University of Toronto Press, 2002) at 120 [Henry and Tator].

<sup>67</sup> Catherine Farley & Damian Listar, "The language quilt". *The Toronto Star*, (30 December 2007), online: <[http://www3.thestar.com/static/PDF/20071230\\_ID06.pdf](http://www3.thestar.com/static/PDF/20071230_ID06.pdf)>.

that immigrated to Canada prior to 1983. The vast majority of Tamil-Canadians came to Canada as refugees fleeing persecution from the civil war occurring in Sri Lanka, between the Sri Lankan government and the LTTE.<sup>68</sup>

*ii. The LTTE and the Ethnic Conflict in Sri Lanka*

The LTTE formed as a guerilla group seeking an independent Tamil-homeland in the North and East of Sri Lanka.<sup>69</sup> The conflict, largely due to the legacy of colonialism<sup>70</sup>, is between the minority Tamil ethnic group comprised of mostly Hindus, with Christians and Muslim minorities, and the Sri Lankan government controlled by the majority Sinhalese Buddhist community. The armed conflict between the LTTE and the Sri Lankan government was sparked by anti-Tamil riots in 1983.<sup>71</sup> This is one of the defining moments in the history of Tamil-Canadians and is the birth of the Tamil refugee movement to Canada, and other parts of the world. Canada was one of the first countries to recognize Tamil refugees fleeing the civil war as genuine refugees.

Over the years, the Tamil-Canadian community has grown exponentially and is now a vibrant thriving community that is contributing to the enrichment of Canada's multicultural society. However, the Tamil-Canadian community has faced many challenges as it has grown and attempted to integrate into Canadian society. Even prior to 9-11, the Tamil-Canadian community has been labeled and stereotyped by the media, law enforcement agencies and security agencies as "terrorists".<sup>72</sup> As will be demonstrated throughout this thesis, since the enactment of the ATA, and the subsequent listing of the LTTE and WTM as terrorist groups, such stereotypes and labels of the Tamil-Canadian community

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<sup>68</sup> Henry and Tator, *supra* note 66.

<sup>69</sup> A. Jeyaratnam Wilson, *Sri Lankan Tamil Nationalism: It's Origins and Development in the Nineteenth and Twentieth Centuries*. (London: Hurts, 2000), [Wilson]. See also: Satchi Ponnambalam, *Sri Lanka: The National Question and the Tamil Liberation Struggle* (London: Zed Books, 1983).

<sup>70</sup> After hundreds of years of European colonial domination by the Dutch, Portuguese and the British, Sri Lanka gained independence in 1948, but was left as a unitary State, despite the presence of significant minority communities; Tamils in the North and East of the island; Muslims; and Tamil estate workers of Indian origin.

<sup>71</sup> Wilson, *supra* note 69.

<sup>72</sup> Henry and Tator, *supra* note 66.

have intensified. The Tamil-Canadian community has been chosen as a case study in order to examine the impact of the national security discourses on vulnerable community groups by observing the interactive nature of law and society through the discourses of fear, victimization and agency.

### C. National Security/Human Rights Discourse

#### *i. Security in Freedom and Freedom of Security*

Forcese clearly outlines the fundamental dilemma of national security legislation. On the one hand there is the premise that “security is the foundation for rights”.<sup>73</sup> On the other hand there is also the premise that “rights are the foundation for security.”<sup>74</sup> Clearly neither of these positions are absolute; rather, security and freedom are interdependent to each other. In order to preserve freedoms, basic security is needed, while security is rendered meaningless if we do not have the basic rights and freedoms that give meaning to the concept of security. The former Secretary General of the United Nations illustrated this highly interdependent relationship between security, development and human rights on a global scale by stating:

[W]e will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights.<sup>75</sup>

Development, security and human rights are inter-related concepts. Without one, the others suffer. The state of world events and experience tell us that a failure to respect human rights and a lack of development are the recipe for breeding grounds of terrorism. While Mr. Annan’s sentiments are intended to be applied on the international level, the premise can also be employed on the domestic level. Without development and human rights, there is no security within the state and in order to achieve national security, human rights must be respected.

The former UN Secretary General was not the first person to articulate the security-human rights-development trilogy. The former Foreign Affairs Minister,

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<sup>73</sup> Forcese, *supra* note 8 at 15.

<sup>74</sup> *Ibid* at 17.

<sup>75</sup> Kofi Annan, “In larger freedom”, UN GA, 59th Sess., UN Doc. A/59/2005 (2005), [Annan].

Lloyd Axworthy, in a famous speech at York University in 1996 called for “a response that links security, economic and social development and governance and that addresses the real problems of particular regions and states.” Axworthy’s speech referenced a new emerging foreign policy based on a new concept of security – “human security”. This concept of human security recognized that responses to global security issues required addressing the root causes of social conditions that create insecurity, including development and poverty issues. The concept of human security attempts to link security issues with those of human rights. While for many years human security became a buzz word in the international development field, after 9-11, there was a sudden shift from “human security” back to “national security” with traditional national security responses.<sup>76</sup>

## *ii. The False Dichotomy of Human Rights and Security*

Often the dominant discourse concerning human rights and security focuses on balancing or trading off security and human rights. This implies that in order to have “more” security in society, freedoms and human rights must be limited. This human rights-security dichotomy is a false one. Human rights and security are not mutually exclusive concepts. Human rights and security are inevitably linked. The guarantee that our personal security will be respected is dependent on respect for human rights, and vice versa; the flourishing of human rights is necessarily dependent on the security of the person and society. Rather than looking at human rights and security as two opposites ends on a balancing scale, human rights and security should be viewed as mutually dependent on each other as the Venn diagram in Figure 1. Neither security nor human rights can be privileged, but rather security and human rights go hand in hand to maintain a society where the rule of law is paramount.

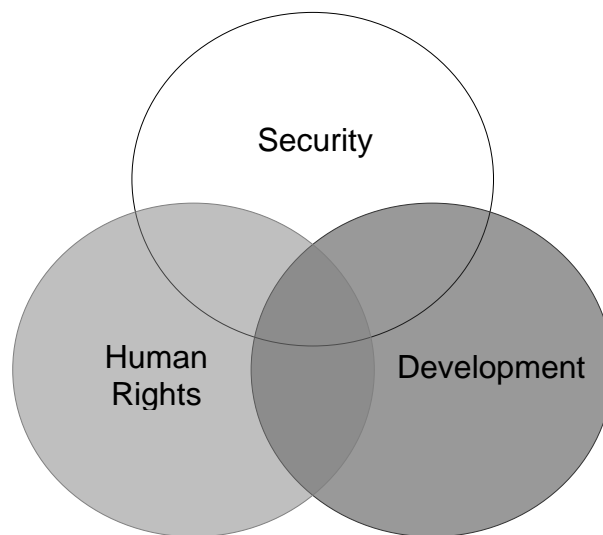
Thus, the fundamental challenge that is posed by security and terrorism discourses is not balancing human rights with security interests, but rather to re-

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<sup>76</sup>Department of Canadian Heritage, *Policing with a National Security Agenda* by Margaret E. Beare, (Ottawa: 2003) at 8, [Beare].



conceptualize what security and human rights actually mean in today's globalized world. In particular we need to rethink how we view national security. There are several elements involved in order to re-conceptualize what we mean by national security. As described by Mariana Valverde "security is not something we can have more or less of because it is not a thing at all."<sup>77</sup> While concepts such as "security of the person" and "human security" relate to individual notions of security, national security is a collective (and often subjective) state of mind. Like concepts of human rights, democracy, and justice, security is an *ideal* that society strives to achieve.<sup>78</sup> When some members of society feel "more" secure at the expense of the security of others in that same society, the collective level of security in society remains unchanged. Granted there are rare instances when terrorist threats are indeed thwarted and in these instances security measures have diligently served their purpose. However, it is the desire for more and more



security that is problematic, as the risk and possibility of terrorist attacks can never be completely eliminated. Thus, overbearing national security is self-defeating because the very rights and freedoms it intends to protect can be subverted by it.

**Figure 1 – The Interconnectedness of Security, Human Rights and Development**

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<sup>77</sup> Mariana Valverde, "Governing Security, Governing Through Security" in Ronald J. Daniels, Patrick Macklem, & Kent Roach, eds., *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill* (Toronto: University of Toronto Press, 2001) 83 at 85.

<sup>78</sup> *Ibid.*

Moreover, security does not simply mean protecting the domestic sovereignty of the nation-state. Notions of *national security* must also be re-formulated. As we know from the events of 9-11, the absence of security around the world impacts directly on Canadian security and interests, whether it be through migration and refugee movements seeking protection in Canada, or the deployment of Canadian peacekeeping troops to Afghanistan, or the possibility of terrorist attacks on Canadian soil. Security threats are a shared global reality; therefore, the issues and the solutions to security threats are global in scope.<sup>79</sup> Security concerns are especially difficult concepts in the security-conscious post 9-11 world. As stated by Australian jurist, Julian Burnside:

In a climate of fear, protection of human rights becomes extraordinarily difficult. It brings to the forefront the tension between the majoritarian principle of democratic rule and the humanitarian principle of protecting the powerless and marginalised. In that setting, protection of human rights presents its greatest challenges.<sup>80</sup>

Throughout the remaining chapters of this thesis, this fundamental tension between security and freedom will be illustrated, using the Tamil-Canadian community as a case study. The next Chapter will look at the **Discourse of Fear and Terrorism** in order to flush out the discourse of terrorism further.

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<sup>79</sup> Beare, *supra* note 76 at 5.

<sup>80</sup> Julian Burnside, "Protecting Rights in a Climate of Fear", (Lecture delivered at 6th annual Human Rights Oration, 13 December 2006).

## CHAPTER 2: DISCOURSES OF FEAR, SECURITY AND TERRORISM

*"Let me assert my firm belief that the only thing we have to fear is fear itself"*

President Franklin Delano Roosevelt  
First Inaugural Address, March 4, 1933

On March 21, 2005, former United Nations (UN) Secretary-General Kofi Annan released a report: *In larger freedom: towards development, security and human rights for all*.<sup>81</sup> Part III of that report entitled "Freedom from Fear"<sup>82</sup> specifically discussed the issues which confront threats to international peace and security.<sup>83</sup> Annan's choice to label the chapter dealing with security as the "freedom from fear" exemplifies that the notion of terrorism and threats to security often conjure up images of fear and intimidation. This perspective supports and justifies the enactment of counter-terrorism measures which are deemed necessary to protect the public from not only the acts of violence that are unleashed by terrorism, but also from the very fear of terrorism itself. National security policies and legislation are generally viewed as protecting society from this fear of insecurity.

However, national security policies can also breed fear and insecurity. All over the world, governments have used national security as an excuse to suppress dissent within their own borders and justify extraordinary measures. According to Amnesty International, "in recent years heightened fears about terrorism and insecurity have reinforced repression – or the risk of it – in a variety of ways."<sup>84</sup> In particular, anti-terrorism legislation has become one vehicle employed around the world and in some countries has been implemented to severely restrict the rights and freedoms of individuals.

Fear, therefore, plays a prominent role in the discourse of terrorism and security. Terrorist groups use fear as a primary means to achieve their objective.

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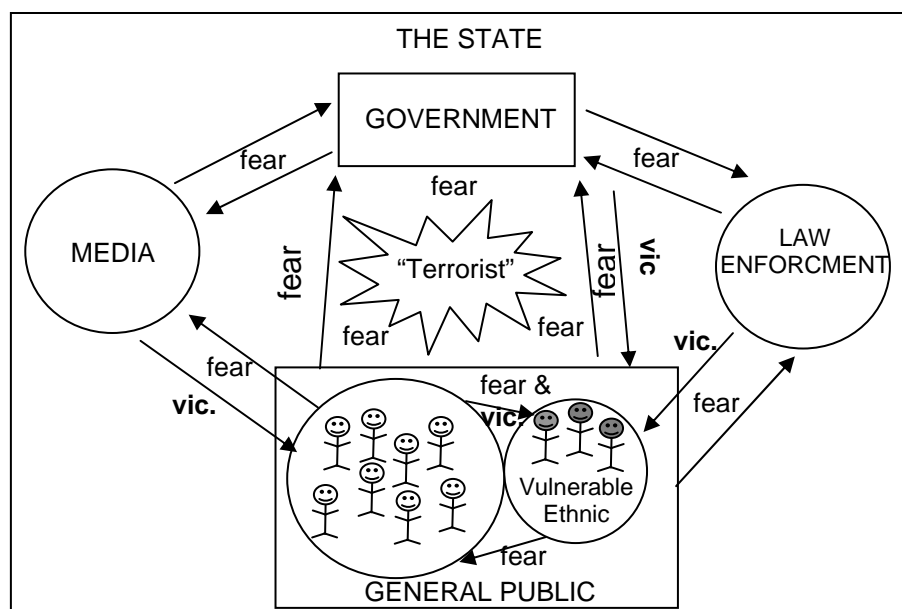
<sup>81</sup> Annan, *supra* note 75.

<sup>82</sup> In fact, the theme of Amnesty International's 2007 Report on the State of the World's Human Rights was also titled "Freedom from Fear".

<sup>83</sup> The first pillar of *In larger freedom* is "freedom from want" outlining development issues, and the third pillar is "freedom to live in dignity" expressing human rights issues, Annan, *supra* note 75.

<sup>84</sup> Irene Khan, foreword in *State of the World's Human Rights 2007*, online: Amnesty International at 6, online: <<http://www.amnesty.org>> [AI]

The general public feeds on that fear and responds accordingly. The media and law enforcement reinforce and perpetuate fear in the public. The government, pressured by the public, media and law enforcement, reacts to neutralize the imbedded fear in society. And finally, ethnic communities targeted by legislation face the brute force of this fear and harbour fear of their own. This can be described as “The Cycle of Fear and Victimization” that is created by discourses of security and terrorism as illustrated in Figure 2. John Stossel describes this phenomenon as the “Fear Industrial Complex”, where societal actors such as politicians, activist groups and corporations sell the public on the idea that they can provide safety from the very dangers they are scaring the public about.<sup>85</sup>



**Figure 2: The Cycle of Fear and Victimization**

This vicious cycle of fear of terrorism has created an anxious security conscious society that is more prone to react emotionally than rationally.<sup>86</sup> However, this fear is not just embedded in our consciousness on its own; it is nurtured by external forces. Sensational media headlines about the next threat of terrorist attacks constantly bombard the public domain. The media and law enforcement and security agencies often sensationalize and even exploit this fear

<sup>85</sup> John Mueller, *Overblown: How Politicians and the Terrorism Industry Inflate National Security Threats and Why we believe them* (New York: Free Press, 2006).

<sup>86</sup> Jeffery Rosen, *The Naked Crowd* (New York: Random House, 2004), [Rosen].

by reinforcing prevailing stereotypes and sometimes exaggerated fears of terrorist threats. Often the media and law enforcement and security agencies advocate for a particular government action to address the problem of terrorism. For example, a right-wing conservative media may sensationalize the threats of terrorism to support their call for more funding for “law and order” policies or tougher restrictions on immigration and refugee processes. Further, governments feeling pressure from a variety of societal actors, such as the media, security and law enforcement agencies and the general public, respond to this fear embedded in society by enacting reactive legislation that may not effectively address security concerns while also unfairly impacting particular segments of the public.<sup>87</sup> Each aspect of the *cycle of fear and victimization* will be discussed in greater lengths in this chapter, such as how we define terrorism and threats to national security.

## A. Defining Threats

### *i. Definitions of Terrorism*

“Terrorism” is a loaded term that is widely used in national security discourse. At the very core of terrorism is the concept of fear. Fear is a potent ingredient that gives terrorism its substance. Groups that utilize terrorism seek “to make society insecure through the production of a social condition of fear.”<sup>88</sup> Thus, the very purpose and objective of terrorism is to inflict terror or fear onto a population. This is reflected in the etymology of the word, terrorism, which is derived from the Latin word *terrere* meaning “to tremble” or “to frighten.”<sup>89</sup>

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<sup>87</sup> As a cautionary note, in this paper I do not mean to undermine the threat of global terrorism or the real dangers of terrorist attacks. The threat of terrorism in our world is a very sad reality. However, the means that some governments have chosen to address the real and pressing threat of terrorism are ineffective at dealing with the problem of terrorism and also infringe on the human rights of its citizens and in particular non-citizens, immigrants, and minority groups.

<sup>88</sup> Chris Sparks, “Liberalism, Terrorism and the Politics of Fear” (2003) 23:3 *Politics* 200 at 201, [Sparks].

<sup>89</sup> The word “terrorism” was first used to describe the bloodshed during the “Reign of Terror” in the French Revolution. Edward N. Zalta, ed., *Stanford Encyclopedia of Philosophy* (Stanford: Stanford University, 2003) s.v. “terrorism”.

Modern day definitions of terrorism describe a vast array of situations where violence is used to achieve political ends.<sup>90</sup>

Terrorism is one of the most difficult words in any language to define, mainly due to the political connotations and weight this term carries with it. This is especially problematic in the legal discourse of security. The very act of agreeing on a definition of terrorism has become extremely politicized as illustrated by the well-known maxim, “*one man’s terrorist is another man’s freedom fighter*.” Engaging in an academic exercise of defining terrorism can be pointless, since “no definition of terrorism will account for the social or political nature of terrorism.”<sup>91</sup> However, it is important to examine how the rhetoric of terrorism is used in legal discourse to support the enactment of national security laws.

## *ii. Domestic and International Definitions of Terrorism*

One of the difficulties in defining threats to national security stems from the problems with defining terrorism. Canada too has been confronted with the challenges posed in defining terrorism. One problematic aspect of the Canadian security regime is that historically, Canada lacked a comprehensive definition of terrorism. For instance, under the current immigration legislation, IRPA prevents individuals from entering Canada and allows them to be deported from Canada for “engaging in terrorism”, without ever defining the term terrorism.<sup>92</sup> It was only through the enactment of the ATA that legislation sought to define terrorism from

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<sup>90</sup> According to the Encyclopaedia Britannica’s definition, terrorism is: “the systemic use of violence to create a general climate of *fear* in a population and thereby to bring about a particular political objective.” The Black’s Law Dictionary defines terrorism as “the use or threat of violence to *intimidate or cause panic*, especially as a means of effecting political conduct.” Black’s Law Dictionary (8<sup>th</sup> ed. 2004), *terrorism*.

<sup>91</sup> Dawn Rothen & Stephen L. Muzzatti, “Enemies everywhere: terrorism, moral panic, and US civil society”, 327 by (2004) 12 Crit. Crim. 327 at 331 [Rothen & Muzzatti].

<sup>92</sup> IRPA, *supra* note 25, s. 34(1)(c). This was also problematic with the prior immigration laws in Canada, and was mentioned in the arguments of security certificate detainee, Suresh Manikavasagam in *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, 2002 SCC 1 [Suresh] The SCC stated in *Suresh* that “[o]ne searches in vain for an authoritative definition of “terrorism”. The *Immigration Act* does not define the term. The SCC further stated that “...there is no single definition that is accepted internationally,” at para. 94. The absence of an authoritative definition means that, at least at the margins, “the term is open to politicized manipulation, conjecture, and polemical interpretation”: factum of the intervenor Canadian Arab Federation (“CAF”), at para. 8

a Canadian perspective.<sup>93</sup> Chapter 2 on the **Discourse of National Security** outlined the Canadian definition of terrorism, and as previously discussed, a key component of this definition of “terrorist activity” includes the element of “intimidating the public”.<sup>94</sup>

On the international level, the United Nations too has struggled to define the word terrorism, especially in regards to groups seeking the right to self-determination.<sup>95</sup> UN Member States still have no consensus definition of terrorism that has been agreed upon, despite the vast array of international conventions on terrorism.<sup>96</sup> While the definition of terrorism is riddled with politics, the various national and international definitions of terrorism have several common elements and all encompass the element of fear at its core.<sup>97</sup> In comparing international and national definitions of terrorism, Craig Forcese charts out the various components of “terrorism” as defined in the legislation of several Western nations including, the U.K., Australia, New Zealand, and the U.S., all of which include the mental element or *mens rea* of “intention to *intimidate* or compel a population or the public.” [emphasis added]<sup>98</sup>

As illustrated in Table 1 below, fear is an important component in international and domestic definitions of terrorism, and therefore becomes an

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<sup>93</sup> Even then the Canadian legislation does not define “terrorism” rather it defines “terrorist activity”, “terrorist group” and “terrorist offense”. *Criminal Code, supra* note 24, s. 83.01(1)

<sup>94</sup> *Criminal Code, supra* note 24, s. 83.01(1).

<sup>95</sup> The UN Special Rapporteur on terrorism and human rights, Kalliopi K. Koufa, submitted a final report to the Sub-Commission on the promotion and protection of human rights and noted the immense difficulties in defining terrorism. In particular she highlights “the need to distinguish between what is terrorism and what is something else, e.g. military operations and other facets of armed conflict, or fighting against colonial domination, alien occupation and racist regimes in the exercise of the right to self-determination.” *Report of the N Special Rapporteur on terrorism and human rights*, UNESCOR, 56th Sess., UN Doc. E/CN.4/Sub.2/2004/40 (2004). Even the Canadian definition of terrorist activity recognizes the distinction between terrorist activities and the legitimate use of violence by stating that the definition of terrorist activity “does not include an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional forces of a state in the exercise of their official duties, to the extent that those activities are governed by other rules of international law.” *Criminal Code, supra* note 24, s. 83.01(1).

<sup>96</sup> Terrorism is described in many UN documents, treaties and resolutions. However, as O. Schachter states in “The Extraterritorial Use of Force Against Terrorist Bases” (1989), 11 *Houston J. Int’l L.* 309, at p. 309 “[n]o single inclusive definition of international terrorism has been accepted by the United Nations or in a generally accepted multilateral treaty”.

<sup>97</sup> Forcese, *supra* note 8, at 266.

<sup>98</sup> *Ibid.*

important conceptual tool to analyze the discourse of security and terrorism. The next section will look more closely at how this fear of terrorism permeates through society in the *cycle of fear*.

Country	Definition of Terrorism – Fear	Date
Canada	...in whole or in part with the <b>intention of intimidating the public</b> , or a segment of the public, with regard to its security...	2001 (via <i>Anti-Terrorism Act</i> ) <i>Criminal Code</i> , s. 83.01.1)
U.K.	terrorism means the use of violence for political ends and includes any use of violence for the purpose of <b>putting the public or any section of the public in fear</b>	1989, (Prevention of Terrorism Act, )
U.K.	the use or threat is designed to influence the government or to <b>intimidate the public</b> or a section of the public	2000, (Terrorism Act 2000, c.11, s.1(b))
Australia	... <b>intimidating the public</b> or a section of the public	2002 (via <i>Security Legislation Amendment (Terrorism) Act</i> ) <i>Criminal Code Act</i> 1995, s.100.1
New Zealand	...to <b>induce terror in a civilian population</b>	2002 (Terrorism suppression Act, s. 5(2)(a))
U.S.	...intended to <b>intimidate or coerce a civilian population</b> 18 U.S.C § 2331(1) – international terrorism 18 U.S.C § 2331(5) – domestic terrorism	Federal Criminal Code
UN - <i>International Convention for the Suppression of the Financing of Terrorism</i>	... when the purpose of such act, by its nature or context, is to <b>intimidate a population</b> , or to compel a government or an international organization to do or to abstain from doing any act.	1999
UN – General Assembly Resolution 49/60	Criminal acts intended or calculated to provoke a <b>state of terror in the general public</b> , a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.	1994
European Union	...seriously <b>intimidating a population</b>	

**Table 1: International and Domestic Definitions of Terrorism – Fear**

## B. The Psychology of Fear

### *Relationship between Fear and Terrorism*



The word terrorism elicits many emotional reactions; anger, vengeance, and fear. Yet, fear is probably one of the strongest emotions which is elicited by terrorism. Fear itself is a powerful human emotion. Fear can compel otherwise rational people into saying, doing and even feeling irrational things.<sup>99</sup> Fear can feed “discontent and leads to discrimination, racism, persecution of ethnic and religious minorities and xenophobic attacks against foreigners and foreign-born citizens.”<sup>100</sup> This is especially true in the context of national security and terrorism. While terrorism breeds fear, Chris Sparks outlines the differences between fear and terror: fear is produced by uncertainty, or insecurity; however, terror is the result of certain destruction.<sup>101</sup> While the destruction from a terrorist attack impacts few in a harsh manner, the fear of terrorism impacts many in a chronic fashion. Sparks argues that, “fear felt by the many, lasts longer than the terror felt by the few.”<sup>102</sup> An act of terrorism that injures and kills thousands in a particular location can trigger an epidemic of fear far beyond the geographic scope of the actual threat of terrorism itself as illustrated by the global reaction to the 9-11 attacks. Thus, as a result of terrorism, “people scare themselves into non-rational panic-driven activity.” The theory of “moral panics” illustrates this phenomenon.

*i. Fear of Terrorism as a “Moral Panic”*

This panic based fear of terrorism as outlined in the *cycle of fear and victimizatio*, is reminiscent of the criminology theory of “moral panics”. The theory of moral panic was first coined by Jock Young’s examination of the media’s role in constructing social meanings of deviance.<sup>103</sup> Young outlined the interaction between the media and agents of social control in shaping public

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<sup>99</sup> Chris Sparks states that “fear particularly colours our perceptions of what is going on.” Sparks, *supra* note 88 at 202.

<sup>100</sup> AI Report, *supra* note 84 at 5.

<sup>101</sup> Sparks, *supra* note 88 at 204.

<sup>102</sup> *Ibid.* at 204.

<sup>103</sup> Stanley Cohen, *Folk Devils and Moral Panics*. 3<sup>rd</sup> Ed. (Routledge: Oxon, 2002), [Cohen]. The term moral panic was first used by Jock Young in “The Role of the Police as Amplifiers of Deviancy, Negotiators of Reality and Translators of Fantasy” at xxxv.

opinion which could become a “moral panic”.<sup>104</sup> Stanley Cohen, most famous for developing Young’s theory of moral panics,<sup>105</sup> defines moral panic as occurring when “a condition, episode, person or group of persons emerges to become defined as a threat to societal values and interest; its nature is presented in a stylized and stereotypical fashion by the mass media” and politicians.<sup>106</sup> The theory of moral panics has over time been applied to social responses and public reactions to several types of “deviant behaviours”, such as youth gang sub-cultures, pedophilia, immigration, welfare mothers, and child abductions.<sup>107</sup> In fact, Cohen concluded his study with a pessimistic prediction that “more moral panics will be generated and other, as yet nameless, folk devils will be created.”<sup>108</sup> This is exactly what has occurred with the fear of terrorism which as emerged into a global moral panic and has created a new generation of “folk devils”; terrorists.

In order for a moral panic to emerge, there is interplay between several societal actors: “folk devils”<sup>109</sup>; rule enforcers; media; politicians; actions groups; and the public, as depicted in the *cycle of fear and victimization*, which reinforces the growth of fear of the “folk devils” (in the context of terrorism, individuals and groups that are label as “terrorist”) in society. While moral panics eventually diminish or fade away, there are lasting implications upon society as a result of moral panic. Cohen explains that while sometimes a particular moral panic is forgotten and passes over time, it can also have a “more serious and long lasting repercussion and might produce such changes as those in legal and social policy or even in the way society conceived itself.”<sup>110</sup> A key aspect to moral panics is that “societal reaction is disproportionate to the actual seriousness (risk, damage,

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<sup>104</sup> *Ibid.*

<sup>105</sup> Cohen applied the theory of moral panic to his study of British youth in the 1960s. According to Cohen’s analysis the media and politicians fed into the public consciences the perceived danger that the Mods and Rockers present to the public, which in turn were used to justify increased law enforcement powers. *Ibid.*, at 140.

<sup>106</sup> *Ibid.*, at 1.

<sup>107</sup> Rothen & Muzzatti, *supra* note 91 at 328.

<sup>108</sup> Cohen, *supra* note 103 at 172.

<sup>109</sup> Stanley Cohen coined the term “folk devils” in his work on *Folk Devils and Moral Panics* and can be used to describe when a person or group of people are portrayed as deviant.

<sup>110</sup> *Ibid.* at 1.

threat) of the event.”<sup>111</sup> As the tragic events of 9-11 moves further into the history books, many members of society have begun to question some of the reactionary policies implemented in a panic-state immediately after 9-11 and the lasting implications of these policies that continue to be felt.

### *ii. Application of Moral Panics to Terrorism*

The UN Special Rapporteur on terrorism and human rights described post 9-11 counter-terrorism measures enacted around the world as “close-to-panic reactions.”<sup>112</sup> The response to perceived threats of terrorism are not simply “close-to-panic” reactions, they are akin to the phenomenon of moral panics. The fear of terrorism falls neatly into the definition of a moral panic and exemplifies all of the components of the definition of moral panic. Through the fear of terrorism, (i) individuals and groups (or even people that look similar to those individuals or groups of people) are (ii) defined as a threat (to national security) and are (iii) portrayed in a stylized and stereotypical manner by the media and government. Dawn Rothe and Stephen L. Muzzatti state that in relation to terrorism; “perceived threats and heighten security alerts abound in daily media coverage and political speeches, leading to what may be termed a moral panic.”<sup>113</sup>

In applying the theory of moral panics to the discourse of terrorism, Rothe and Muzzatti, outline a step-by-step approach to the build-up of a moral panic. The first stage of the moral panic occurs when “someone or something [is] defined as a threat to values or interests”.<sup>114</sup> The next stage emerges when “threats are depicted by the media in a recognisable form.”<sup>115</sup> The third stage occurs when there is “a rapid build-up of public concern generating hostility.”<sup>116</sup> Next, the fourth stage is “a response from authorities”, usually in the form of

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<sup>111</sup> *Ibid.* at xxviii.

<sup>112</sup> UN Special Rapporteur on terrorism and human rights, Kalliopi K. Koufa, stated that ““close-to-panic” reactions may have serious implications for international and human rights law, as well as humanitarian law.” *Report of the UN Special Rapporteur on terrorism and human rights*, UNESCOR, 54th Sess., UN Doc. E/CN.4/Sub.2/2002/35

<sup>113</sup> Rothe and Muzzatti, *supra* note 91 at 327.

<sup>114</sup> *Ibid.* at 332.

<sup>115</sup> *Ibid.* at 334.

<sup>116</sup> *Ibid.* at 336.

disproportionate reactions.<sup>117</sup> And finally the last stage of the moral panic is when social changes occur resulting from the panic.<sup>118</sup> While this model is useful to conceptualize and understand how moral panics are created and maintained, rather than simply using Rothe and Muzzatti's stages model, this paper will focus on the role of key actors during each of these stages as depicted in Table 2.

Stage	Application to Terrorism	Application to Tamil Community	Actors
<b>1. Someone or Something Defined as a Threat to Values or Interests</b>	<ul style="list-style-type: none"> <li>• Terrorist Attack (9-11)</li> <li>• Threat of Terrorism</li> <li>• Islamic Extremists</li> <li>• Bin Laden</li> <li>• Al Qaeda</li> <li>• Axis of Evil – Iran, Iraq, North Korea</li> </ul>	<ul style="list-style-type: none"> <li>• Violent secessionist movement</li> <li>• LTTE</li> <li>• WTM</li> <li>• Front organizations</li> <li>• Suresh Manikavasagam</li> </ul>	<ul style="list-style-type: none"> <li>• Media</li> <li>• Government</li> </ul>
<b>2. Threat is depicted in a Recognizable Form by the Media</b>	<ul style="list-style-type: none"> <li>• Terrorism as pop-culture</li> <li>• State-propaganda</li> </ul>	<ul style="list-style-type: none"> <li>• National Post campaign against Tamil community</li> <li>• Tamil-gangs linked to LTTE</li> <li>• Tamil = thugs &amp; terrorists</li> </ul>	<ul style="list-style-type: none"> <li>• Media</li> </ul>
<b>3. Rapid Build-up of Public Concern Generating Hostility</b>	<ul style="list-style-type: none"> <li>• With us or with the terrorist</li> <li>• Terror alerts</li> </ul>	<ul style="list-style-type: none"> <li>• 8,000 Trained Tamil Tigers operatives in Canada</li> <li>• Extortion of members of the Tamil-Canadian community by LTTE – HRW report</li> </ul>	<ul style="list-style-type: none"> <li>• Media</li> <li>• Government</li> <li>• General Public</li> </ul>
<b>4. Response from Authorities, Politicians, and Moral Entrepreneurs – Disproportionate Reactions</b>	<ul style="list-style-type: none"> <li>• “War on Terror”</li> <li>• Anti-Terrorism Legislation (ATA)</li> <li>• Expand military, security and law enforcement budgets</li> <li>• Criminalizing terror</li> <li>• Militarizing police</li> <li>• Invasion of Afghanistan &amp; Iraq</li> <li>• Institutionalizing national security</li> </ul>	<ul style="list-style-type: none"> <li>• Listing of LTTE as “terrorist entity”</li> <li>• Listing of WTM as “terrorist entity”</li> <li>• HRW Report</li> <li>• Raids on community organizations</li> <li>• Arrests of Tamil-Canadians</li> </ul>	<ul style="list-style-type: none"> <li>• Government</li> <li>• Law Enforcement</li> <li>• Security Agencies</li> <li>• Media</li> </ul>
<b>5. Panic results in Social Changes</b>	<ul style="list-style-type: none"> <li>• Racial/Religious Profiling</li> <li>• Implications on Civil Liberties</li> </ul>	<ul style="list-style-type: none"> <li>• Tamil=Tiger=Terrorist</li> <li>• Discrimination against member of the Tamil-Canadian community</li> </ul>	<ul style="list-style-type: none"> <li>• Government</li> <li>• Law Enforcement</li> <li>• Security Agencies</li> <li>• General Public</li> <li>• Media</li> </ul>

**Table 2: Stages of Moral Panic, Terrorism and Actors**

In particular the role of three key actors will be discussed. These actors are the most influential agents of social control in the creation of moral panics in the context of terrorism. As Margaret Beare states, “swept up in this grab for additional powers, or to maintain their existing resources, or to appease a constituency, were the usual suspects; law enforcement, politicians and the

<sup>117</sup> *Ibid.* at 339.

<sup>118</sup> *Ibid.* at 343.

media.” In the next few sections we will look at the impact and influence of each of these “usual suspects”; media, law enforcement and security agencies, and the government.

### C. Fear and “Errorism”

The mainstream media is the “single most influential actor in the orchestration and promulgation of a moral panic.”<sup>119</sup> The media is the lens through which one views society. If that lens is distorted, then a distorted view of the world is portrayed. Unfortunately, the media’s representation of certain types of “deviant/criminal” behaviour is often distorted and sensationalized.<sup>120</sup> While the intention of the media is not necessarily to exacerbate or exploit these fears in society, this definitely is a consequence of the media’s use of terrorism rhetoric to garner a wider audience.

#### *i. Manufacturing fear: the misinformation age*

The psychology of fear is driven by images perpetuated by the media<sup>121</sup>. As we have observed from the events of 9-11, the media played a key role in the transformation of our perceptions of security.<sup>122</sup> These images can bring devastating events into our living rooms and make these dangers seem closer than they are.<sup>123</sup> The growth of the information age has also led to the creation of the “misinformation age”. The misinformation age bombards the public with excess information that can result in information overload. Individuals tend to look for simplistic 30 second sound bite solutions to explain complex ideas and problems. This simplification and generalization of complex information can often lead to stereotypes and biases. The media’s portrayal of terrorism at times is

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<sup>119</sup> *Ibid.* at 329.

<sup>120</sup> *Ibid.*

<sup>121</sup> Rosen, *supra* note 86 at 14.

<sup>122</sup> Millions of viewers around the world were glued their television screens on 9-11 as images of airplanes crashing into the twin towers, and the burning twin towers crumbling down were replayed over and over. These images continue to be viewed through the internet.

<sup>123</sup> Like all things in society, this can be instrument for positive outcomes as well as negative ones. On the positive side, we saw the media be used as a tool to bring increased awareness of the devastation of the Boxing Day tsunami in Asia prompting an outpouring of donations and aid to those in need of humanitarian aid.

sensationalized and as Noam Chomsky states, is largely based on a propagandist approach to the issue of terrorism.<sup>124</sup>

The term “Errorism” is phrase coined by a group of young Tamil males engaged in a public education campaign on the pitfalls of stereotypes in the public discourse on terrorism and security.<sup>125</sup> They define “errorism” as the misuse of the terms ‘terrorism’ and ‘terrorist’ that is “often used by government to undermine minorities and to scare its citizens.”<sup>126</sup> More specifically they state that “errorism” means “when a majority community uses stigmatized terms to bully a minority community for its own self interest.”<sup>127</sup> “Errorism” could be more broadly used to describe the over application of the rhetoric of terrorism and fear in the security discourse. Nowhere is this more clear than how the media uses (or misuses) the discourse of terrorism. The impact of the media’s role in perpetuating fear of terrorism and stereotyping community groups is vividly observed in the case study of the *National Post*, a conservative national daily newspaper with a well-known anti-immigration perspective.

## *ii. Case Study: The National Post Targeting of the Tamil Community*

Frances Henry and Carol Tator devoted a significant part of a Chapter in their book, *Discourses of Domination: Racial Bias in the Canadian English-Language Press* to the distorted picture of the Tamil-Canadian community painted by media, in particular right-wing anti-immigration media outlets such as

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<sup>124</sup> Noam Chomsky, “International Terrorism: image and reality”, in Alexander George (ed.), *Western State Terrorism*, (Routledge, 1991). Chomsky states that there are two ways to approach the study of terrorism: “a *literal approach*, taking the topic seriously, or a *propagandistic approach*, construing the concept of terrorism as a weapon to be exploited in the service of some system of power.” “Pursuing the literal approach, we begin by determining what constitutes terrorism. We then seek instances of the phenomenon -- concentrating on the major examples, if we are serious -- and try to determine causes and remedies. The propagandistic approach dictates a different course. We begin with the thesis that terrorism is the responsibility of some officially designated enemy. We then designate terrorist acts as “terrorist” just in the cases where they can be attributed (whether plausibly or not) to the required source; otherwise they are to be ignored, suppressed, or termed “retaliation” or “self-defence.””

<sup>125</sup> More information about this group and their activities will be discussed in the final chapter on agency.

<sup>126</sup> Little Empire, News Release “Stop Errorism” (26 May 2007), online: <<http://www.littleempire.com>>

<sup>127</sup> *Ibid.*

the *National Post*.<sup>128</sup> In their analysis, Henry and Tator state that “[r]egarding the Tamil community in Toronto, the word the *Post* used most often in its articles was ‘terrorist’.”<sup>129</sup> Henry and Tator conclude:

The readers of the *National Post* are in a sense being programmed to believe that the Tamil Tigers are terrorist. It is not even necessary to read the full reports: the headlines make the point. They may or may not be terrorists; another perspective – and certainly their own – is that they are ‘freedom fighters.’<sup>130</sup>

Headlines concerning Tamils often exclaim “Tamil Tiger” in bold letters. References to Tamil youth street gangs invariably associate these gangs to the activities of the LTTE.<sup>131</sup> The impact of this kind of reporting is that “when the average reader hears or sees the ethnic descriptor ‘Tamil,’ he or she immediately thinks of ‘terrorist Tamil Tigers’<sup>132</sup> and more alarming is that “Canada’s entire Tamil community has been associated negatively with an alleged ‘terrorist’ organization.”<sup>133</sup> Over time, “Tamil” became equated with the “Tigers”, who were in turn associated with the word “terrorist”. Thus, the short-hand schema becomes Tamil = Terrorist, thereby painting the entire Tamil-Canadian community with the same brush.

The association of the entire Tamil community in Canada with terrorism is not just an incidental assumption that is alluded to by the *National Post*; rather it is an explicit connection that is being made deliberately. For example, in an article the *National Post* cites law enforcement sources that allege there are 8,000 trained Tamil Tiger operatives in Toronto alone.<sup>134</sup> This astounding claim implies that between 5-8% of the Tamil population in Toronto are members of a “terrorist group”.<sup>135</sup> Arguably, sensational headlines are developed to grab the reader’s attention in order to sell more papers and as a by-product elicit fears.

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<sup>128</sup> Henry & Tator, *supra* note 66 at 121.

<sup>129</sup> *Ibid.* at 122

<sup>130</sup> *Ibid.*

<sup>131</sup> Sutha Balasingam *et al.*, *Canadian Tamil Youth: The Realities*. (Toronto: Canadian Tamil Youth Development Centre, 2000) [Balasingam].

<sup>132</sup> Henry & Tator, *supra* note 66 at 123

<sup>133</sup> Henry & Tator, *supra* note 66 at 123

<sup>134</sup> Stewart Bell, “Up to 8,000 Tamil guerrillas living in Toronto RCMP says”, *National Post* (27 April 2001) [Bell].

<sup>135</sup> 5% based on the community estimate that there are 150,000 Tamils in the GTA, or 8% based on the census figure that there are 95,000 Tamils in the GTA.

Similar to how the Nazis used the media to “report” alleged “facts” based on Jewish traits preceding the Holocaust, the National Post’s coverage of the Tamil community is a lesser but systematic variant of this kind of reporting, and can also create hatred and fear-mongering.

However, upon deeper analysis, the National Post campaign against the Tamil community can be viewed in a different light. The National Post is known to have a conservative leaning and has often used the Tamil community to further its own political agenda. Henry and Tator conclude that while this could be an acceptable media practice:

[T]he problem is that in so doing, the paper was communicating to its readers a largely negative image of the Tamil community in Canada. In pursuing its political agenda, the Post was categorizing an entire community as ‘terrorist’ without at any time publishing any positive or supportive pieces about the community and its members.<sup>136</sup>

The role of the media in perpetuating and creating fear in the public is imperative to understanding the force that fear plays in the security discourse context. However, the community did take an active stance in countering this negative portray, and will be explored further in Chapter 4 on Discourses of Agency.

The media also feeds off the rhetoric of other societal actors such as law enforcement and security agencies. For example, in the National Post article claiming there are 8,000 trained Tamil Tigers living in Toronto, it was the RCMP that was cited as the source of information.<sup>137</sup> In addition, the media will often quote “unnamed sources” from law enforcement and security agencies as their sources of information. In turn, law enforcement agencies often use newspaper clippings and media articles as their sources of information on terrorist activities when making recommendations to government officials, and even produce these media articles in court as evidence.<sup>138</sup>

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<sup>136</sup> Henry & Tator, *supra*, note 66 at 129.

<sup>137</sup> Bell, *supra* note 134. In the article, Sergeant Fred Bowen, an RCMP officer, was quoted as testifying in an immigration hearing that that as many as 8,000 Tamil guerrillas with military weapons training are now living in the Toronto area after fleeing a civil war in Sri Lanka

<sup>138</sup> Matthew Behrens, *Desecration of Democracy*, online: Shunpiking Online <<http://www.shunpiking.com>>. “A judge is handed a 1,500-page dossier on terrorism-related news clippings, none of which mentions Harkat, but CSIS says it has “reasonable grounds to believe” he is somehow in the past, at present, or perhaps in the future associated with that dossier.”



## D. Policing Fear

Law enforcement and security agencies, feeding off the general climate of fear in society that is reinforced by the media, play an important role in maintaining the cycle of fear. Rothe and Muzzatti state that “as those responsible for the enforcement of norms, codes of conduct and law, rule enforcers are a vital part of the moral panic.”<sup>139</sup> Law enforcement and security agencies have their own interests at stake in propagating the security and terrorism debate. Law enforcement and security agencies portray themselves as the only social agents capable of resolving the problem of security and terrorism and, thus, save society from terrorist destruction. In doing so, they strengthen their claim for increased resources to thwart the ever-present threats to security. In the post 9-11 security era, extensive powers and resources have been diverted towards national security polices and agencies to implement these policies. Prior to the examination of these aspects, it is important to contextualize the role of law enforcement and security agencies in the national security discourse by looking at the historical development of these agencies.

### i. *Policing National Security*

As Margaret Beare observes, traditionally, national security offences were seen to be “distinct from criminal code offences”, and this distinction was reflected in the separation of law enforcement bodies.<sup>140</sup> With the enactment of the ATA, national security offences became criminal code offences, thereby blurring the lines between concepts such as “organized crime”, “terrorism”, and ordinary criminal code violations.<sup>141</sup> More alarming is the blurring between “control agencies that address these separate forms of criminality”<sup>142</sup>; the RCMP and CSIS. In policing national security, cooperation between law enforcement and national security intelligence agencies is vital, even necessary. However, this can also be problematic if the correct checks and balances are not followed,

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<sup>139</sup> Rothe & Muzzatti, *supra* note 91 at 329.

<sup>140</sup> Beare, *supra* note 76 at 9.

<sup>141</sup> *Ibid.*

<sup>142</sup> *Ibid.* at 8.

as it is reminiscent of a time when citizens were subject to surveillance by agencies that share the mandate for both policing and national security.

For much of Canadian history, the RCMP played the dual function of law enforcement, as well as security intelligence. After controversies erupted over counter-intelligence operations by the “Security Service” branch of the RCMP, the McDonald Commission<sup>143</sup> was established and recommended that “security intelligence functions be separated from the RCMP.”<sup>144</sup> As a result of the McDonald Commission, the CSIS, a civilian agency was established in 1984 with the mandate to collect intelligence on threats to security.<sup>145</sup> Recognizing the need to balance security interests with *Charter* rights, CSIS had two important oversight mechanisms: (1) an internal review mechanism, in which the Inspector General may review the operational policies and activities of the agency, and (2) an external civilian oversight body – the Security Intelligence Review Committee (SIRC).<sup>146</sup>

This separation of powers resulted in distinct and separate mandates being assigned to CSIS and the RCMP with respect to security issues. CSIS’ mandate is “to collect, analyze, report and retain information and intelligence relating to threats to the security of Canada”, and the RCMP’s mandate is “to enforce laws, prevent crime, maintain peace, order and security.”<sup>147</sup> Thus, the primary responsibility of CSIS is to investigate and analyze security threats, while the RCMP investigates criminal activities. Despite these distinct mandates, the issue of counter-intelligence has posed difficulties as to which agency is primarily responsible and for what.<sup>148</sup> As the new security paradigm has increased cooperation between agencies, strategies with respect to national security threats also become blurred. One such example is the establishment of Integrated National Security Enforcement Teams (INSET) in major urban centres such as Vancouver, Toronto, Ottawa and Montreal. INSETs are made up of

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<sup>143</sup> McDonald Commission, *supra* note 58.

<sup>144</sup> Arar Commission, Policy, *supra* note 13 at 32.

<sup>145</sup> Beare, *supra* note 76 at 15.

<sup>146</sup> *Ibid.* at 16.

<sup>147</sup> Beare, *supra* note 76 at 16-17.

<sup>148</sup> *Ibid.* at 14.

representatives of the RCMP, CSIS, other federal partners and agencies such as the Canada Border Services Agency (CBSA), and provincial and municipal police services. The purpose of INSETs are to increase the capacity for the collection, sharing and analysis of intelligence among partners with respect to individuals and entities that are a threat to national security.

After 9-11, with increased powers granted to law enforcement agencies, and increased resource allocations to security agencies, the blurring of the roles between these separate agencies is a cause for considerable concern. We have seen this vividly with the case of Maher Arar, where Canadian law enforcement agencies provided inaccurate intelligence information to U.S. authorities that led to Arar's rendition to Syria where he was tortured.<sup>149</sup> As expressed by Margarte Bear, additional powers being granted to the RCMP is disconcerting as the RCMP has no reviewing or auditing authority, unlike CSIS.<sup>150</sup> In fact, one of the key recommendations of the O'Connor Commission, the Commission of Inquiry looking into the Arar affair, is that the RCMP should be subject to review by an independent review body.<sup>151</sup> Further, Justice O'Connor states that the existing oversight mechanisms<sup>152</sup> are inadequate and that "there remains a need for specialized and day-to-day review of the RCMP's national security activities."<sup>153</sup> As security issues continue to dominate the public policy agenda, the need for enhanced oversight mechanisms becomes even more vital.

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<sup>149</sup> Maher Arar is a dual Canadian/Syrian citizen who was detained in the US at a stopover in New York while enroute to his hometown in Montreal on September 26, 2002. He was interrogated and placed into a detention facility. Despite the fact that he had Canadian citizenship, Arar was removed from the U.S. and deported to Syria, where he faced torture. A Commission of Inquiry was held to investigate the role of Canadian authorities in the events relating to Maher Arar.

<sup>150</sup> Beare, *supra* note 76 at 17.

<sup>151</sup> Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Analysis and Recommendations* (Ottawa: Public Works and Government Services Canada, 2006) at 342. [Arar Commission: Analysis and Recommendations].

<sup>152</sup> The existing review mechanisms include: the Commission for Public Complaints Against the RCMP (commission that handles complaints from the public), and the RCMP External Review Committee (mechanism for complaints by RCMP members against their own organization). These review mechanisms are inadequate as they do not have the power to monitor the activities of the RCMP on an ongoing basis and more importantly is situations where a member of the public is not there (or willing) to make a complaint. Bear, *supra* note 76 at 16-17.

<sup>153</sup> Arar Commission: Policy, *supra* note 13 at 496.

## *ii. Resource Allocation*

In addition to expanded powers, law enforcement and security agencies received a financial windfall as a result of the post 9-11 security measures. Heeding the call for increased resources and capacity to deal with national security issues, the government of Canada has allocated extensive resources to the national security portfolio. Rothe and Muzzatti describe how depending on the strength of the discourse, there are “calls for increased numbers of rule enforcers and more extensive authority (i.e. greater power) for them.”<sup>154</sup> The strength of the terrorism discourse is powerful and has resulted in the allocation of extensive resources to security and law enforcement agencies by the government. Beare explains “security issues are rife with political agendas and resource implications for governments, enforcement agencies and advocacy organizations.”<sup>155</sup> Margaret Beare asserts that “security has become an objective with additional funds pumped in to alleviate some of the drought that law enforcement had been experiencing.”<sup>156</sup> In particular, the RCMP received \$59 million immediately following 9-11 to support the “fight against terrorism”<sup>157</sup> and a further increase during the December 2001 budget to a total of \$576 million in order to “fund 17 initiatives dedicated to national security efforts.”<sup>158</sup> CSIS, the organization mandated to investigate national security threats received additional funding as well; immediately following 9-11, CSIS’ operating base budget increased by 35%.<sup>159</sup>

The rhetoric of security entered the political domain in December 2001, with Chapter 5 of the Budget Plan titled “Enhancing Security for Canadians”. However, in subsequent years the security rhetoric diminished slightly. In the

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<sup>154</sup> Rothe & Muzzatti, *supra* note 91 at 329.

<sup>155</sup> Beare, *supra* note 76 at 5.

<sup>156</sup> *Ibid.*, at 6.

<sup>157</sup> This investment was provided to enhance analytical, intelligence sharing and operational technology; to support protective operations; to enhance security activities at airports, major centres, ports and border crossings; and to invest in immediate staffing requirements for priority areas such as those targeting cross-border criminal activities. Safety and Security for Canadians, online: Royal Canadian Mounted Police <[http://www.rcmp-grc.gc.ca/security/index\\_e.htm](http://www.rcmp-grc.gc.ca/security/index_e.htm)>

<sup>158</sup> *Ibid.*

<sup>159</sup> CSIS: speech, *supra* note 10.

2003, 2004 and 2005 Budget Plans national security was relegated to the domain of “Canada in Relation to the World”. In the 2006 Budget Plan, with the emergence of a new conservative government which placed national security as a priority in their campaign platform, the theme of “Security” remerged as a dominant theme in the budget.<sup>160</sup> This continued in the 2007 Budget Plan, where the theme of the Budget as a whole was “Aspire to a Stronger, Better, **Safer** Canada” [emphasis added] and Chapter 6 of the Budget Plan was titled “A Safer Canada: Building a Stronger Canada in a Modern World”.<sup>161</sup> This most recent federal budget earmarked an additional \$80 million dollars over two years to the public safety portfolio.<sup>162</sup>

In examining resource allocation, law enforcement agencies and security agencies have received substantial increases in resources over the years. This also demonstrates the interactive relationship between these agencies and the government. Security agencies have a significant influence over the decisions that are made in government with respect to matters of national security. These agencies are governed by government directives and legislations. In addition, law enforcement and security agencies also have a strong influence over governmental policies. To illustrate, as mentioned previously, CSIS reports form the basis upon which the SIR is produced and relied upon when the Minister considers listing an entity as a terrorist group.<sup>163</sup> While the ultimate decision is a political one, security agencies, play a vital role in the listing process. In turn, law enforcement and security agencies rely on the government for its continued existence and expansion.

When national security is a priority of the government, law enforcement and security agencies benefit with higher budgets, increased personnel, new programs, and added powers. Thus, keeping security interests a priority for the government is a key objective of law enforcement and security agencies. While

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<sup>160</sup> Department of Finance Canada, “Focusing on Priorities”, Budget Plan 2006 (Ottawa: Public Works and Government Services Canada, 2006)

<sup>161</sup> Department of Finance Canada, “Aspire to a Stronger, Safer, Better Canada”, Budget Plan 2007 (Ottawa: Public Works and Government Services Canada, 2007) [Budget 2007]

<sup>162</sup> *Ibid.* 21 million for 2007-2008 and 60 million for 2008-2009.

<sup>163</sup> Security Intelligence Review Committee (SIRC), *Annual Report 2004-2005*, (Ottawa: Public Works and Government Services Canada, 2005).

increased resource allocation to security and law enforcement agencies is an important tool to protect Canadian national security and to fight terrorism there are, however, several troubling aspects. First, fiscal accountability of these agencies is not entirely public or transparent despite the reporting requirements. CSIS' operating budget is reported to SIRC and the Treasury Board, however, detailed itemized budgeting allocation such as human resources, operations, administration is limited. In terms of the RCMP's budget, the amount that is diverted towards national security measures is also not itemized. Thus, it is difficult to determine how these additional resources are being utilized by these agencies and if in fact they are being used in the most effective and efficient manner.

#### E. The Politics of Fear

As discussed previously, the media, law enforcement and security agencies, as well as the general public are all key actors in the discourse of fear and terrorism. While each of these actors has a significant role to play in the *cycle of fear and victimization*, politicians and the government are the most powerful societal actors, as they are the law makers. Politicians control the public purse strings and determine what the national priorities are. Yet, at the same time politicians are highly susceptible to societal influence. Politicians "often align themselves with the press and the rule enforcers in a struggle against the evils perpetrated by the folk devils."<sup>164</sup>

In particular, politicians are highly dependent on the electorate; namely the general public. There is a symbiotic bond between these two actors. The general public is "relied upon to express contempt for the 'folk devils' and support for the rule enforcers, to consume the media coverage, and wait for the latest pronouncements from politicians and/or action groups on how the problem is to be solved."<sup>165</sup> Thus, driven by the general climate of fear created by the *cycle of fear and victimization*, the general public demands increased "law and order"

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<sup>164</sup> Rothe & Muzzatti, *supra* note 91 at 329.

<sup>165</sup> Rothe & Muzzatti, *supra* note 91 at 330.

policies from the government and gives political leaders “greater freedom of action to advance and justify exceptional legislation, encroach on civil liberty rights, and accomplish their geo-political agendas.”<sup>166</sup>

This creation of a perpetual state of fear, results in “disproportionate reactions of politicians that can create negative social ramifications, leaving long-term social consequences.” In *The Naked Crowd*, Jeffrey Rosen argues that the psychology of fear imbedded in society as a result of terrorism propels the adoption of laws and technologies that make people feel safe rather than actually being safe.<sup>167</sup> This is a sentiment that is also shared by Margaret Beare, who states that “new policies and laws may have unanticipated and adverse consequence while failing to make us more safe.”<sup>168</sup> There is a clear dilemma for governments and politicians. Governments are criticized for the counter-terrorism measures implemented in the name of “security”, as these measures can be overly broad, and encroach on individuals’ rights and freedoms. Conversely, governments also face severe criticism when security threats emerge for their inaction in anticipating and preventing such incidents. Thus, politicians race to enact laws that appear to address security problems.

It is argued that these laws often fail to effectively address the challenging and complex realities of security threats as the government is compelled to utilize the wrong strategy to effectively deal with terrorism issues. Rosen illustrates this paradox by stating that “the technologies and laws demanded by a fearful public often have no connection to the practical realities of the threats that confront us”<sup>169</sup> In doing this “we run the risk, therefore, of constructing vast but ineffective architectures of surveillance and identification that threaten the liberty and privacy of innocent citizens without protecting us from terrorism.”<sup>170</sup> This is the real and significant challenge that society, and especially government, confronts when dealing with the intersection of fear and terrorism in society.

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<sup>166</sup> *Ibid.* at 336.

<sup>167</sup> Rosen, *supra* note 86 at 6.

<sup>168</sup> Beare, *supra* note 76 at 29.

<sup>169</sup> Rosen, *supra* note 86 at 8.

<sup>170</sup> *Ibid.* at 8.

In the aftermath of 9-11, the security paradigm has become privileged. Although the initial panic-driven response to 9-11 has dissipated, notions of security become a rallying point in the political sphere. In relation to national security threats, politicians attempt to portray themselves as the protectors of law and order in society, and according to Rothe and Muzzatti:

even the most liberal politicians usually take a moralistic, no-nonsense, war on crime stance, advocating reactionary and punitive strategies to deal with this new threat.<sup>171</sup>

To illustrate, the ATA, was passed into law quickly with limited debate and criticisms from opposition parties as politicians of all stripes wanted to appear to be supportive of the new measures. In fact, to oppose such legislation during the intense climate of fear could be political suicide and perceived as “unpatriotic”. Thus, how governments respond to the culture of fear created by terrorism is of critical importance to public administration and its impact on society.

*i. Eradicating or Managing Fear:*

An Amnesty International reports on *the State of the World's Human Rights* in 2007 states that:

Fear can be a positive imperative for change, as in the case of the environment, where alarm about global warming is forcing politicians belatedly into action. But fear can also be dangerous and divisive when it breeds intolerance, threatens diversity and justifies the erosion of human rights.<sup>172</sup>

It is how governments respond to fear that becomes the necessary ingredient to determine whether this fear will be the driving force for positive and productive change in society or reinforce the negative and destructive nature of the downward spiral of fear. Chris Sparks argues that there are two government responses to fear: (1) a politics of eradication of the fear, and (2) a politics aimed at managing this fear. In describing the eradication approach he states that:

Overly fearful governments can lurch into panoptic governance, undermining the world they seek to persevere. In such situations, citizens come to be seen as actual or potential enemies within, vigilantes prosper, civility withers and, ironically, the uncertainties and dangers that lurk within the society become its defining and potentially terminating features.<sup>173</sup>

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<sup>171</sup> Rothe & Muzzatti, *supra* note 91 at 329.

<sup>172</sup> AI, *supra* note 84, at 1.

<sup>173</sup> Sparks, *supra* note 88 at 201.



The eradication of fear approach falls into the trap of terrorism by “intensifying and prolonging a general state of fearfulness.”<sup>174</sup> While managing fear involves “clarification of the sources of the fear, enabling people to deal with it strategically.”<sup>175</sup> It is not so much the acts of terrorism and the violence that surrounds terrorism that carries political weight, but rather the fear of terrorism itself that gives terrorism political value.<sup>176</sup> The strategy of eradication, which is predominately exhibited by the first wave of measures enacted at the height of the fear of terrorism, ignites the climate of fear in society. These measures fixate on the sources of fear in society - the prevalent and unceasing threat of terrorism -- and are often disproportionate responses to the actual threats. While, in time this panic driven wave recedes, unfortunately, the measures enacted become long-term features that are affixed and become difficult to remove.

Those with an eradication agenda are “driven by ‘a gut-level fear’ of uncertainty and seek to eradicate the causes of uncertainty ‘entirely with little regard to cost’”<sup>177</sup> However, the threat of terrorism can never be completely eliminated. Governments may implement preventative measures to decrease the possibility of future threats; however, domestic measures cannot solely eradicate global terrorism. To think otherwise would be politically naïve. Just as the threat of terrorism has existed long before 9-11, terrorism will surely continue to plague the world in the years to come. It is how the government responds to the threat of terrorism that can have a significant impact on society and depending on the approach taken can either continue the perpetuation of fear or assist the public in handling the fear in a constructive and healthy manner.

In contrast, a management strategy manages the fear in society by portraying the threats realistically. An important aspect to a management strategy is clear and transparent communication. For example, such a strategy would involve clarifying the sources of fears and eliminating stereotypes such as “all members of Group X are terrorists”. While legislative measures may be

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<sup>174</sup> *Ibid.* at 202.

<sup>175</sup> Sparks, *supra* note 88 at 202.

<sup>176</sup> *Ibid.* at 204

<sup>177</sup> Sparks, *supra* note 88 at 201.

necessary to ensure public safety, a management strategy would ensure that the least intrusive measures were introduced to protect society. To illustrate, the government could introduce public service announcements as a means to eliminate stereotypes that particular segments of society are “terrorists”. A management strategy could also include cultural training and outreach into community groups that are perceived to be targets of backlash. Government also has an important role to play in setting regulatory standards to ensure there is a line between propaganda and factual reporting to the public around national security threats. These are all elements of a strategy aimed at managing the fear of terrorism rather than adding fuel to the fire.

The Canadian government's response to terrorism in Canada is indicative of the “eradication model” rather than the “management model”. In dealing with emotional and highly sensitive issues such as terrorism, the knee-jerk reaction of the Canadian government was to legislate in an attempt to eradicate the fear of terrorism. The problem with the eradication approach is that it often leads to strategies that are disproportionate to the threat that is posed to society.<sup>178</sup> The ATA is a prime example of reactive legislation to respond to the fear of threats of terrorism. Legislation created as a reactive measure to neutralize a perceived threat in society is often poorly designed. In consultations during the drafting of the ATA, leading academics have argued that existing Canadian criminal law is sufficient to deal with terrorist crimes<sup>179</sup> and that the ATA has many negative implications including targeting minorities, immigrants and non-citizens.<sup>180</sup> While some of the more problematic aspects of the draft legislation were amended (either redrafted, eliminated or subject to a sunset clause), many problematic aspects of the ATA still remain as discussed previously, in particular the definition of terrorism and the controversial listing process.

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<sup>178</sup> Sparks, *supra* note 88 at 205.

<sup>179</sup> Kent Roach, “The New Terrorism Offences and the Criminal Law” in Ronald J. Daniels, Patrick Macklem, & Kent Roach, eds., *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill*, (Toronto: University of Toronto Press, 2002) 151 at 152.

<sup>180</sup> Sujit Choudhry, “Protecting Equality in the Face of Terror: Ethnic and Racial Profiling and s. 15 of the Charter” in Ronald J. Daniels, Patrick Macklem, & Kent Roach, eds., *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill*, (Toronto: University of Toronto Press, 2002) 367.

Governments around the world have employed a variety of strategies to deal with terrorism. These strategies can be reactive or pre-emptive. Forcese outlines the different techniques that national security legislation utilize to achieve its objectives. Forcese defines a reactive system as one that “guards against the continuation of a security peril by deterring (or making physically impossible) its repetition”,<sup>181</sup> and describes pre-emptive measures broadly as “anticipating, analyzing, detecting and preventing threats”<sup>182</sup>. In applying a pre-emptive strategy governments use: clandestine intelligence gathering, surveillance, inter-state information sharing, interception and interdiction of persons posing security threat, detention of persons who pose an imminent national security threats.<sup>183</sup>

Anti-terrorism legislation is reactive in nature as it is a response to a particular event, cause or issue. In the case of the events of 9-11, anti-terrorism legislation was enacted, in part, as a show of solidarity with the American government and that Canada was on the righteous side in the ‘war against terror’. However, the ATA, as well as many of the measures enacted following 9-11, such as the increased airport security measures, were designed and implemented to prevent similar attacks as 9-11; where terrorists hijacked planes with box cutters. It was only after the alleged “shoe bomber” plot was discovered that airport security screening involved the removal and x-ray of passengers’ shoes. Again it was only after an alleged terrorist plot that involved the use of liquid to create a bomb that all “liquids and gels” were banned from carry-on baggage.<sup>184</sup> Such security measures are a response to threats that have emerged.

Many of the “law and order” policies put into place today are drafted based on incidents that have occurred in the past in order to shape a particular outcome

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<sup>181</sup> Forcese, *supra* note 8 at 11.

<sup>182</sup> *Ibid.* at 12.

<sup>183</sup> *Ibid.*

<sup>184</sup> Michael Moore, *Stupid White Men* (New York, HarperCollins, 2001), Moore states that “while everyday household items such as toothpaste, shaving cream, and even bottled water are subject to scrutiny on airports. Yet, dangerous items such as lighters which could be used to light the fuse on bombs and start fires on planes, continue to be allowed since the cigarette company lobby in North America is so powerful.” While there was ban on lighters in place in 2005, it was quickly lifted in 2007. “Airplane ban on lighters ends Aug 4.” *USA Today* (20 July 2007).

in the future.<sup>185</sup> The purpose of national security legislation that is made today is to prevent certain actions that are harmful for society from occurring in the future. This is exemplary of the fact that law is in fact reactionary as Phillip Alston states:

What law does is allow a society to choose its future. Law is made in the past, to be applied in the present, in order to make society take a particular form in the future. Law carries a society's idea of its own future from the past into the future. Law carries society's structures and systems from the past into the future.

This function of law places an added onus on politicians to be forward thinking in how laws are going to impact on society. Since the laws that are made in the past have to be applied in the present to achieve a desired result in the future, politicians have to anticipate how the laws they draft today will be implemented in the future. This is especially of concern regarding anti-terrorism legislation designed to thwart disastrous events in the future from occurring, and has widespread implications on individual privacy and civil liberties, as well as the negative impact on particularly vulnerable ethnic communities that are often used as scapegoats in the discourse of fear and terrorism.

The Amnesty International report states that “fear thrives on myopic and cowardly leadership”<sup>186</sup> and correctly identifies several reasons why some world leaders promote fear instead of a sustainable strategy to manage security concerns. Governments promote fear because “it allows them to consolidate their own power, create false certainties and escape accountability.”<sup>187</sup> According to Naomi Klein’s *Shock Doctrine*<sup>188</sup>, in order for governments to

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<sup>185</sup> A prime example of this is the “Just Desserts Bill” enacted three months after the murder of a 23-year-old young woman, Georgina (ViVi) Leimonis, making it easier to deport landed immigrants with serious criminal records, primarily used to deport individuals of Jamaican heritage. In its first two years, the legislation has been used to deport 355 criminals from Ontario to other countries. Of these, 138 have gone to Jamaica (38%) with the second highest number being 22 to Trinidad. Julian Falconer and Carmen Ellis, “Colour Profiling: The Ultimate Just Desserts” (Paper presented to the 1998 American Bar Association conference, 4 August 1998). Another example is the placement of police CCTV cameras on the corner of Yonge and Dundas after the boxing day shooting of a 15 year old Jane Creba. Rosie Dimanno, “Police cams cut both ways” *The Toronto Star*, (8 January 2007).

<sup>186</sup> Al, *supra* note 84 at 2.

<sup>187</sup> *Ibid.*

<sup>188</sup> Naomi Klein, *The Shock Doctrine* (Toronto: Random House, 2007). “The original disaster – the coup, the terrorist attack, the market meltdown, the war, the tsunami, the hurricane – puts the entire population into a state of collective shock. The falling bombs, the bursts of terror, the pounding winds serve to soften up whole societies much as the blaring music and blows in the torture cells soften up prisoners. Like the terrorized prisoner who gives up the names of

implement “unpopular policies” that enrich the few and impoverish the many, some sort of crisis or disaster (either real or imaginary) is required. In the U.S., 9-11 served just this purpose by using the “war on terror” as “a thin cover for a thriving destruction/reconstruction complex, with disasters, wars and homeland security fuelling a booming new economy.”

Since 9-11, there has been an explosion of new laws and infrastructure created to contain the problem of global terrorism. Some governments have used the security preoccupation of the international community to further their own foreign affairs agendas, while others have used security as a guise to repress their own citizens and suppress dissent at home. All over the world, national security has been used as an excuse by States to consolidate their power and suppress dissent. In Sri Lanka, draconian anti-terrorism laws were enacted to proscribe the LTTE as a terrorist group in that country in 1979.<sup>189</sup> As a result, the government of Sri Lanka used these increased powers to unleash law enforcement agencies to indiscriminately round up young Tamil males under arbitrary arrest and detention without charge leading to torture and extrajudicial killings and disappearances. In response thousands of Tamils were forced to flee Sri Lanka out of fear of being persecuted during the early 1980’s. Today, as the war in Sri Lanka continues, the Tamil Diaspora in Canada experiences the ripple impact of Canadian legislation that has permitted the listing of the LTTE and the WTM as terrorist entities in Canada.

## *ii. National Security and Diasporas*

Canada’s diversity and multicultural nature poses a significant challenge in the national security discourse. While this source of diversity is one of Canada’s greatest strengths, those in the intelligence community have often stated that this diversity also poses significant challenges to policing in the national security

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comrades and renounces his faith, shocked societies often give up things they would otherwise fiercely protect.”

<sup>189</sup> The *Prevention of Terrorism (Temporary Provisions) Act*, No. 48 of 1979, was enacted in Sri Lanka well before the Sept 11 attacks. It was enacted in 1979 as a temporary measure for three years, but became a permanent feature of Sri Lanka law in 1982. However, since 9-11, the government of Sri Lanka has continued to use provisions of the PTA to arbitrarily arrest and detain Tamils. *Al*, supra note 84.

context.<sup>190</sup> Diaspora communities often come to Canada as a result of brutal conflicts in their countries of origin. In a security-dominated paradigm, such communities can be viewed as a breeding ground for terrorism. The Canadian government notes that:

Most terrorist activities in Canada are in support of actions elsewhere linked to homeland conflicts. These activities include providing a convenient base for terrorist supporters and may involve using the refugee stream to enter Canada, or immigrant smuggling. In recent years, terrorists from different international terrorist organizations have come to Canada posing as refugees.<sup>191</sup>

As noted by Margaret Purdy, “attempts to analyze links between Diaspora activities and homeland violence can be construed as indicating that Diaspora communities automatically represent security threat and therefore are appropriate targets for law enforcement and intelligence attention.”<sup>192</sup> While governments and communities themselves try to dispel this “causal connection” the actions (and profiling by) law enforcement and security agencies often exacerbate these unfounded assumptions.

In particular, refugees, migrants and immigrants are particularly “vulnerable” in the terrorism discourse.<sup>193</sup> Chris Sparks notes that in “Western Europe, fearfulness has been expressed in a right-wing backlash against the ethnic and cultural diversity commonplace in European nations, as the issue of terrorism has become confused with issues of immigration.” This fear that refugees, migrants and immigrant communities may hold sympathies for armed groups fighting against a State that oppressed them also prevails in Canada. According to CSIS, these communities may also fundraise to support the armed groups in their struggle against oppressive regimes.<sup>194</sup>

Thus, Diaspora communities, especially large ones where there is political turmoil in their home countries, are targets of CSIS. The Tamil Canadian community is the largest Tamil Diaspora outside of Sri Lanka, and the brutal civil

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<sup>190</sup> Margaret Purdy, *Targeting Diasporas: The Canadian Counter-Terrorism Experience*, (2003) [unpublished], online: Armed Groups Project <<http://www.armedgroups.org>>, at 4. [Purdy]. Permission obtained by the author to quote from this working paper.

<sup>191</sup> “Counter-terrorism: Backgrounder Series #8” (9 August 2002), online: CSIS <<http://www.csis-scrs.gc.ca>>

<sup>192</sup> Purdy, *supra* note 190 at 2.

<sup>193</sup> Beare, *supra* note 76 at 27.

<sup>194</sup> Purdy, *supra* note 190 at 4.

war continues to rage for over 25 years. As a result, the Tamil Canadian community has faced increased scrutiny as the terrorism discourse morphed into a moral panic. In several CSIS documents, the Tamil Tigers are listed as a target for investigation in Canada.<sup>195</sup> Recently, CSIS's annual report lumps "Tamil extremism" with "white supremacist" and "Sikh extremism" as "longstanding interests of CSIS's "domestic and secessionist investigations".<sup>196</sup> As the next chapter on the **Discourse of Victimization** will demonstrate, since the listing of the LTTE, the Tamil-Canadian community has faced increased victimization by agents of social control, such as governments and law enforcement and security agencies.

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<sup>195</sup> Peter Chalk, "Liberation Tigers of Tamil Eelam's (LTTE) International Organization Operations – A preliminary Analysis" Commentary #77, (Winter 1999) online: CSIS <<http://www.csis-scrs.gc.ca>>

<sup>196</sup> Jim Bronskill "CSIS monitors potential for violent anti-Olympic protests" *Toronto Sun* (20 January 2008).

### CHAPTER 3: DISCOURSES OF VICTIMIZATION, FEAR AND HUMAN RIGHTS

*"Mankind censure injustice fearing that they may be the victims of it, and not because they shrink from committing it."*

Plato, *The Republic*

The discourse of fear is intricately linked to the discourse of victimization, as fear in society can create victims. While national security legislation has an impact on the rights and liberties of all citizens, there are segments of the population that are disproportionately affected by increased security measures. As we have seen in the previous Chapter, the fear of terrorism elicits a variety of societal responses. Colin Harey states that these responses can:

[t]ake the form of enhanced monitoring of political movements and /or national minorities. However, when the danger comes from international terrorism then attention often shifts to migration control, and with it more intense scrutiny of the regulation of entry and the monitoring of migrants who are already present.<sup>197</sup>

To further promulgate Harey's argument, it is often immigrant and refugee communities that face the impact of increased security measures. The security agenda, often views "the existence of ethnic communities as potential bases for terrorist activity or at least terrorist fund raising and financing"<sup>198</sup> thus, leaving ethnic communities vulnerable to increased scrutiny and policing under the rubric of national security. Margaret Beare cautions that "the exercise of police powers, against often particularly vulnerable people, requires the same degree of diligence" as the oversight mechanisms in place against corruption.<sup>199</sup> While there are many ethnic and religious groups that have been impacted by the security discourse, most notably, the Muslim and Arab communities<sup>200</sup>, the focus of this thesis, will be the impact of national security legislation on the Tamil Canadian community.

There is a complex web of relationships between actors captured by the discourses of victimization, fear and human rights that will be discussed in greater length in this section by exploring theories and critiques of victimhood,

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<sup>197</sup> Colin Harey "Securing Refugee Protection in a Cold Climate", (2002) 20:4 *Refuge*, at 2.

<sup>198</sup> Beare *supra* note 76 at 5.

<sup>199</sup> *Ibid.* at 28.

<sup>200</sup> Louise Ciankar, "The Impact of the September 11 Attacks and Their Aftermath on Arab and Muslim Communities in the United States" (2004) 12 *Global Security and Cooperation Quarterly* (Summer/Fall).



such as Alyson M. Cole's "Cult of True Victimhood"<sup>201</sup> and Makau Mutua's "Metaphor of Human Rights"<sup>202</sup>. Building on these general theories of victimization, it is important to critically assess the role that victimization plays in discourses of security, in particular, who is being victimized and by whom? Finally, the experiences of the Tamil-Canadian community will be examined in relation to national security discourse by providing concrete examples of how individuals and vulnerable groups are impacted by the discourses of fear, victimization and human rights.

#### A. Victimization and Fear – "The Cult of True Victimhood"

##### *i. Defining Victim*

Victimization is an important conceptual tool necessary to analyze how vulnerable groups are viewed in the security discourse. "Victim"<sup>203</sup> and its derivatives, "victimization", "victimhood", "victimize" have become keywords in the lexicon of political and judicial discourse, especially in the field of criminology.

In an era preoccupied with security, the word victim has taken on new meaning. In order to better understand what is meant by the term victim it is necessary to look at the etymology of the word. The word "victim" is derived from the Latin word *victima* meaning "a sacrifice", such as an animal that is sacrificed.<sup>204</sup> Coincidentally, this word is also the origin of the term "scapegoat",<sup>205</sup> which has also become a keyword in the security discourse to describe how some community groups feel they are being targeted and negatively affected by national security legislation.

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<sup>201</sup> Alyson M. Cole, *The Cult of True Victimhood* (Stanford: Stanford University Press, 2007), [Cole].

<sup>202</sup> Makau Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights" (2001) 42 Harv. Int'l L.J. 201, [Mutua]

<sup>203</sup> *Oxford English Dictionary*, 2d ed., s.v. "victim". Victim is defined as:

- b. One who is reduced or destined to suffer under some oppressive or destructive agency.
- d. In weaker sense: One who suffers some injury, hardship, or loss, is badly treated or taken advantage of, etc.

<sup>204</sup> *Ibid.*

<sup>205</sup> *Ibid.*

## *ii. Anti-Victimization Backlash*

Alyson M. Cole, a political scientist argues that “[v]ictim talk is indeed omnipresent, but American political discourse is dominated not by claims of victimization as much as by claims against victims.”<sup>206</sup> According to Cole, contemporary political discourse has moved away from the rise of victim-rights movements<sup>207</sup> towards an anti-victimization movement that vilifies victimhood. The stigma of victimhood is so pervasive that often individuals and groups who are being victimized do not even see themselves as such.<sup>208</sup> Since claiming victim status is perceived as being weak, the victim-rights movement has reclassified itself as a survivor movement, diametrically opposed to any of the negative connotations of victimhood.

Cole argues that those who demonize victimhood themselves engage in victim politics.<sup>209</sup> In doing so, paradoxically, they not only shame victims off the pedestal, they also raise a higher standard to be placed on the pedestal, what she describes as the “cult of true victimhood”.<sup>210</sup> According to Cole, “True Victimhood” is characterized by certain personal attributes, such as propriety, responsibility, individuality, and innocence.<sup>211</sup> These characteristics attempt to limit victim claims. Cole argues that this “Cult of True Victimhood” serves to “undermine collectivity and depoliticize challenges to injustice”.<sup>212</sup> Anti-victim discourse seeks to eliminate victim claims, since the truest of “True Victims” does not claim victim status at all.<sup>213</sup>

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<sup>206</sup> Cole, *supra* note 201, at 2.

<sup>207</sup> Increasingly, victim's rights have become entrenched into the judicial process. For example, in most criminal sentencing cases, a victim impact statement is taken into account in the sentencing phase. In addition, crimes committed against members of vulnerable groups may be an aggravating factor in sentencing. Many courts have even institutionalized the role of victims in the justice system by having Victim Support Offices housed in the courthouse.

<sup>208</sup> This is exemplified by the rise of the “survivor model” approach of violence against women movements. Women who have experienced violence assert themselves as “survivors” of violence rather than being “victims” of violence.

<sup>209</sup> Cole, *supra* note 201, at 2.

<sup>210</sup> *Ibid.* at 5

<sup>211</sup> *Ibid.* Propriety: The True Victim is a noble victim; Responsibility: The True Victim commands his fate; Individuality: The True Victim is an individual; Innocence: The True Victim has not contributed to their injury in any way.

<sup>212</sup> *Ibid.* at 6.

<sup>213</sup> *Ibid.*

The anti-victim backlash plays an important role in dissipating identity politics. Anti-victimists attack the legitimacy of ethnic and racial groups, and claim that allegations of discrimination is “playing the race card”. The pervasive attitude is that:

The race holder whines, or complains indiscriminately, not because he seeks redress but because he seeks the status of victim, a status that excuses him from what he fears. A victim is not responsible for his condition, and by claiming a victim’s status the race-holder gives up the sense of personal responsibility he needs to better his condition”.<sup>214</sup>

When minority groups do assert claims of discrimination, the anti-victim project seeks to shut down these claims since the “true victim is not a victim by affiliation or by engaging in ‘victim politics’”.<sup>215</sup> While a group may be injured collectively, through racism, discrimination, and racial profiling, victimhood status is deemed to be individual.<sup>216</sup> Individuality is one of the central characteristics Cole attributes to the “Cult of True Victimhood”, as individual members of the group are the victims and not the collective as a whole, group based claims of discrimination are dismissed by the anti-victim movement.<sup>217</sup>

However, Diane C. Bates and Joanne Ardovini-Broker challenge this assumption stating that “[v]ictimization can occur to a collective – most often, marginalized groups”.<sup>218</sup> Government policies, media stereotyping, and law enforcement profiling can also give rise to what is described as *structural victimization*. In order to be characterized as a “victim”, direct victimization is not necessary. Indirect or *vicarious victimization* affects those who have not directly experienced victimization, but rather hear about the victimization experiences of someone else.<sup>219</sup> Victimization in the context of terrorism encompasses all of these different components.

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<sup>214</sup> Shelby Steele. *The Content of Our Character: A New Vision of Race in America* (New York: St. Martin’s Press, 1990) at 33.

<sup>215</sup> Cole, *supra* note 201, at 5.

<sup>216</sup> *Ibid.*

<sup>217</sup> *Ibid.*

<sup>218</sup> Diane C. Bates and Joanne Ardovini-Broker, “Victims in underdeveloped Countries” in Charisse Tia Maria Coston ed., *Victimizing Vulnerable Groups* (Westport: Praeger Publishers, 2004), at 194.

<sup>219</sup> Charisse T.M Coston and James O. Finckenaue, “Fear of Crime among Vulnerable Populations” in Charisse Tia Maria Coston ed., *Victimizing Vulnerable Groups* (Westport: Praeger Publishers, 2004), at 6.

### *iii. Victimization and Terrorism: The Nation as Victim*

In the security discourse, victimization operates on many different levels. On the one hand there are the individual victims of terrorist attacks; those who are killed or injured by terrorist activities and their surviving families. On the other hand there is the community at large, the general public that witnesses these devastating events through the modern medium of television, radio and other electronic communications such as the internet. And finally, there are those who are victimized by the counter-terrorism discourse.

These facets of victimization are important in order to understand the impact of the security agenda on vulnerable communities, such as the Tamil-Canadian community. The dominant discourse on security pivots around victims of terrorist attacks; those who have been directly affected by acts of terror through the loss of their own lives or those of loved ones. Victims of terrorist attacks and their families are viewed as the “True Victims”, while those who witnessed and survived 9-11 are the “Survivors”, those of us who became traumatized watching these events unfold on our television screens are the “Vicarious Victims”.

The security paradigm is concerned with the prevention of terrorist attacks to avoid creating more “True Victims”. However, other indirect casualties of terrorism, those who are negatively affected and wrongly targeted by national security measures, are often ignored. Not only do acts of terrorism create victims, but in addition, counter-terrorism measures also have the potential to victimize groups and individuals who are perceived to be threats to society. Those who have directly experienced the backlash from 9-11 and terrorism related policies and members of communities that have been targeted or associated with the discourse of terrorism have become the “Structural Victims” of discourses of terrorism and security. The traditional security discourse, dominated by fear, minimizes the victimization of vulnerable groups targeted by counter-terrorism measures. Moreover, as Cole states, “the current drive against victims continues

a long tradition of suppressing groups that challenge the status quo by casting them as a subversive threat to the stability of the nation.”<sup>220</sup>

Victim and anti-victim discourses were prevalent in the aftermath of the September 11<sup>th</sup> attacks in the U.S.A. The American government presented the “American nation” as the truest victim of the terrorist attacks on 9-11. Renana Brooks, a clinical psychologist in Washington DC, argues that President George W. Bush fostered a “victim mentality” among the American public in the aftermath of 9-11 through the deployment of fear tactics<sup>221</sup> by using “pessimistic language that creates fear and disables people from feeling they can solve their problems.”<sup>222</sup> By using fear tactics, the President attempted to consolidate his power to respond to threats of terrorism. Given these vastly different contexts of victimization in the security discourse, there is a challenge to balance the voices of those victimized by counter-terrorism measures without undermining the voices of the victims of terrorist attacks and their families. There is an intricate web of relations between fear and victimization in the security discourse that is expressed in the *cycle of fear and victimization*. In order to untangle this web and identify who is being victimizing and by whom, Makau Mutua’s Savage-Victim-Savior Metaphor will be analyzed and applied to the security context.

## B. Victimization and the Savage-Victim-Savior Metaphor

This discourse of victimization in the security context leads to questions of who is being victimized, and by whom. Makau Mutua’s description of the dominant metaphor of human rights is a useful tool to analyze these questions. Mutua provides a critical perspective to the concept on victimhood and how victims are portrayed in the human rights discourse. Mutua’s three-dimensional prism involving Savages, Victims, and Savors (S-V-S) sheds insight on the role

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<sup>220</sup> Cole, *supra* note 201 at 7

<sup>221</sup> Renana Burke, “A Nation of Victims”, online: (2003) *The Nation* <<http://www.thenation.com>>.

<sup>222</sup> *Ibid.* For example, in his September 20, 2001 address to a joint session of Congress and the American people, on the 9/11 attacks, President George W. Bush chose to increase people’s sense of vulnerability: “Americans should not expect one battle, but a lengthy campaign, unlike any other we have ever seen.... I ask you to live your lives, and hug your children. I know many citizens have fears tonight.... Be calm and resolute, even in the face of a continuing threat.” George W. Bush, address to a Joint Session of Congress and the American People, 20 September 2001), online: White House <<http://www.whitehouse.gov>>.

of victimhood in the security discourse. In describing the dominant metaphor of human rights, Mutua states that the main authors of human rights discourse (including the UN, Western states, INGOs<sup>223</sup>, and senior Western academics) construct a three-dimensional prism that pits “good” against “evil”.<sup>224</sup> This dominant metaphor on human rights can be applied to the security discourse which also asserts the good vs. evil dichotomy.<sup>225</sup> The discourse on security portrays tensions between forces of good (democratic liberal governments) and evil (non-state actors engaged in armed conflicts with states, networks that use violence against civilian targets, and non-democratic governments that support such groups).

In examining each of the three prisms of Mutua’s dominant metaphor on human rights; the Savage, the Victim, the Savior, we can expose the weaknesses of looking at terrorism and counter-terrorism solely from the security paradigm.

#### *i. The Savage*

The first dimension of the prism depicts the savage, or rather the perpetrator and violator of human rights.<sup>226</sup> In the S-V-S metaphor the classic savage is the State.<sup>227</sup> Mutua points out that while the state itself is not barbaric, it is the cultural foundations of the state that deviate from human rights norms that invokes the real savagery.<sup>228</sup> Applying the S-V-S model in the context of the terrorism discourse, it is not a State, but rather the terrorist group that is portrayed as the savage. It is very convenient to depict non-state actors as the

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<sup>223</sup> International Non-governmental Organizations

<sup>224</sup> Mutua, *supra* note 201 at 202.

<sup>225</sup> U.S. President George W. Bush expressed the good vs. evil dichotomy several times in speeches made after 9-11: 11/6/01 “Our war that we now fight is against terror and evil... Our struggle is going to be long and difficult. But we will prevail. We will win. Good will overcome evil”; 10/29/01 “Anybody who tries to affect the lives of our good citizens is evil”; 10/17/01 “And my answer is, there’s evil in the world. But we can overcome evil. We’re good. We’re good-hearted people, and the boys and girls of America are showing the world just that.”; 10/4/01 “This is a war between good and evil. And we have made it clear to the world that we will stand strong on the side of good, and we expect other nations to join us”; 9/25/01 “Make no mistake about it: This is good versus evil. These are evildoers. They have no justification for their actions. There’s no religious justification, there’s no political justification. The only motivation is evil”; 9/14/01 “This will be a monumental struggle of good versus evil. But good will prevail.”

<sup>226</sup> Mutua, *supra* note 202, at 202.

<sup>227</sup> *Ibid.*

<sup>228</sup> *Ibid.*, at 203.

savage. Thus, there is reluctance on the part of many states to recognize the growing problem of state-sponsored terrorism, which often sets the precondition to the growth and spread of terrorism as a means to achieve political objectives by non-state actors.

Labeling a group as “terrorist” signals to the entity listed that they are viewed as the “savage”. Once labeled, a terrorist group lies outside of the boundaries of humanity. In particular, the stigma of the terrorist label can have devastating implications on groups asserting that they are national liberation movements and seeking international recognition.<sup>229</sup> In addition, as the previous discussion on defining terrorism indicates, who is or is not labeled a terrorist is a political act, as was the case with the listing of the LTTE by the Canadian government.<sup>230</sup>

## *ii. The Victim*

The second dimension of the prism depicts the victim – “the powerless, helpless innocent”.<sup>231</sup> Victimhood is a necessary component in the human rights discourse. Without victims, there are no human rights violations. Muta describes the victim as “a human being whose ‘dignity and worth’ have been violated by the savage.”<sup>232</sup> Victimhood, therefore, becomes a central component to the human rights project. As previously outlined, victimhood also plays an important role in

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<sup>229</sup> While this is not to say that gaining legitimacy is an impossible task, as the cases of the Irish Republican Army and the African National Congress have proved, the stigmatization of “terrorist” carries with it significant political weight that can be difficult to overcome.

<sup>230</sup> Public Safety: 10 April 2006, *supra* note 60. For example, when announcing the listing of the LTTE, the Minister of Public Safety and Emergency Preparedness, Stockwell Day, stated that the listing was long over due and asserted that the previous government's failure to list the LTTE was politically motivated. The previous government the Minister was referring to was the Liberal government which initially resisted listing the LTTE as a terrorist entity during the creating of the list, despite pronouncements by the Canadian Security Intelligence Service (CSIS) that the LTTE should be placed on the list. At the time of the creation of the original entities list, the LTTE and the Sri Lankan government were in the midst of peace negotiations and the Liberal government stated that they did not want to jeopardize the peace process by placing the LTTE on the terrorist list. The Liberal government faced criticism from the ranks the Conservative party who at the time were in the opposition and repeatedly raised questions in the House of Commons as to why the LTTE wasn't being placed on Canada's list.

<sup>231</sup> Muta, *supra* note 202 at 203.

<sup>232</sup> *Ibid.*

the security discourse. Similar to the role of the victim in the human rights metaphor, the victim is the rallying point in the security discourse.

There are indeed devastating physical and psychological impacts from acts of terrorism. However, in some cases, victims can also be used as a “poster child” to justify government actions and policy responses to security threats. For example in the weeks and months leading up to 9-11, the families of the victims of 9-11 were used in various fundraising campaigns by non-governmental organizations as well as speeches by government officials including the President of the United States of America.<sup>233</sup> In security discourses, the potential victims are on a grand scale. Enhanced by the politics of fear, security discourses dictate that anyone at anytime can be potential victims of impending terrorist activities.

The human rights project seeks the sympathetic victim. Just as the legal system is more likely to award damages to the sympathetic plaintiff, the human rights machinery is more likely to vindicate the rights of the sympathetic victim. The most vulnerable groups in society make for the most sympathetic victims: children, minorities, women, persons with disabilities, etc. Vulnerability is intrinsically linked to victimization. Victimhood then becomes a marker that is an imbedded characteristic of these vulnerable groups. These groups are often the targets of not only the “savages” but also the human rights project. As such, media images of widows and orphans of terrorist attacks are often used as propaganda tools by interested parties. Yet, as we will see when we examine the role of the savior, there are other groups that also claim to represent the victims, and can actually create more victimization.

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<sup>233</sup> In a speech made by President George W. Bush, on 10/19/01, he stated “the victims of September 11th were innocent, and this nation will never forget them. The men and women who murdered them were instruments of evil, and they have died in vain”



### *iii. The Savior*

Finally, the third dimension of the prism depicts the savior – “the good angel who protects, vindicates, civilizes, restrains, and safeguards”.<sup>234</sup> The savior offers the victim freedom from the oppressive and stifling nature of the savage. The classic savior in the human rights model is the bearer of human rights norms; the United Nations machinery, Western governments, and INGOs, which are often Western-based. In the context of national security discourse the savior is the State. In devising measures to deal with terrorism, governments often maintain that they are trying to protect not only the public at large, but also the very community that is being targeted by the legislation itself.

To illustrate, the Canadian government is one actor that attempts to play the role of the saviour, by portraying itself as protecting society at large from the savage. In this case study on national security discourse the Canadian government states that it is the Tamil-Canadian community that needs to be protected from victimization by placing the savage (the LTTE) on its list of terrorist entities.

Upon listing the LTTE pursuant to the Anti-Terrorism Act in April 2006, the Minister of Public Safety and Emergency Preparedness, Stockwell Day stated this measure was intended to protect the Tamil community in Canada:

This listing is meant to support the Tamil community in Canada who are law-abiding and hard working people who have left their country of origin to build a better life for themselves and their families in Canada -- where the rule of law and human rights are respected.<sup>235</sup>

The government's primary justification for listing the LTTE is to protect the Tamil-Canadian community from intimidation by LTTE operatives in Canada. The government's rationale stems from allegations that the LTTE extorts members of the Tamil-Canadian community to collect funds to wage its war against the Sri Lankan government.<sup>236</sup> At the same time, the Canadian government was quick to point out that the LTTE operates within Sri Lanka and does not pose a direct

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<sup>234</sup> Mutua, *supra* note 202 at 204.

<sup>235</sup> Public Safety: 10 April 2006, *supra* note 60.

<sup>236</sup> Human Rights Watch “Funding the ‘Final War’: LTTE Intimidation and Extortion in the Tamil Diaspora”, (2006) online: Human Rights Watch <[www.hrw.org](http://www.hrw.org)>. [HRW Report]

violent threat to Canada or Canadian interests. This begs the question then, if the LTTE does not pose a violent threat to “Canada” or “Canadians” then why is it necessary to determine that the LTTE is a terrorist organization in order to protect the “Tamil community”?

*iv. Case Study: Human Rights Watch Report on LTTE Fundraising in the Tamil Diaspora*

The S-V-S metaphor can be applied in the terrorism discourse by examining the case of the Human Rights Watch Report on alleged LTTE fundraising in the Tamil Diaspora. Human Rights Watch (“HRW”), a New York based non-governmental organization released a report on March 15<sup>th</sup> 2006, shortly before the listing of the LTTE by the Canadian government, claiming that members of the Tamil Diaspora in Canada and the United Kingdom are living “in a climate of fear”<sup>237</sup> and being subjected to “intimidation, extortion and even violence” by the LTTE and its agents to raise funds. In the report, the HRW states:

Although fear within the Tamil community has resulted in few individual complaints to the police or other law enforcement, clear patterns of intimidation and extortion should prompt proactive government action, including police investigations, prosecutions, and public outreach to the community to publicize individuals’ rights and avenues of complaint.”<sup>238</sup>

The purpose of the report was to curtail the source of funding to the LTTE by urging the governments of Canada and the U.K. to “take active steps to protect Tamil residents from harassment, threats, extortion and violence linked to the LTTE.” Although not specifically listed as one of the recommendations, the HRW report was a key tool utilized by the Canadian government to support its listing of the LTTE as a terrorist organization.

Some members of the Tamil-Canadian community challenged the assertions made by HRW. The Canadian Tamil Congress (CTC), a national Tamil community organization in Canada issued a press release and held a press conference in response to the Human Rights Watch report. The CTC expressed

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<sup>237</sup> *Ibid* at 15.

<sup>238</sup> *Ibid* at 3.

concern about the implications of the report stating that; “[L]eading members of Tamil community organizations assert that the reports conclusions potentially place Tamil Canadians at great risk of racial discrimination and harassment.”<sup>239</sup> After extensive complaints by the Tamil-Canadian community to HRW, the author of the report, Joe Becker, acknowledged in a letter addressed to the Minister of Public Safety that “there have also been negative consequences for members of the Tamil community as a result of the government’s listing of the LTTE as a terrorist organization.”<sup>240</sup> The letter goes on to state that “some Tamils have expressed concerns that the government has not done enough to make clear distinctions between the LTTE and the Tamil community as a whole, and to speak out against possible anti-Tamil bias that may result from the LTTE ban.”<sup>241</sup> The Tamil-Canadian community is being portrayed as victims of the LTTE; meanwhile they are being victimized by the Canadian government as it claims that it wishes to protect the Tamil-Canadian community. As a result of placing the LTTE on the list of terrorist entities, members of the Tamil Canadian community face discrimination and stereotyping in schools, at work places and in the general public, as illustrated below.

### C. Victimization and Human Rights: The Impact of National Security Discourse on the Tamil-Canadian Community in Toronto

Discrimination is one manifestation of how victimization appears in the security discourse. Several incidents have occurred in the Tamil-Canadian community that are tantamount to discrimination. According to the Canadian Tamil Congress:

The Canadian Tamil community has seen an infringement of its rights and freedoms at home. The community has been slandered and portrayed in a negative light in the media. At places of work and educational institutions, Tamils are increasingly subjected to suspicion and scrutiny following the government of Canada’s decision to proscribe the Liberation Tigers of Tamil Eelam (LTTE). The

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<sup>239</sup> Canadian Tamil Congress, News Release, “A Canadian Tamil Community response to Allegations by Human Rights Watch on Extortion” (14 March 2006), online: <<http://www.ctconline.ca>> [CTC: 14 March 2006]

<sup>240</sup> Letter from Jo Becker, Advocate, Human Rights Watch to Minister Stockwell Day, Public Safety Canada (4 December 2006), online: Human Rights Watch <<http://www.hrw.org>> [HRW: letter]

<sup>241</sup> *Ibid.*

Government's decision has led to the curtailment of the community's regular activities and this has profoundly aggrieved the entire community.<sup>242</sup>

Some of these examples will be discussed this section. First, research that was conducted on the Tamil Canadian community in Toronto will be presented to illustrate examples or perceptions of discrimination and victimization.

*i. Methodology:*

In order to assess the impact of national security discourses on the Tamil-Canadian community, research was conducted amongst members of the Tamil-Canadian community in Toronto. Keeping with Glaser's grounded theory of empirical research methods, a multi-methodological research design was utilized in order to better understand the perceptions and perspectives of members of the Tamil Canadian community towards national security discourses. The grounded theory does not aim to find "objective truths" but rather to contextualize "reality" with empirical data.<sup>243</sup> The goal of such research is to understand the context in which events and outcomes occur and the descriptive parts of a ground theory are there mainly to illustrate these concepts. A quantitative analysis will attempt to highlight any trends that may exist which can be further expanded upon through a quantitative analysis. Thus, combining both a quantitative and qualitative research method will produce a rich analysis of the issues confronted by national security discourses and its impact on the Tamil- Canadian community. The first part of the research design was quantitative consisting of administering a survey to members of the Tamil-Canadian community to measure the perceived impact of national security legislation on the political, social, cultural, economic and civic participation of the Tamil-Canadian community in Canada, and gain valuable insights into how national security is perceived by the Tamil community in Canada. The second part of the research was qualitative in nature and consisted of interviews with various stakeholder groups to probe

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<sup>242</sup> CTC: 14 March 2006, *supra* note 239.

<sup>243</sup> Glaser and Strauss state that "different people in different positions may offer as "the fact" very different information about the same object." B.G. Glaser, & A. L. Strauss, *The discovery of grounded theory: Strategies for Qualitative Research*. (Chicago: Aldine Publishing Company, 1967) at 67.

deeper into how the Tamil Canadian community has responded to issues of national security and their impact.

The survey was administered to members of the Tamil-Canadian community in Toronto, including non-government organizations, advocacy groups, settlement service agencies and student/university groups. The survey was distributed electronically through e-mail as well as hardcopies distributed at various locations including places of worship, local community grocery stores, and take-out restaurants in Toronto. The survey was translated into the Tamil language as well. Over the course of two months, 139 individuals responded to the survey. Although the sample population is small and there are areas where certain demographics were overrepresented, the survey respondents are fairly reflective of the composition of the Tamil Canadian community, except where noted.<sup>244</sup>

The survey questionnaire consisted of three parts (See Appendix B). The first part included demographical questions, such as gender, age, immigration status, employment status, arrival in Canada and community involvement. The second part of the survey measured knowledge and views on national security measures in Canada. Survey participants were informed that for the purposes of this research national security was defined as government policies invoked against “threats to the security of Canada”. The third and final part of the survey measured the perceived impact of national security measures in Canada on the Tamil Canadian community. Survey participants were asked to rate the impact that government policies on national security has on the Tamil Canadian community before and after key events, such as 9-11, the enactment of the ATA,

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<sup>244</sup> Most of the respondents to the survey were employed males, who were Canadian-citizens. There was an overrepresentation of males; 73.3% of respondents to the survey were male, and 26.7% were female. There was a normal age distribution, with 19.1% in the 18-24 age group, 30.1% in the 24-34 age group, 18.4% in the 35-44 age group, 11% in both the 45-54 age group and 55-65 age group, and 10.3% in the 65 and over age group. There was also an over-representation of Canadian citizens. 8.9.6% of the respondents were Canadian citizens, 8.9% were Canadian permanent residents, and only 1.5% were on a student or work visa. None of the respondents were current refugee claimants. The vast majority of respondents came to Canada between 1983 and 1995, which is reflective of the migration trend of the wider Tamil-Canadian community. 61.3% of respondents were employed, 19.7% were students, 6.6% were self-employed, 3.6% were unemployed, and 8.8% were retired or work in the home.

and the listing of the LTTE. Respondents were also asked if they believe they have personally experienced discrimination and where this discrimination took place. Finally, the survey also prompted respondents to indicate what advocacy measures have been employed by members of the Tamil-Canadian community in response to perceived discrimination.

In terms of the qualitative analysis, five interviews were conducted with members of the Tamil Canadian community, and one interview was conducted with a senior CSIS officer. The Tamil Canadian interviewees included representatives from two leading community organizations, two lawyers who have experience and knowledge representing clients who have experienced discriminatory treatment, and a recent university graduate who indicated that she believes she has experienced discriminatory treatment. The semi-structured interviews lasted between an hour to two hours in length depending on how much the participant had to say. Interviewees were selected based on their experience and knowledge of the issues being researched as well as based on trends observed from the quantitative analysis. For example, age seemed to be a significant factor in perceptions of victimization, thus an interview was conducted to obtain a youth perspective. These interviews were invaluable to the research as the individuals interviewed had extensive experience and knowledge about incidents that have occurred in the Tamil-Canadian community and formed the basis for the case studies presented throughout the thesis.

It is important to note that the quantitative data presented is used for illustrative purposes and not as conclusive evidence of discrimination in the community. As previously mentioned, the data presented shows that there may be some trends in the perception of discrimination. These trends must be explored more in-depth in a more comprehensive social science research study and is beyond the scope of this thesis research. However, the data presented below is useful to gauge how fear and victimization interact in national security discourses. It is also important to note that this research was conducted prior to the listing of the World Tamil Movement and thus only reflects perceptions and views after the listing of the LTTE.

## *ii. Views on National Security*

Like most Canadians, the vast majority of members of the Tamil-Canadian community believe that national security should be a high priority for the Canadian government. In addition, the respondents to the survey were generally familiar with the national security measures adopted by the government. 87.2% of the Tamil respondents in this survey were familiar with the existence of the Anti-Terrorism Act. This indicates a fairly high level of awareness among members of the Tamil-Canadian community about security and anti-terrorism issues. In interviews conducted with community workers, many of them stated that the Tamil-Canadian community was well informed of what the Canadian government is doing to combat terrorism. However, one subject disagreed stating that the Tamil-Canadian community is “not very well informed”.<sup>245</sup> He went on to state that the Tamil-Canadian community is “really dependant on ethnic media” and since the Canadian government “has not reached the Tamil community through this media” many members of the community are not informed about specific actions that the government has undertaken to combat terrorism.<sup>246</sup> This community activist further stated that “our government can do a much better job getting the message across” to members of the Tamil-Canadian community and Canadian society at large.<sup>247</sup>

## *iii. Perceptions and Experiences of Discrimination*

A major component of this research is to examine how the national security discourse has impacted the Tamil-Canadian community. It is argued that the Tamil-Canadian community has faced an increase in discrimination as a result of stereotyping in the media that continuously links the Tamil-Canadian community to terrorism. The research combined with anecdotal evidence supports this conclusion.

Since the listing of the LTTE as a terrorist organization under the ATA in April 2006, government policies on national security have impacted the Tamil-

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<sup>245</sup> Interview of Subject A (10 May 2007).

<sup>246</sup> *Ibid.*

<sup>247</sup> *Ibid.*

Canadian community significantly. Notwithstanding, prior to 9-11 and the listing of the LTTE, the Tamil-Canadian community faced racism, discrimination and stereotyping, but to date these incidents have intensified since the listing of the LTTE. A look at both the personal subjective experiences of discrimination and the systemic and community wide experiences of collective discrimination of the Tamil-Canadian community is necessary to fully comprehend the magnitude of the impact of the national security legislation on this community.

The listing of the LTTE as a terrorist entity by the Canadian government was the most significant security related action to impact the Tamil-Canadian community. The vast majority of respondents to the survey believed that the Tamil-Canadian community faced an increase in discrimination since the listing of the LTTE.<sup>248</sup> In addition, the overwhelming majority of respondents stated that as a result of listing the LTTE as a terrorist organization, government policies on national security have impacted the Tamil-Canadian community negatively.<sup>249</sup> In comparison to other security related events, the listing of the LTTE was deemed the most profound.<sup>250</sup> The impact according to members of the community has been negative, generally characterized by discrimination and stereotyping of the Tamil-Canadian community.

In particular individual perceptions of discrimination are high. Many respondents (41.7%) believed they have personally experienced discrimination because of their ethnicity as Tamils.<sup>251</sup> While this is only an illustrative example, it is still an alarmingly high response rate and indicates that the Tamil-Canadian community is highly sensitive to experiences of discrimination. According to the

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<sup>248</sup> 86.4% of respondents either “strongly agreed” (51.1%) or “agreed” (35.3%) with the proposition that the Tamil-Canadian community has faced an increase in discrimination since the listing of the LTTE as a terrorist organization under the Anti-Terrorism Act. Only 10.5% of respondents disagreed with this statement, and 3% strongly disagreed.

<sup>249</sup> Respondents stated that since the listing of the LTTE, national security policies have impacted the community very negatively (61.8%) or negatively (27.5%).

<sup>250</sup> Prior to 9-11, only 51.1% of respondents felt that the Canadian government policies on national security have had a “very negative” (9%) or “somewhat negative” (42.1%) impact on the Tamil-Canadian community. Since 9-11, 81.7% of respondents felt that Canadian government policies on national security have had a “very negative” (44.3%) or “somewhat negative” (37.4%) impact on the Tamil-Canadian community.

<sup>251</sup> 41.7% of respondents believed they have experienced discrimination because of their ethnicity as Tamils.



results of Statistics Canada's Ethnic Diversity Survey about 20% of members of visible minorities reported perceived discrimination or unfair treatment sometimes or often.<sup>252</sup> Of those who indicated that they have experienced personal discrimination as a member of the Tamil-Canadian community, most of the incidents occurred in "the general public" (42.6%), while the rest occurred at the workplace (29.6%), at school (22.2%), at the airport or US boarder crossing (24.1%) as depicted in Figure 3.

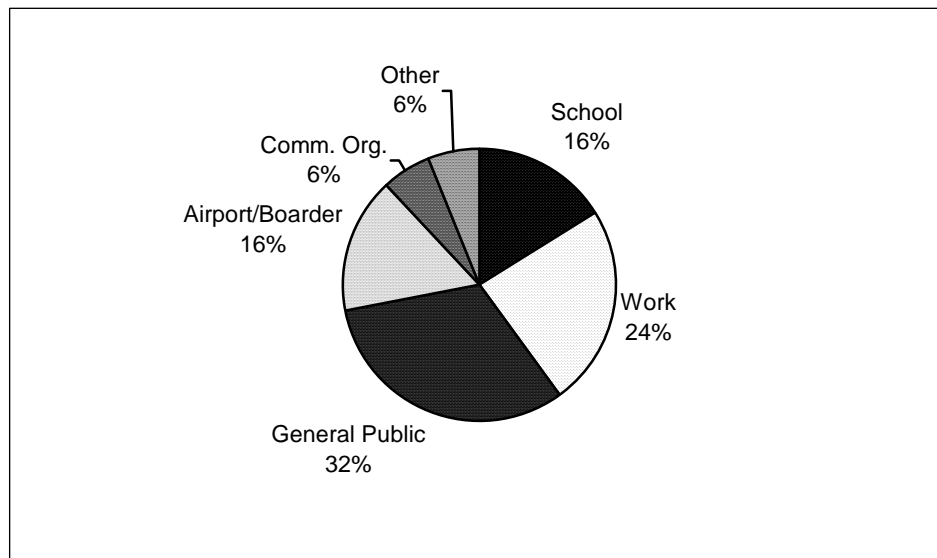


Figure 3: Places of Personal Experiences of Discrimination

In addition, several incidents of experiences of discrimination have been reported to community organizations. For example, Human Rights Watch reported that several accounts of "employment-based discrimination or harassment following the listing, including cases of employers making remarks in front of Tamil employees about Tamils being terrorist, and one case where an employee was demoted and ultimately dismissed, ostensibly because his

<sup>252</sup> The findings are based on a survey conducted by the firm Environics for the Department of Canadian Heritage between March 29 and April 18th, 2004. Of the groups included in the visible minority population, Blacks were more likely to report feeling that they had been discriminated against or treated unfairly by others because of their ethno-cultural characteristics. In 2002 nearly one-third (32%) of Blacks said that they had had these experiences sometimes or often in the past five years, as did 30% of Muslims (though such discrimination was experienced by 34% of Muslims identifying as visible minorities and 11% by those not identifying as such), 23% of the Jewish population, 21% of South Asians and 18% of Chinese Canadians.

employer felt he could not “trust” a Tamil.”<sup>253</sup> There have been several cases of employment based discrimination against Tamil Canadians. One subject, a lawyer in the Tamil Canadian community stated that there are several employment related incidents that have occurred since the listing of the LTTE. The research subject also remarked that it has become common practice at most places of employment that when a person is identified as being Tamil, there is immediately a connection established to the Tamil Tigers, in fact “being Tamil has become synonymous with being a Tiger.”<sup>254</sup> The research subject also noted that other ways of “discriminating against someone who is Tamil is by using their political beliefs as a way to keep them out of a particular employment position.” In fact this is the situation that has occurred. The subject provided an example of a Tamil individual, who has spoken out about human rights abuses occurring in Sri Lanka in public forums during his private time, and subsequently had his duties restricted at his place of employment.<sup>255</sup>

Tamil youths felt they were discriminated against in educational facilities, such as universities and schools. In describing experiences of discrimination, a survey respondent noted that experiences of discrimination have increased since the listing of the LTTE<sup>256</sup>:

After the LTTE were listed as a terrorist organization, there has been many [acts of] discrimination towards Tamil people. Students have been discriminated at [in] school by peers, classmates, teachers, and staff at school and by the principal and this is no exaggeration. I have worked with students thorough many youth organizations that has tried to help them out but the principals [of these schools] don't want to hear from any outside organizations.

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<sup>253</sup> HRW: letter, *supra* note 240 .

<sup>254</sup> Interview of Subject B (24 May 2007).

<sup>255</sup> *Ibid.*

<sup>256</sup> Of those respondents who indicated they have experienced personal discrimination, 70.7% stated that their personal experiences of discrimination have increased since the listing of the LTTE as a terrorist organization. 27.6% of respondents stated that their personal experience of discrimination has stayed the same, while only 1.7% stated that their personal experiences of discrimination decreased since the LTTE was listed by the Canadian government. This suggests that many members of the community have perceived that their direct experiences of discrimination have increased since the LTTE was listed as a terrorist entity by the Canadian government. In comparison to their perceived discrimination since 9-11 and since the listing of the LTTE, more respondents indicated that their experiences of discrimination have increased since the listing of the LTTE than since the terrorist attacks of 9-11. 48.2% of respondents stated that their personal experience of discrimination has increased since 9-11, while 51.8% of respondents stated that their personal experiences of discrimination have stayed the same since 9-11.

For example, at a school in Toronto where a Tamil youth group<sup>257</sup> regularly conducts workshops for Tamil students, the administration requested that the workshops be conducted in the English language.<sup>258</sup> When the youth organization explained that the workshops were conducted in Tamil because many of the Tamil students that attended felt more comfortable expressing themselves in Tamil than in English, the school administration responded that the workshops had to take place in English so that administrators would know what was being said during the workshops and that to ensure that there was no recruitment and promotion of the LTTE on school premises.<sup>259</sup> The stigma and stereotype of “Tamil Tigers” is so profound that any Tamil who wears a picture of a tiger animal or has stuffed tiger animals in his/her car is at serious risk of being associated with the LTTE.<sup>260</sup> For example, an incident that occurred in a Toronto school involved a young Tamil male who was wearing a picture of an ordinary orange and black striped Tiger on his T-shirt. The student was stopped in the halls by a school official and told he could not wear a T-shirt that promoted the Tamil Tigers.<sup>261</sup> The discourses of fear and security have become so pervasive that even the benign tiger animal has become linked to the LTTE when a Tamil person is associated with it.

As we can see, from these examples, the fall-out from the listing of the LTTE has had a significant effect on the everyday lives of some members of the Tamil-Canadian community, at school, in their workplaces, and in the general public. As a research subject noted, one of the impacts of anti-terrorism legislation has been that communities such as the Tamil Canadian community

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<sup>257</sup> This youth organization has been working with Tamil youth in the Toronto schools for over 9 years and had received funding and honors from the City of Toronto, the Province of Ontario and the Federal Government.

<sup>258</sup> Interview of Subject C (20 June, 2007).

<sup>259</sup> *Ibid.*

<sup>260</sup> There have been incidents reported by community organizations, where young Tamil males have been stopped by police on the pretense of traffic violations and questioned about stuffed tiger animals displayed in the rear windshields of their cars. In some cases, the police officers have made statements such as “You are banned” in reference to the listing of the LTTE. Subject C, *supra* note 258.

<sup>261</sup> *Ibid.*

have become even more marginalized than they were before. In particular the subject commented that:

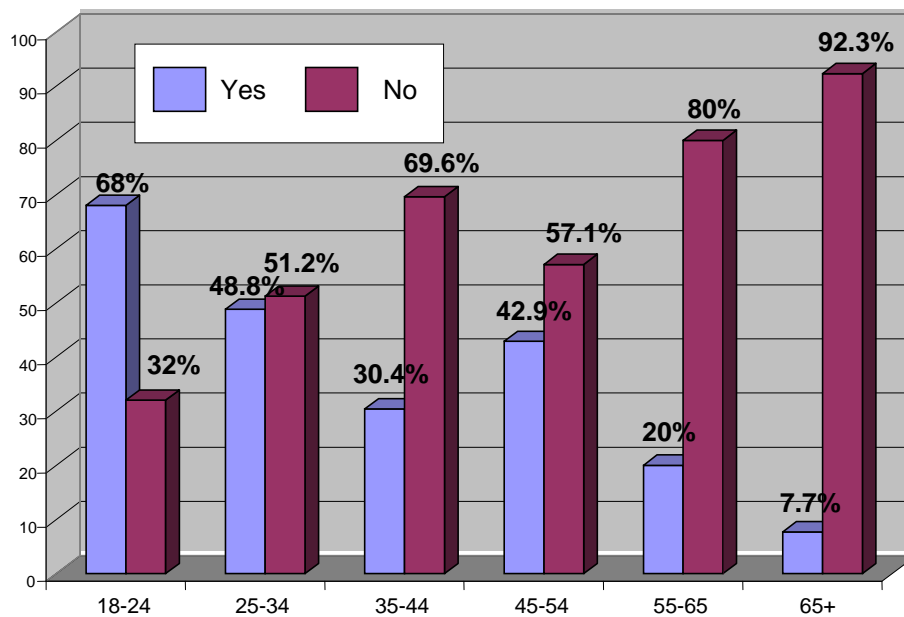
[This] legislation created way to oppress another groups in Canada. A lot of these acts are geared at towards a certain small percentage of people, but has such a wide impact. It impacts factory workers, to university students to professionals. It has such a wide net. It creates a new uncertain climate.<sup>262</sup>

Looking more closely at the data, we can see that some groups within the Tamil-Canadian community are more impacted and particularly vulnerable than other groups. Breaking down the data further by age and gender provide some interesting insights into which groups are most vulnerable to discriminatory treatment. Age seems to be a significant determinative factor in connection to response rates about perceived discrimination.<sup>263</sup> Those who were in the younger age categories were more likely to have stated that they believe they have been personally discriminated against because of their Tamil ethnicity, while those in the older age categories were less likely to have stated that they believe they were discriminated against because of their ethnicity as Tamils (See Figure 4). In the 18-24 age group, 68% of respondents indicated that they have personally been discriminated against because of their Tamil ethnicity, while in the over 65 age group only 7.7% of respondents indicated that they felt personally discriminated against because of their ethnicity as Tamils.

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<sup>262</sup> Subject B, *supra* note 254.

<sup>263</sup> There is a negative inverse relationship between age and experiences of discrimination. As age increases, the respondents were less likely to indicate that they have experienced discrimination.



**Figure 4: Perceptions of Discrimination by Age**

Young members of the Tamil-Canadian community are most likely to face the brunt of discrimination at school and their workplaces. A cause for concern is that these experiences may lead to feelings of alienation by younger members of the Tamil community in Canada. Most Tamil youth in Canada were either born in Canada or came to Canada at a very young age. Yet, there are pressing social issues that face the young generation of Tamil Canadians, such as drug and alcohol abuse, youth gang violence, identity issues, racism, and teen pregnancy. In particular, for several years, Tamil youth have been battling with the “thug” labels where media would often identify youth gang activities in the Tamil community with bold headlines referring to “Tamil gangs”. Through extensive community advocacy with media and law enforcement agencies, as well as increased social programs directed at at-risk Tamil youth by organizations, the cycle of violence dissipated and as a result media coverage of “Tamil youth gangs” declined. However, since 9-11, the “thug” stereotype has now been replaced with the “terrorist” label.

#### *iv. Case Study: Targeting Tamil Students Associations*

As noted from the research findings, many experiences of discrimination occurred at school. Tamil youth in universities and colleges have been at the forefront of these experiences of discrimination. University and college students also fit squarely within the age range that reports the highest perception of discrimination (18-24). Across many university and college campuses, Tamil youth have organized themselves into social groupings and formed Tamil Students Associations (TSA's) to foster Tamil identity and culture. The largest and most active TSAs are in Toronto and Waterloo, where there are large Tamil student bodies.

Since the listing of the LTTE (and even prior to the listing), Tamil students at various campuses were targeted by campus administration. In particular, the members of University of Waterloo TSA have faced a number of incidents of discriminatory actions by the University. After the arrest of some Tamil Canadian young males during the summer of 2006, five of whom were connected to the University of Waterloo, the TSA at Waterloo was under intense scrutiny and suspicion.<sup>264</sup> Several of the individuals that were arrested in connection to alleged activities of the LTTE, were members of the Waterloo TSA, which included a previous student president of the TSA in Waterloo. As a result of the large number of Waterloo students involved, the media constantly associated the arrested accused with the Waterloo TSA.<sup>265</sup> These arrests had a significant impact on all Tamil students at the University of Waterloo, and in particular member of the TSA. Almost immediately after the arrests, administrators at the University of Waterloo targeted the TSA for disciplinary action, and conducted an external audit of the TSA and temporarily suspended the TSA from operating on

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<sup>264</sup> In August 2006, four Tamil males from Canada traveling to the U.S. were arrested in New York by the FBI in a sting operation on anti-terrorism charges. Later, several other Tamil males from Canada were arrested by the RCMP in connection to the joint FBI-RCMP investigation. Colin Freeze, "Tamil Tigers and the Canadian connection" *The Globe and Mail* (26 August 2006).

<sup>265</sup> Almost every media report about the arrests mentioned the Waterloo TSA.

campus.<sup>266</sup> While the external audit eventually cleared the student club from any wrong doing, the stigma and ordeal has cast a web of suspicion around the club's activities.<sup>267</sup>

However, even prior to the arrests, the Waterloo TSA faced significant scrutiny and suspicion. Events that were held by the TSA were subject to extra security and police personnel. For example, the TSA booked the campus pub "Bomber" for a Frosh week event in 2006. A day before the event, the campus pub contacted the TSA and informed them that police officers were required to staff the event in case any "incidents" occurred. Since it was a last minute request and the TSA could not come up with the additional funds to hire the police officers that were required, the event was cancelled. A similar request was also made when the club organized a Tsunami relief fundraiser at the Student Life Centre in 2005. The TSA was informed that police officer presence was required. The police officers checked the identification of everyone who attended the event. An interview subject who was involved with the TSA at Waterloo stated:

It felt so weird to have police officers there – it was just an event where people from our TSA were giving speeches – we had a couple of people who were in Sri Lanka at the time of the *tsunami* – while they were volunteering, so we had them talk about their experiences and how bad the situation was and we had a slideshow presentation, we were told that everything had to be in English, including any songs we were to be playing.<sup>268</sup>

It is not just the University of Waterloo administration that produced these extra hurdles for the TSA to jump through. The University's Federation of Students, the student advocacy organization that is supposed to represent student interests, also played a role in targeting the TSA. For example, when the TSA organized a cultural information event at the Student Life Centre showcasing Tamil cultural artifacts, clothing, jewelry, books, and traditional foods, the Federation of Students required that all the written information that would be

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<sup>266</sup> "University of Waterloo probes Tamil club's books", online: CBC News (29 August 29, 2006) <<http://www.cbc.ca>>.

<sup>267</sup> University of Waterloo, News Release, "Report clears student group and recommends strict oversight of self-generated overseas work" (15 February 2007), online: <<http://www.uwaterloo.ca>>.

<sup>268</sup> Interview of Subject D (18 February 2008).

displayed at the event be submitted in advanced and approved by the Federation of Students officials to ensure that there was no mention of “anything about the LTTE.”<sup>269</sup>

In November of 2004, prior to the listing of the LTTE as a terrorist entity in Canada, the TSA organized “Maveerar Naal”<sup>270</sup> (Tamil Remembrance Day). During this event, there was intense scrutiny of the TSA. The TSA was informed by the University that they could not raise a flag that had been raised in prior years on campus. The flag was that of the LTTE, however, Tamil nationalists have stated that this flag is representative of the Tamil nation and not the LTTE. This opinion was shared by members of the TSA, who believed that it was within their right to raise this flag at their event. The University’s stance was that the flag was the LTTE flag and did not allow the flag to be raised, even though the LTTE had not been a listed entity yet. The TSA decided to raise the controversial flag in any event, and subsequently, the University administration took action against the TSA by removing its club status in December 2004. As a consequence, the TSA was not allowed to rent university property to conduct meeting or hold events, making it near impossible for the club to continue its regular activities. The TSA was only allowed to gather in the open space at the Student Life Centre. During this period, the TSA was monitored and reviewed. After a year of compliance, the TSA regained its club status in January 2006 and continues to function as a recognized student club.

It is important to note that according to a former University of Waterloo student these measures, prior approval of materials, mandatory use of the English language, police presence at events, are not required of other student clubs at Waterloo. It was only the TSA that was subject to these measures. Tamil students at Waterloo felt particularly targeted because of their ethnicity as Tamils. They saw the University administration treating them differently from

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<sup>269</sup> *Ibid.*

<sup>270</sup> Literally translated from Tamil to English to mean “Hero’s Day”. This event is usually held the week of November 27<sup>th</sup>, where members of the Tamil community around the world honor LTTE members who have sacrificed their lives, and innocent civilians who have lost their lives during the civil conflict. Thousands of Tamils attend these events, and many of the TSAs across Universities and Colleges in Canada also hold the event.



other campus clubs who were not subject to the same scrutiny. This is alarming at the University setting, which has historically been a place where young adults were free to explore their political opinions and where the free flow of ideas is paramount.<sup>271</sup> After the listing of the LTTE, and the arrests of Tamil individuals with affiliation to the TSA at Waterloo, Tamil students at the University of Waterloo felt silenced.<sup>272</sup> There was a chilling effect on many Tamil students who scaled back their involvement with the TSA and the Tamil community as a whole. This case study is one of the strongest pieces of evidence of the impact that national security discourses has on the Tamil Canadian community.

The University of Waterloo TSA is not the only student club that has experienced such discriminatory treatment. At the University of Ontario Institute of Technology (UOIT), when Tamil students attempted to form a TSA, they were initially denied club status by university administration “because the university associated the word “Tamil” with “terrorist”.”<sup>273</sup> After an extensive battle with University administration, including petitions and the threat of legal action, the TSA was eventually given club status.

The TSA at York University also initially experienced some difficulties with the university administration in terms of securing campus space for York TSA events. However, after persistent advocacy efforts by the TSA, the attitude of university administration shifted slightly. In fact, during a recent multicultural week event held on campus, the university allowed the TSA to use the Tamil Eelam flag (the same one that the University of Waterloo refused to permit) to

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<sup>271</sup> Recognizing the importance of academic freedom on campuses, the Canadian parliament has set strict guidelines on the how security intelligence gathering agencies collect information in sensitive institutions such as campuses, trade unions, the media, religious institutions, and political organizations etc. The Ministerial Directions strictly regulate how CSIS may recruit and use human sources on a post-secondary campus and any activities on campuses must be approved by the Minister of Public Safety. On October 30, 1989 then Solicitor General Pierre Blais issued the following Ministerial Direction on 'CSIS' Use of Human Sources' to the Director of CSIS. The Direction states in part: "that special care is required in regard to investigations which impact on, or which appear to impact on, the most sensitive institutions of our society." The direction goes on to further state that "I am primarily thinking in this regard of institutions in the academic, political, religious, media or trade union fields". House of Commons, Meeting of Sub-Committee on National Security of the Standing Committee on Justice and Legal Affairs, 35th Parl., 1st sess. No. 20 (20 June 1995).

<sup>272</sup> Mohammad Jangda, "Silenced Voices speak out on Sri Lanka" *Imprint* (1 September 2006), online: <<http://www.imprint.uwaterloo.ca>>.

<sup>273</sup> *Ibid.*

represent the organization.<sup>274</sup> The advocacy efforts of the York TSA is a clear example of how the community can respond and resist fear and victimization, as examined in the next **Chapter on the Discourse of Agency**.

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<sup>274</sup> Valz Renata Valz "Flag's terrorism links under question" *Excalibur* (6 February 2008) online: <<http://www.excal.on.ca>>.

## CHAPTER 4: DISCOURSES OF AGENCY AND HUMAN RIGHTS

### A. Breaking the Cycle of Fear and Victimization

The previous Chapter on the Discourses of Victimization illustrates how the Tamil-Canadian community has been significantly impacted by the national security policies of the Canadian government. A survey participant illustrates how profound the *cycle of fear and victimization* is within the Tamil Canadian community by stating that:

The anti terrorism laws and listing [of the] LTTE has created fear among the Tamil Canadian community to speak the truth and advocate for truth and justice in Sri Lanka, where they still have many close relatives and friends whose lives are in constant danger.

While in many instances members of the Tamil-Canadian community have been adversely affected by security discourses, which has targeted and labeled segments of the Tamil-Canadian community as terrorists. Although this is not to say that the entire community has simply accepted this victimization without protest. In fact large segments of the community have actively challenged the terrorist label affixed to the Tamil Canadian community. While the Tamil Canadian community may be victimized by the discourse of fear and security, they are not just victims; they can also be viewed as agents of change. The aim of this Chapter is (i) to examine if the *cycle of fear and victimization* can be broken by introducing the discourse of agency, and (ii) to provide concrete examples of how the Tamil Canadian community has collectively attempted to exercise such agency. Before delving into these examples, let me offer a preliminary account of what I mean here by agency.

#### *i. Definition of Agency*

Philosophers, jurists, sociologists and academics have for centuries debated the concept of agency. In this Chapter agency does not refer to the traditional legal concept of agency that animates the agent-principal relationship.<sup>275</sup> Rather, agency here means the philosophical or sociological

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<sup>275</sup> Most often used in commercial and contract law, agency refers to “a fiduciary relationship created by express or implied contract or by law, in which one party (the *agent*) may act on

concept of agency. The legal concept of agency introduces an external “agent” who acts on behalf of the principal. In fact in this section, the exact opposite of legal agency is referred to. Rather than having someone act on one’s behalf, agency in this Chapter refers to the concept of acting on one’s own behalf. Concepts of agency such as human agency and moral agency have been theorized by philosophers such as Kant, Hegel and Marx, just to name a few. In the field of sociology, there is a long standing debate over competing influences of agency and structure on human behavior.<sup>276</sup> Agency is described as the individual’s capacity to make choices, while structure involves societal factors such as class, religion, gender, ethnicity, and customs that can limit or influence the opportunities that individuals have.<sup>277</sup> Both of these concepts of agency will be discussed further below, and in particular how external forces can impact the ability of individuals and community to exercise their agency.

In sociology, theories of agency have been utilized in many fields applied to various academic discussions, but the theory of agency is particularly prominent in the field of women’s studies, especially with regards to issues of domestic violence. Issues of domestic violence also center on concepts of fear and victimization; the abused partner is constantly fearful of violence and reprisal and as a result becomes “victimized”.<sup>278</sup> In such discourses, agency is often pitted in opposition to victimization; for instance, the “victim” is either helpless and unable to improve or change her situation or is the “survivor”, who asserts “agency” and feels empowered to make changes in her life. As discussed previously, victimization is often perceived and portrayed negatively, and agency is portrayed positively. Thus, in order to break the cycle of violence, theories of agency are introduced to empower women to break free from situations of domestic violence.

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behalf of another party (the *principal*) and bind that other party by words or actions.” *Blacks Law Dictionary*, 8th ed. ,s.v. “agency”.

<sup>276</sup> Chris Shilling, “Towards an embodied understanding of the structure/agency relationship” (1999) 50:4 *British Journal of Sociology* 543.

<sup>277</sup> *Ibid.*

<sup>278</sup> Patricia Connell, “Understanding Victimization and Agency: Considerations of Race, Class and Gender” (1997) 20:2 *Political and Legal Anthropology Review* 115 at 118.

Patricia Connell argues for a more expanded concept of agency and states that “in legal and social contexts agency is usually constructed in opposition to victimization, and tends to be understood in a unidimensional way.”<sup>279</sup> She defines agency as: “the exercise of any measure of resistance and self-determination used by an abused woman to regain control in her life and in her attempt to stop the abuse she experiences.”<sup>280</sup> Thus agency not only involves the traditional acts of autonomy such as leaving the spouse and the abusive relationship, but also coping mechanisms exerted within the abusive relationship. As Connell states, “agency (and indeed victimization) is usually seen as an individual matter, the functioning of an atomistic, mobile individual.”<sup>281</sup> While agency is traditionally attributed to the individual, a collective body can also exert agency. The rise of women’s organizations as forums for women to come together and advocate for policy and law reform illustrates how collective agency can be exercised by a group. Just as victimization can be structural in nature, agency can also be exercised structurally.<sup>282</sup> In fact, it is often easier for groups of individuals to collectively exercise power and influence in society rather than lone individuals.

The above discussion with respect to the theory of agency applied to the analysis of domestic violence may be applied in analogy to the fear and victimization in the national security discourse. Just as agency is required to break the cycle of violence and victimization in relation to domestic violence, a sense of agency is required to break the cycle of fear and victimization in the national security discourse as seen in Figure 5 below. While there are many means to exert agency, the remaining section will look more closely at two particular manifestations of agency; political advocacy, and advocacy through the courts. It is also important to note that grassroots community mobilization is a necessary ingredient to exhibit agency as we shall see in further discussion below.

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<sup>279</sup> *Ibid.*

<sup>280</sup> *Ibid.*

<sup>281</sup> *Ibid.*

<sup>282</sup> According to philosophers such as Hegel and Marx, human agency is a collective action rather than simply a force of individual behaviours.

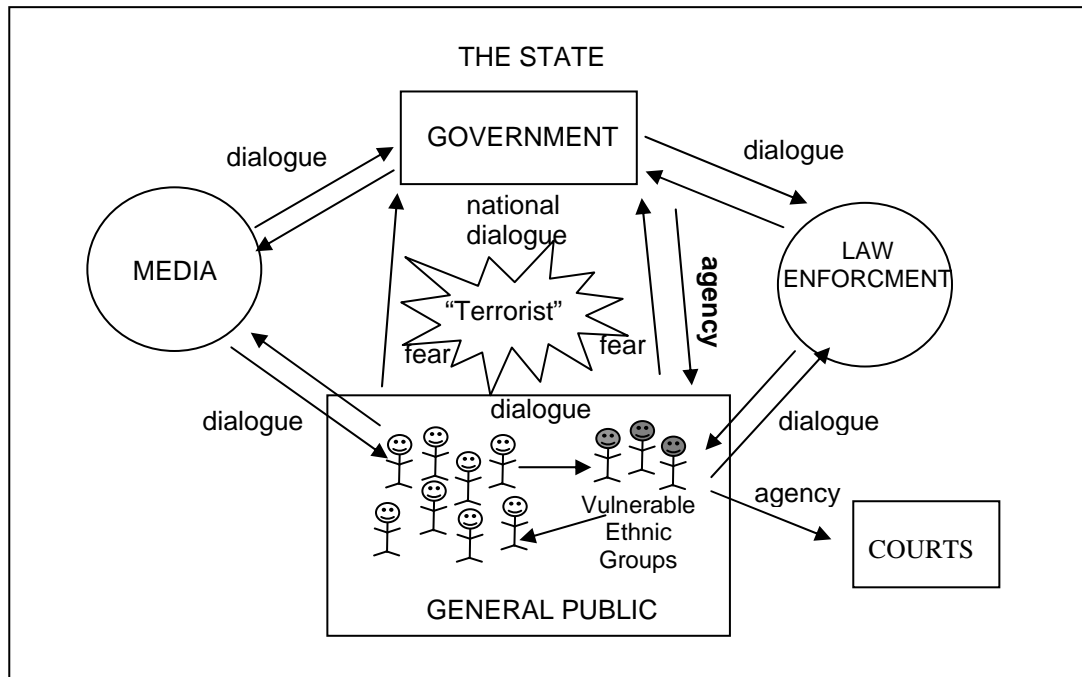


Figure 5: Breaking the Cycle of Fear and Victimization - Agency

## ii. Agency in the Security Discourse

In the national security context, fear and victimization are like two viruses that reinforce each other and permeate through society infecting all the major actors in society. In an effort to cure society of such evils, governments through anti-terrorism legislation and national security policies, attempt to eradicate “terrorists”, which are perceived to be the source of the infection. However, as previously discussed, the most socially destructive aspects of terrorism is not necessarily terrorists or terrorist acts, but rather the very fear and moral panic that state and media responses to terrorism produce. On occasion, agency, if exercised effectively, can act as an antidote to cure society from the diseases of fear and victimization. Breaking the *cycle of fear and victimization* necessarily involves a sense of agency on the part of community groups that perceive themselves as being targeted or victimized. Instead of having other voices speaking out on behalf of the “victimized”, such as governments and other NGOs (i.e. the HRW report on the Tamil Diaspora), the community itself must assert its own voice. In breaking the cycle of fear and victimization, the concept of agency is introduced to neutralize this fear and empower community groups that are targeted by national security discourses.

However, the difficulty with the discourse of agency is tackling not only the symptoms of the illness, but also its source. The symptoms of fear and victimization can manifest itself in the form of discrimination and stereotyping of community groups. Strategies of advocacy often focus on attacking just these visible symptoms and ignore the underlying root causes of the virus; the fear of terrorism. There are several methods which communities, such as the Tamil-Canadian community, can employ to assert its own voice. Before we examine the different approaches that the Tamil community has traditionally applied, it is important to look at the Tamil community's own perceptions of agency.

### *iii. Tamil-Canadian community's perceptions of agency*

As a result of both fear and victimization, the agency of the Tamil community has been impacted. This also has an impact on how the Tamil-Canadian community sees itself, and its own abilities to act with agency. A survey respondent illustrates this by stating that:

I also feel this is due to the fact that Tamil Canadian community is weak [sic] and unable to pose a serious challenge to the system currently in place. Also their fear for security and political establishment in general due to their terrible experiences in their native country Sri Lanka coupled with being recent migrants working hard to improve their lives makes them least likely to challenge.

This survey participant expresses the belief that the Tamil Canadian community is unable to challenge the system and act with agency. Structural forces, such as being a newcomer community, are emphasized as the reasons why the subject perceives that the Tamil Canadian community is unable to exercise agency. While not all respondents felt the same way, a large portion of respondents related to these sentiments.<sup>283</sup> Members of the Tamil Canadian community see themselves and other minority groups as having less influence over national security matters than the general public.<sup>284</sup>

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<sup>283</sup> According to the data analysis of my survey results, most respondents (43.1%) felt that the Tamil-Canadian community has some influence in determining national security priorities, however a large portion (39.2%) felt that the Tamil-Canadian community had no influence. Only 17.7% felt that the Tamil-Canadian community had a strong influence in determining national security policies in Canada.

<sup>284</sup> Almost twice as many respondents (33.8%) felt that members of the general public had a strong influence in determining Canada's national security priorities, and only 20.3% of

#### *iv. Advocacy in the Tamil-Canadian Community*

Community activism is a function of agency within a community group. The sections below discuss how the Tamil-Canadian community has mobilized and acted with agency to address several pertinent issues in the community. The Tamil Canadian Diaspora has a strong network of community service and advocacy organizations that have exercised a collective voice of the community for many years, as early as 1976, when the first Tamil community organization, the Tamil Eelam Society of Canada, was established.<sup>285</sup> Over the years, many other organizations have been established to meet the growing advocacy and social service needs of the Tamil Canadian community. However, according to the Mackenzie Institute, virtually every single Tamil community organization in Canada is allegedly a front for the LTTE.<sup>286</sup> This type of commentary is a clear example of the discrimination and stereotyping that faces the Tamil Canadian community and its organizations. Moreover, it is evident of the fact that when members of the Tamil Canadian community attempt to exercise agency they are accused of being terrorists. For instance, Frances Henry and Carol Tator note that “the [National] Post will seize on any event to report on the Tamil community’s organizations and activities. In effect the Post has mounted a concerted campaign against the organizations of this community.”<sup>287</sup>

The Canadian Tamil Congress (CTC), established in 2000, is one such organization that has taken leadership in the Tamil Canadian community and aspires to be the collective voice of the Tamil Canadian community.<sup>288</sup> In

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respondents felt that members of the general public had no influence in determining national security policies in the country. Interestingly, slightly fewer respondents (14.4%) felt that members of other minority groups had a strong influence in determining national security policies, in comparison to the influence of members of the Tamil-Canadian community.

<sup>285</sup> Subject B, *supra* note 254.

<sup>286</sup> John Thompson, “Other people’s wars: A Review of Overseas Terrorism in Canada” (2003) Mackenzie Institute, online: <<http://www.mackenzieinstitute.com>>. The report lists 32 organizations as being fronts for the LTTE, including social service agencies, seniors groups, and youth/student groups. In addition to this impressive list, the report claims this is not an exhaustive list and that “There are several other organizations in Canada’s Sri Lankan Tamil community, and one might wonder whether LTTE supporters have taken control of them.”

<sup>287</sup> Henry & Tator, *supra* note 66 at 132.

<sup>288</sup> Leslie Dickout “The Quest to Negotiate Equitable Civic Engagement: Response of Toronto’s Sri Lankan Tamil Community to Social Development Planning in Canada’s Largest



response to the listing of the LTTE and the negative impact that the listing has had on the community, the CTC has undertaken several initiatives on behalf of the community. For example, almost immediately after the listing, the CTC engaged with the mainstream media, law enforcement agencies and politicians to highlight the impact that the listing has had on members of the community and the community as a whole.<sup>289</sup> A month after the listing, the CTC launched a solidarity week in May 2006 to address some of the difficulties that the community has faced since the listing of the LTTE.<sup>290</sup> During the solidarity week it was announced that a “Tamil Canadian Legal Defense Fund” would be established to protect Tamil Canadians and hotline will be made available and cases of violations of rights will be documented.<sup>291</sup> Several speakers, including prominent immigration and refugee lawyer, Barbara Jackman, and criminal defense lawyer, Marlys Edwardh attended the solidarity event. In addressing the event, Edwardh stated:

“The Government of Canada made a – what has been a very political choice to list the LTTE as a terrorist organization under Canadian Law.” Speaking on the culture of fear that has gripped the community since the series of raids that followed Canada’s decision, Edwardh said, “We need to look more closely into this legislation and understand the impact on the community in order to reduce uncertainty and fear to act and speak freely.”<sup>292</sup>

In attempting to mobilize the community to act with agency, Edwardh addresses the main problem with the discourse of fear: the debilitating effect that this sense of fear has on community advocacy efforts. The result is that members of communities impacted by national security legislation are often silenced by such fear. This chilling effect has profound consequences on a community’s ability to act with agency.

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Multicultural Metropolis” (2004) Research on Immigration and Integration in the Metropolis Working Paper Series, online: <<http://riim.metropolis.net>> at 11.

<sup>289</sup> Subject A, *supra* note 245.

<sup>290</sup> Canadian Tamil Congress, News Release “Canadian Tamils declare Tamil Solidarity Week for Peace” (7 May 2006) online: <<http://www.canadiantamilcongress.ca>>. Some of the incidents that the community attempted to address included the general climate of fear, the chilling effect on community advocacy, employment discrimination, discrimination and harassment of Tamil students at school and other incidents that were referred to in the previous Chapter on Discourses of Victimization.

<sup>291</sup> TamilCanadian “Canada’s proscription comes under heavy criticism as Solidarity Week is launched” (10 May 2006) online: <<http://www.tamilcanadian.com>>.

<sup>292</sup> *Ibid.*

Yet, at the same time, there is evidence of members of the Tamil community attempting to challenge their victimization. Traditionally the Tamil-Canadian community has responded to discrimination and exercised agency through several means such as: engaging in the political process, protesting and demonstrations, and interacting with the media. By far the predominate means that the Tamil community has utilized to showcase its agency is through protests and demonstrations in public.<sup>293</sup> Whether through demonstration against human rights violations occurring in Sri Lanka, or in response to negative media reports about the Tamil Canadian community, the community turns out in large numbers at rallies and demonstrations.

Another significant example of agency occurred in the summer of 2007. In response to the perceived discrimination faced by the community, members of Little Empire, a Tamil Hip Hop group, which was removed from a stage by police while performing lyrics that mentioned the Tamil Tigers (as described in Chapter 3), engaged in a community action demonstration against “Errorism”, a play on the word “terrorism”. On May 22, 2007, this group of 8 young Tamil men started a 20 day trek from Toronto to Parliament Hill in Ottawa. In a press release announcing the “Walk Against ‘Errorism’”, the group states:

In recent months, Little Empire has been misunderstood for its purpose and had its lyrics misinterpreted as promoting "Terrorism". Citizens have fallen for what is now called "Errorism". Errorism is the misuse of the terms "Terrorism" and "Terrorist". Often used by governments to undermine minorities and to scare its citizens.<sup>294</sup>

The group further states that “Canadian Tamils have the right to create awareness about our destiny without being labeled as ‘Terrorists’.”<sup>295</sup> During their 20 day walk to Ottawa, members of the group stopped at small towns along the way and met with Mayors, local law enforcement officials and members of the public to educate them about their campaign. Local media in several towns were intrigued by the efforts of these young men and they quickly gained media attention. The campaign also inspired many Tamil youth, who joined the group at

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<sup>293</sup> Wayland, *supra* note 41 at 420.

<sup>294</sup> Little Empire, News Release, “Walk Against Errorism” (22 May 2007) online: <<http://www.littleempire.com>>

<sup>295</sup> *Ibid.*

various stops along the way to support their efforts. The group has also started a campaign on the social-networking tool *facebook*, which now has 3046 members supporting the group.<sup>296</sup>

The “Stop Errorism” campaign was a unique advocacy effort spearheaded by Tamil youth. While it falls under the category of “protests/rallies/demonstrations”, it was a different kind of advocacy effort than what the community has traditionally employed. What is unique about the “Stop Errorism” campaign is that this grassroots initiative attempted to engage the everyday public in small towns across Ontario. While individuals in urban centres such as Toronto, Ottawa and Montreal, may have interacted with members of the Tamil-Canadian community at school or workplaces, those in small towns in Ontario may never have even encountered a person of Tamil ethnicity. Often their only perceptions of the Tamil Canadian community are derived entirely from the media, which generally has portrayed the community in a negative light. This advocacy effort spearheaded by these young Tamil men who perceive themselves to have been targeted unfairly by discourses of national security is a novel method to break *the cycle of fear and victimization* by reaching out to the general public.

In the past, the Tamil community in Canada has traditionally employed large scale rallies and protest marches to demonstrate against human rights violations occurring in their native country from as early on as 1983, where a large rally took place on Capital Hill in Ottawa to protest against the anti-Tamil riots occurring in Sri Lanka.<sup>297</sup> Over the years, the community has gathered in places such as Mel Lastman Square in North York, Albert Campbell Square in Scarborough, Queen’s Park and Nathan Phillips Square in Toronto, and Parliament Hill in Ottawa, for various purposes such as a vigils to mark the Boxing Day 2004 tsunami and anniversaries of massacres that occurred in Sri Lanka.<sup>298</sup> Tamil Canadians have also demonstrated against what they perceived

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<sup>296</sup> As of February 29, 2008.

<sup>297</sup> Subject B, *supra* note 254.

<sup>298</sup> “Toronto vigil marks tsunami” *Siber News.com*, (27 December 2005) online: <<http://www.sibernews.com>>.

as discriminatory treatment of their community in Canada. When security certificate detainee Suresh Manickavasagam<sup>299</sup> was about to be deported from Canada, thousands of members of the Tamil community rallied in Toronto and Ottawa to implore the Canadian government to stay his deportation order.<sup>300</sup>

Another example of where the Tamil Canadian community in Toronto demonstrated its strength and resolve occurred in the winter of 2000 when the Toronto Sun published an incendiary article that alleged Tamil women in Canada were prostituting themselves to fundraise for the LTTE.<sup>301</sup> This accusation deeply outraged the Tamil community and led to mobilization of all segments of the community against the Toronto Sun and culminated in a day long protest in front of the Toronto Sun head office. Despite the bitter cold, 650 Tamil Canadians from all walks of life showed up to voice their outrage at the Toronto Sun.<sup>302</sup> In response to the demonstration, executives at the Toronto Sun agreed to meet with a delegation from the Tamil Canadian community. Representatives of the Tamil Canadian community met with the Editorial Board of the Toronto Sun in order to establish an on-going dialogue with the newspaper. The newspaper published an apology to the community and assured members of the Tamil community that a more balanced and fair representation of the community would occur in future articles. In fact, shortly after the protest, the Toronto Sun published an opinion editorial by the coordinator of a Tamil youth organization entitled "Stereotyping Tamils Unfair"<sup>303</sup> Executives at the newspaper were invited to attend several community events over the years and an on-going positive relationship was established with the paper that continues to this day.<sup>304</sup>

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<sup>299</sup> More about the Suresh case will be explored further in the sections dealing with legal advocacy.

<sup>300</sup> Subject B, *supra* note 254.

<sup>301</sup> A January 30<sup>th</sup>, 2000 article written by David Quigley quotes John Thompson of the Mackenzie Institute, stating: "Thompson, who estimates 30,000 of the 180,000 Tamils in Canada are here illegally, said endemic welfare fraud and forcing Sri Lankan women into prostitution are schemes used to raise money for the fight back home." David Quigley, "How Canada funds terrorism" *The Toronto Sun* (30 January 2000).

<sup>302</sup> Dick Chapman, "Tamils denounce the Sun" *The Toronto Sun* (13 February 2000).

<sup>303</sup> Indy Pathmanathan "Stereotyping Tamils Unfair" *The Toronto Sun*. (n.d. 2000?).

<sup>304</sup> For example, Lori Goldstein, Senior Associate Editor of the Toronto Sun, had attended the controversial FACT New Years dinner and the Toronto Sun published a full page of colour photos from the event. More recently, Mr. Goldstein attended a community dinner organized

On the other hand such a dialogue was harder to establish with another more conservative national daily newspaper; the National Post. As previously outlined in Chapter 2, the National Post published a series of defamatory articles about the Tamil Canadian community. Members of the Tamil community attempted to engage with the editorial board at the National Post, but were refused a meeting.<sup>305</sup> Rather than resorting to another protest, the Tamil community opted for a different approach. Representatives of the community held a press conference at Queen's Park, on June 15, 2000 to denounce the unfair and bias reporting of the National Post.<sup>306</sup> At the press conference organized by the Colleges and Universities Tamil Student's Union, the representatives stated that members of the community had tried to meet with the Post's editorial board but had been denied a meeting.<sup>307</sup> In order to ensure that media, such as the National Post were held more accountable for their reporting, the group set out to create a media watch committee, form coalitions with other groups, and hold a symposium to make journalists more sensitive to issues in the community.<sup>308</sup> Despite these efforts, the National Post continued its campaign against the community, and another community organization, the Federation of Associations of Canadian Tamils (FACT), which was mentioned in several of the articles as a front for the LTTE, launched a defamation lawsuit in 2000 against the newspaper and retained prominent civil liberties lawyer Clayton Ruby to spearhead the case.<sup>309</sup> However, due to limited financial resources and the high costs of litigation, the lawsuit was eventually dropped.

Henry and Tator describe the community's response to the National Post campaign as "community resistance" and comment that these actions "are attempts to provide an alternative perspective to that of the mainstream [*National Post*] and to challenge and resist the discourse of criminality and terrorism

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by the Canadian Tamil Congress. In addition, the Toronto Sun recently published an op-ed on the human rights situation in Sri Lanka. Harini Sivalingam, "Canada needs our Leadership" *The Toronto Sun* (4 February 2008).

<sup>305</sup> Harini Sivalingam, Press Statement "We will not be silenced" College and University Tamil Students Union (15 June 2000). [Sivalingam]

<sup>306</sup> Henry & Tator, *supra* note 66 at 132.

<sup>307</sup> *Ibid.*

<sup>308</sup> Sivalingam, *supra* note 305.

<sup>309</sup> Henry & Tator, *supra* note 66 at 133.

propounded by that newspaper.”<sup>310</sup> They describe the community’s response as launching a “counterdiscourse” to the dominant discourse of “criminality” and “terrorism”. This counterdiscourse portrays a picture of the community that is not seen in the traditional discourse; the achievements of the Tamil community and its members as well their pride in being an important component of the Canadian mosaic.<sup>311</sup> The Tamil Canadian community was able to successfully mobilize hundreds of its members to take an active stance against the negative media stereotyping by the Toronto Sun and the National Post. However, dialogue is a two-way street. The community can only engage with those who are willing to engage with it. In the case of the Toronto Sun, the editorial board was willing to meet with the Tamil community, hear their concerns and respond to them. The National Post, however, was initially resistant to engage with the community and continued to defend its editorial position and reporting practices.<sup>312</sup> Executives at the National Post at first refused to meet with members of the Tamil community to discuss the issues of concern with the community. Hundreds of letters, e-mails and faxes were sent to the National Post in response to the defamatory articles, yet, none of these were published by the paper. However, through persistent advocacy by the community, a dialogue was eventually established between reporters at the National Post and members of the Tamil-Canadian community. In fact, recently, the National Post has published two responses written by a community member on their online blog.<sup>313</sup> It could also be argued that the tone of the newspaper has shifted slightly in the coverage of the Tamil-Canadian community. It is interesting to note that the Tamil Canadian community has managed to build relationships with two of the most conservative papers (Toronto Sun and National Post) over the years as a result of negative encounters which sparked persistent advocacy and engagement with these papers.

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<sup>310</sup> Henry & Tator, *supra* note 66 at 132.

<sup>311</sup> *Ibid.*

<sup>312</sup> Henry & Tator *supra* note 66 at 135.

<sup>313</sup> Manjula Selvarajah, “Defending Tamil Canadians” The National Post - Full Comment (20 June 2008) online: <<http://network.nationalpost.com>> and Manjula Selvarajah, “Sri Lanka has failed to protect all of its citizens” The National Post (23 April 2008) online: <<http://www.nationalpost.com>>.

These are examples of a key advocacy strategy; to engage with societal actors in a dialogue to educate them about the Tamil Canadian community and inform them about the issues in the community. The Tamil Canadian community has also attempted to engage with other key actors in the discourse of national security and terrorism; law enforcement and security agencies. For many years, the Tamil Canadian community has interacted with local law enforcement agencies through community outreach meetings to address concerns in the community. One successful initiative was launched by the Canadian Tamil Youth Development Centre (CanTYD), to deal with the problem of Tamil youth street gangs. Community Watch was a program developed by CanTYD to engage with members of the Toronto Police Services in the Scarborough area where a significant portion of the Tamil community resides.<sup>314</sup> Through Community Watch, members of the Tamil community held regular monthly meetings with police officers from 42 Division and 41 Division. These regular monthly meetings facilitated the much needed exchange of dialogue between the community and local police officers. Members of the Tamil community also regularly provided “cultural sensitivity” training to rank and file officers about Tamil culture and other issues that might come up in the community. As a result of this on-going dialogue several positive developments occurred. A significant concern of the Tamil community was the negative media attention directed at the Tamil community that resulted from Tamil youth street gang violence. In particular there was a concern raised by leaders of the community about the existence of the “Tamil Task Force” a special unit of the Toronto Police Services that focused exclusively on the Tamil community. Tamil community leaders argued that the “Tamil Task Force” was profiling Tamil male youths as violent criminals and offensive to the community.<sup>315</sup> In essence, the existence of the Tamil Task Force was institutionalized racial profiling. Reinforcing the stereotype was the mention of the “Tamil Task Force” in many newspaper articles that reported on the

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<sup>314</sup> Balasingam, *supra* note 131.

<sup>315</sup> *Ibid* at 43. A key recommendation in the report was that “the name ‘Tamil Task Force’ needs to be eliminated for the term is offensive and counterproductive for improving relations with the police. The mandate of this group should be clearly defined and monitored to ensure that they do not deter from their duties.”

activities of Tamil youth street gangs. As a result of extensive advocacy by the community, the “Tamil Task Force” was renamed so that the Tamil community was not singled out in police practices in Scarborough. Another key concern of members of the Tamil community was the link constantly being made between Tamil youth street gangs and the LTTE.<sup>316</sup>

Several media reports, attempt to associate criminal elements in the Tamil community to the activities of the LTTE. The Tamil community in Canada has been battling to address these concerns. A report issued by CanTYD as a result of an in-depth study of Tamil youth violence confirmed that there was no connection between Tamil youth gangs in the GTA and the LTTE.<sup>317</sup> The report noted that many of the members of Tamil youth street gangs were young Tamils born in Canada or predominately raised in Canada. The report also highlighted that socio-economic issues, such as integration issues, inter-generational conflicts between Tamil youth and their parents, feelings of discrimination and alienation were the main causes of Tamil youth gang involvement.<sup>318</sup>

Tamil youth street gang violence reached a peak in early 2000, and after the arrest of several key members of these groups, the violence significantly decreased.<sup>319</sup> As a result, over time, the Community Watch program began to fade away and has not been reinstituted. However, some of the same concerns that existed during the “Thugs and Gangs” period of the community, have begun to remerge in the security context. While national security is a national issue, effective implementation of national security policies involves intergovernmental, interdepartmental and regional cooperation. As such, local police officers are at the front line in the discourse of terrorism. For example, it is local police officers that execute search warrants in cooperation with federal law enforcement and security agencies. Local police in Toronto executed the search warrant issued against the World Tamil Movement, and other premises including the Tamil

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<sup>316</sup> *Ibid* at 7.

<sup>317</sup> Henry & Tator, *supra* note 66 at 129.

<sup>318</sup> Balasingam *supra* note 131 at 42.

<sup>319</sup> Subject B, *supra* note 254.



Academy of Culture and Technology<sup>320</sup>, where students were disrupted while attending classes.<sup>321</sup> In response to the raid, the Canadian Tamil Students Association (CTSA) held a rally at Mel Lastman Square where hundreds of members of the Tamil community attended.<sup>322</sup> Despite these efforts of engaging with law enforcement and security agencies, issues of discrimination continue to cause concern for the Tamil-Canadian community as observed in the case study of the community's use of public space.

#### *v. Case Study: Community Use of Public Spaces*

In particular, student and youth groups have been impacted significantly since the listing of the LTTE, with respect to obtaining permits for using public school facilities in the GTA. The issue stems from a Toronto District School Board (TDSB) policy that requires the presence of paid-duty police officers in order for communities to obtain a permit to rent school facilities after-hours.<sup>323</sup> The discretion of whether to provide paid duty officers rests with the local duty officer in each police division.<sup>324</sup> There have been a number of Tamil community events that have been cancelled over the years because of the refusal of police

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<sup>320</sup> Tamil Academy of Culture and Technology is an educational center that provides training and educational programs for children and adults. Courses offered include adult English classes, computer courses, and traditional music and dance classes.

<sup>321</sup> Armed police officers in uniform entered the classroom and requested the students to leave the premise. Students, who were questioned by police without the presence of their parents, were asked to show proof of identity and sign their names on a sheet before they were sent home. A computer with student records was reportedly seized during the raid. Natalie Pona, "Toronto Tamils protest raid" *The Toronto Sun* (11 May 2006) online: <<http://canoe.ca>>.

<sup>322</sup> *Ibid.*

<sup>323</sup> Section 18 of the Permit Application to obtain the use of TDSB facilities after school hours states: "Pay-duty Police will be required for special events (upon request by the Permit Staff). Arrangements are to be made by the permit applicant." TDSB, Application for Permit, online: <<http://www.tdsb.on.ca>>. According to TDSB Operational Procedure PR.666 FAC "Community Use of Board Facilities (Permits)" adopted on May 24, 2006, applications for one-time special events with a large attendance of 200 or more using auditoriums will be scheduled by the Facilities Services Permit Unit (FSPU) and processed in consultation with the school principal and head caretaker.

<sup>324</sup> The policy states at 4.6 (b): The FSPU will ensure that arrangements have been made for security personnel and/or pay-duty police to be on duty based on:

- the type of event
- number of people in attendance
- sale of tickets
- type of advertisement, e.g. flyers, web site, media

The "Responsibility of Permit Holders " states that: "the number of pay-duty police will be determined by the Police Department".

to provide paid-duty officers. The Toronto Police Services (TPS) has no written policy guiding the application process for paid-duty officers. Thus, there is no systematic way of ensuring that the policy is applied fairly and equally to all community groups. The Paid Duty - Officer Request form states

The Toronto Police Service reserves the right to cancel a paid duty at any time, at its sole discretion. However, when exercising this authority the Service will attempt to provide the applicant with as much notice as possible.<sup>325</sup>

However, since the TDSB requires the presence of paid-duty officers, if the police refuse to provide paid-duty officers for the event, then as a consequence, the permit will not be granted by the TDSB. Organizers will have to seek an alternate venue for the event, and if one can not be found the event is often cancelled.

In the aftermath of the listing of the LTTE, a number of community events were cancelled as a result of police refusal to provide paid-duty officers at Tamil-Canadian community events.<sup>326</sup> For example, the Tamil Academy of Culture and Technology (TACT), a Toronto based registered non-profit organization applied for a permit from the TDSB to hold an annual event honoring the achievements of 3000 Tamil-Canadian elementary and high school students.<sup>327</sup> The organizers applied for paid-duty officers through the Central Paid Duty Office on June 11, 2006. Two weeks later, on June 23, 2006, the school board requested the organizers to provide a reference number for the Paid Duty officers. One of the organizers contacted the Central Paid Duty Office to inquire on the status of their application and was informed they were waiting for the local police division (42 division in this case) to respond to the request. The organizer decided to contact the local division himself and was told that no application was received. The organizer faxed another completed application to the local division and was told

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<sup>325</sup> Toronto Police Services, *Paid Duty Request* (2008) online: <<http://www.torontopolice.on.ca>>.

<sup>326</sup> These events included a *Bharatha Natyam* (South Indian classical dance) graduation performance and a *Miruthangam* (classical drumming) graduation performance. These graduations are a milestone event for the young performers who have trained for many years for this opportunity to perform in front of their family and friends.

<sup>327</sup> The TACT event that was cancelled was an annual student appreciation event and exhibition. Over the course of the three days, 3000 students were to receive awards in Math, English and Tamil. This annual event has been held for over 12 years in the community at various TDSB schools. A number of high profile community leaders, municipal, provincial and federal politicians had attended the event in previous years. TACT is not an organization listed under the Anti-Terrorism Act.

by the officer in charge that there was a page missing and not signed; the “Tiger page”. The officer faxed a form containing a declaration that the event “no way directly or indirectly is in support of the LTTE aka the Tamil Tigers or any other organization designated as a terrorist organization by the Government of Canada”. Among other requirements, there were several other conditions also listed including fundraising, display and paraphernalia prohibitions. The Coordinator of organization signed and faxed the declaration. Despite the signed declaration the request for paid duty officers was denied a few days before the event was scheduled to take place. No reasons for the denial were presented in writing but the organizers were informed that “the climate has changed” and that names connected to the organization “do not pass the test”.<sup>328</sup> It is likely the statement “the climate has changed” refers to the recent listing of the LTTE.

In response to these issues, several community organizations are now bypassing TDSB schools as their venue for community events, and opting instead to hold community events in private venues such as ethnic community centers and banquet halls. Thus, the Tamil-Canadian community is being pushed out of using public space and forced to rely on private venues. However, as discourses of fear and security permeate through all aspects of society, even some private venues are denying Tamil groups accommodation.<sup>329</sup>

This is just one concrete example of how discrimination and stereotyping have impacted the Tamil Canadian community. Tamil community organizations are struggling to find a means to address this continuing problem. This issue has been raised with local police, and in particular at a meeting with the Chief of the Toronto Police, as well as senior members of CSIS and the RCMP at community

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<sup>328</sup> Subject B, *supra* note 254.

<sup>329</sup> There was an event that was to occur in November 2007 in Mississauga at the Hershey's Centre, a private corporation. The organization had a contract with the venue to hold a Tamil cultural event. A few days before the event was scheduled to take place, the organizer, a community organization that has existed and held annual events in places such as Toronto City Hall for over 15 years, was informed that law enforcement and security authorities advised them that the event should not take place due to “security concerns”. The venue backed out of the contract and left the organization without a venue.

outreach meetings.<sup>330</sup> Yet to date, the issue remains unresolved and continues to be a pressing concern for members of the Tamil community.

#### B. Political Advocacy or Legal Advocacy?

As we have seen, the Tamil Canadian community has employed a variety of means to advocate for its interests. While all of these methods may prove to be valuable, there are two key concepts to agency that will be focused upon in the following sections. The first is the role of the courts and legal system in the security discourse. The second is political advocacy through the establishment of a national dialogue on national security that is open and inclusive. Given the limited resources of community groups such as Tamil Canadians, it is imperative to look at where these resources will best be utilized.

Jeffery Rosen argues that legislatures are in a better equipped than the courts to design regulations that protect liberty, privacy, and security at the same time.<sup>331</sup> Rosen states that “courts were (properly) reluctant to second-guess popular conceptions of how much privacy citizens should reasonably expect.”<sup>332</sup> Rosen argues that the courts accord more deference to parliament concerning matters of national security. In some cases, the courts can be far ahead of public opinion in terms of righting historical wrongs and protecting minority group interests. In support of his claim, that the legislative branch is more responsive to civil liberty concerns in national security policies, he argues that the courts “have been less willing to defend privacy and have generally deferred to popular opinion.”<sup>333</sup>

While courts are not immune to public opinion, they are less susceptible to public influence than politicians whose livelihoods depend on public opinion. It could be argued that judges on the other hand have security of tenure and are able to make judgements that reflect the principles of justice, equality and fairness, and not just the popular public opinion of the day. There are several

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<sup>330</sup> Subject B, *supra* note 254.

<sup>331</sup> Rosen, *supra* note 86 at 132.

<sup>332</sup> *Ibid.* at 132

<sup>333</sup> *Ibid.* at 144.

important and progressive decisions made by the courts to protect the interests of minority communities and the courts can be a valuable tool for community groups that feel targeted to advance their claim. For example in the case of rights and benefits accorded to same-sex partners, the Canadian courts have been far ahead of both public opinion and the legislature.<sup>334</sup> The issue of same-sex rights has caused extensive controversy and public debate and has elicited extremely emotional responses. Yet, the courts have affirmed the rights of same-sex partners in spite of popular opinion at the time. The courts have at times played a similar role, as we will see in the following section, in the national security context.

#### *i. National Security in the Courts*

In recent years there have been some groundbreaking legal cases concerning national security law in Canada. In fact, the courts have been an important avenue of recourse for members of the Tamil-Canadian community to assert their rights. For example, the legal system proved to be an invaluable tool in the *Suresh* case concerning the deportation of a Sri Lankan national of Tamil ethnicity who was alleged to have links to the LTTE.<sup>335</sup> The *Suresh* case was deemed an extremely important issue in the Tamil-Canadian community as it related to the deportation of a young Tamil male to Sri Lanka where he faced the risk of torture. In addition, the case was important politically, as it was an attempt to argue that the LTTE was not a terrorist organization, but rather a national liberation movement. Recognizing the importance of this case, the Tamil-Canadian community was actively involved in the case and the Federation of Associations of Canadian Tamils (FACT) acted as an intervener. This case is the first instance where a Tamil-Canadian community organization acted as intervener in a legal matter. The *Suresh* case reaffirmed the landmark ruling in

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<sup>334</sup> For example, in 1995, the SCC ruled in *Egan v. Canada* [1995] 2 S.C.R. 513, that “sexual orientation” should be read in to the equality provision of section 15 of the Charter. In *M v. H.* [1999] 2 S.C.R. 3, the SCC declared that same-sex partners have the same rights and benefits as common-law couples. Most recently, the courts in Ontario and Quebec were among the first in the world

<sup>335</sup> *Suresh*, *supra* note 92

*Singh v. Canada (Minister of Employment and Immigration)*, that a refugee has the right not to be removed from Canada to a country where his life or freedom would be threatened and that the denial of such a right amounts to a deprivation of “security of the person” within the meaning of s. 7.<sup>336</sup>

The Supreme Court of Canada ruled in *Suresh* that “deportation to torture may deprive a refugee of liberty, security and perhaps life.”<sup>337</sup> The court went on to state that “[d]etermining whether deportation to torture violates the principles of fundamental justice requires us to balance Canada's interest in combating terrorism and the Convention refugee's interest in not being deported to torture.”<sup>338</sup> In making this determination, the SCC in *Suresh* concluded that “generally to deport a refugee, where there are grounds to believe that this would subject the refugee to a substantial risk of torture, would unconstitutionally violate the *Charter's* s. 7 guarantee of life, liberty and security of the person.”<sup>339</sup> Members of the Tamil-Canadian community welcomed the SCC decision in *Suresh*. A prominent Tamil human rights lawyer, Francis Xavier, at a panel discussion organized at the University of Toronto the afternoon the decision was rendered stated on behalf of the community that:

"We consider this decision of the Supreme Court of Canada a major step in protecting Tamil refugees from being returned to Sri Lanka, where individuals are at serious risk of torture by the state."

At the same time the weaknesses of the legal system approach must also be confronted and is illustrated in the *Suresh* judgement. The *Suresh* case is not a complete victory for human rights advocates. While the court determined that deportation to torture can be a violation of s. 7, the court also left room for “exceptional circumstances” in what is called the “*Suresh* exception” which has yet to be tested in other cases.<sup>340</sup> Thus, the court did not take the stance that there is an absolute prohibition to torture, much to the chagrin of human rights

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<sup>336</sup> *Singh v. Canada (Minister of Employment and Immigration)*, [1985] 1 S.C.R. 177 at para 46. Interestingly, the *Singh* decision was rendered just months before the 1985 Air India bombing.

<sup>337</sup> *Suresh*, *supra* note 92 at para 44.

<sup>338</sup> *Ibid*, at para 47.

<sup>339</sup> *Ibid*, at para 129.

<sup>340</sup> *Ibid*, at para 78. The SCC stated “We do not exclude the possibility that in exceptional circumstances, deportation to face torture might be justified, either as a consequence of the balancing process mandated by s. 7 of the *Charter* or under s. 1.”

advocates. As a result, the fate of “Manickavasagam Suresh is in legal limbo and so, it seems, is much of Canada's Sri Lankan Tamil community.”<sup>341</sup>

More recently, there have been several significant cases before the courts concerning matters of national security. Once again the courts have been tasked with determining whether national security laws abide by human rights standards. In several of these cases, the courts have found serious flaws the legislations enacted by Parliament. In *Charkoui v. Canada (Citizenship and Immigration)* the Supreme Court of Canada ruled that the present security certificate scheme was unconstitutional and ordered the government to revamp the system within a year.<sup>342</sup> In another important national security case, *R. v. Khawaja*, concerning anti-terrorism provisions in the criminal code, the lower courts deemed the motive requirements in the definition of “terrorist offence” to be unconstitutional and severed the impugned provision from the rest of the definition.<sup>343</sup> While not complete victories, these cases reflect the willingness of courts to strike down national security laws enacted by the government that infringe on *Charter* rights.

However, it could also be argued that judges too may be susceptible to public opinion and even political pressure from government officials. Judicial activism has its limits in a democracy, and “unelected, unaccountable” judges may be perceived as too activist and stepping into the grey areas of making new laws rather than strictly interpreting the law. The post 9-11 terrorism and security discourses have also had a profound effect on the judiciary. The *Suresh* case is a prime example of this trend. *Suresh* was argued at the Supreme Court of Canada in May 2001, prior to 9-11. Four months later, the Court was still deliberating the decision in *Suresh* when the events of 9-11 occurred. Surely, the international political climate at the time had an impact on the wording of the judgement that the court rendered in January 2002.<sup>344</sup> Had the *Suresh* decision

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<sup>341</sup> Paul Weinberg. “Tamils feel heat in Canada” *Asia Times* (30 January 2002).

<sup>342</sup> *Charkaoui*, *supra* note 49.

<sup>343</sup> *Khawaja*, *supra* note 34.

<sup>344</sup> The SCC subtly makes reference to the events of 9-11 and the global impact of terrorism at the beginning of its judgment stating “The issues engage concerns and values fundamental to Canada and indeed the world. On the one hand stands the manifest evil of terrorism and the random and arbitrary taking of innocent lives, rippling out in an ever-widening spiral of loss and fear. Governments, expressing the will of the governed, need the legal tools to effectively

been delivered on September 10 or prior, would the judgement have been slightly different? The SCC addresses the issues at the core of the discourse of national security. While acknowledging that terrorism does pose a significant challenge to governments and that government needs certain tools to combat threats to national security in order to protect the public interest, it is also important to recognize that these tools must be the proper tools, and those who use these tools must utilize them correctly. In a commentary on the Suresh decision Audrey Macklin described the role of the judiciary during times of threat in reference to the *Suresh* case by stating that “[a]t moments of real or perceived threat to the integrity of a democratic state, the responsibility of the judiciary to protect human rights comes under special scrutiny.”<sup>345</sup>

However there are other challenges and barriers to utilizing the legal advocacy approach. Advocacy through the courts requires resources. A significant challenge, especially to community groups, is financial resources. It takes extensive resources to hire experienced and competent human rights lawyers to take a case from start to finish through the legal system. Some groups, especially victimized and marginalized groups, lack the resources necessary to successfully challenge discriminatory legislation through the courts. The Tamil-Canadian community is predominately a newcomer community and does not have the collective resources to finance test cases. In fact one of the reasons why the lawsuit against the National Post was dropped was because the community did not have the necessary funds to continue to pursue legal action.<sup>346</sup> Adding fuel to the fire, the recent abolishment of the Court Challenges

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meet this challenge. On the other hand stands the need to ensure that those legal tools do not undermine values that are fundamental to our democratic society – liberty, the rule of law, and the principles of fundamental justice – values that lie at the heart of the Canadian constitutional order and the international instruments that Canada has signed. In the end, it would be a Pyrrhic victory if terrorism were defeated at the cost of sacrificing our commitment to those values. Parliament’s challenge is to draft laws that effectively combat terrorism and conform to the requirements of our Constitution and our international commitments.” *Suresh*, *supra* note 92 at para 3-4.

<sup>345</sup> Audrey Macklin, “Mr. Suresh and the Evil Twin” 20:4 Refugee at 15.

<sup>346</sup> Subject B, *supra* note 254.



Program (CPP), a fund established in 1978<sup>347</sup> to provide “funds to support test cases of national significance to clarify the constitutional rights of official language minorities, and the right of everyone in Canada to live free from discrimination based on sex, race, disability, age, sexual orientation, and other similar grounds”, will result in community groups like the Tamil-Canadian community facing increased barriers to accessing the justice system.<sup>348</sup> Community organizations have asserted that the elimination of the CCP will significantly impact the ability of marginalized groups from challenging laws that are discriminatory and in violation of their Constitutional rights.<sup>349</sup> The lack of resources and the high costs of litigation could be a reason why the Tamil community in Canada has yet to launch a legal challenge to discriminatory incidents that have occurred since the listing of the LTTE.

#### *ii. Political Advocacy in the Tamil Canadian community*

In addition to legal recourse, it could also be argued that the Tamil Canadian community can utilize the political arena more effectively. The experiences and activities of the Tamil Canadian community in political advocacy shows limited results. In particular, members of the Tamil Canadian community face significant challenges when they do attempt to mobilize politically. When members of the Tamil-Canadian community attempt to engage with the political process they are met with resistance, on the part of politicians as well as by the media and law enforcement and security agencies. There are several incidents that illustrate this experience in the community.

#### *iii. The FACT Dinner*

Perhaps the most prominent and high profiled example of how widely the Tamil Canadian community and its organization are targeted is demonstrated by

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<sup>347</sup> The CCP was initially established in 1978 to fund the advancement of language rights, but was extended to include equality rights, after the adoption of the Canadian Charter of Rights and Freedoms in 1982.

<sup>348</sup> FAIFA, New Release, “Leading organizations call for reinstatement of the Court Challenges Program of Canada” (4 October 2006) online: <<http://www.fafia-afai.org>>.

<sup>349</sup> Beth Wilson, et al. “Faces of the Cuts: The Impact of Federal Program Cuts on communities in Toronto” Community Social Planning Council of Toronto (11 October 2006).

the FACT Dinner controversy. In April 2000, the Federation of Associations of Canadian Tamils organized a dinner to celebrate Tamil New Year.<sup>350</sup> While FACT is a group deemed by the U.S. State Department as a front organization for the LTTE, at the time of the FACT Dinner, the LTTE was not a listed organization by the Canadian government.<sup>351</sup> Controversy erupted over the presence of two Liberal Cabinet Ministers who attended the dinner; then Minister of Finance Paul Martin, who would later become the Prime Minister, and Minister of International Cooperation, Maria Minna.<sup>352</sup> The National Post in association with the former official opposition party, the Canadian Alliance (now the Conservative Party of Canada which forms the Minority government and listed the LTTE in April 2006), launched an aggressive campaign against the Ministers, FACT and the Tamil Canadian community accusing the Ministers of attending a terrorist fundraising event. Articles and editorials appeared almost daily in the National Post with headlines such as “Dancing with Terrorists” and “Martin to Dine with Terrorist ‘Front’”.<sup>353</sup> The Ministers were questioned repeatedly in the House of Commons debates about their attendance at the dinner.<sup>354</sup> Even the media in Sri Lanka picked up on the controversial story. For months the Liberals and in particular Martin and Minna were accused of being terrorist sympathizers and questioned for attending the event, which was simply a community cultural celebration. When Government officials attend Chinese New Year celebrations, or St. Patrick’s Day parades, they are not repeatedly questioned in Parliament to account for their actions. The hoopla over the FACT dinner is a prime example of how a community group can be used as pawns in a political vendetta between political parties and media outlets with a vested agenda. It is clear that the Canadian Alliance and National Post were using the FACT dinner to target their political

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<sup>350</sup> Henry & Tator, *supra* note 66 at 123.

<sup>351</sup> *Ibid.*

<sup>352</sup> *Ibid.*

<sup>353</sup> *Ibid.* at 123,125.

<sup>354</sup> *Ibid.* at 127.

opponents; the Liberal Party.<sup>355</sup> However, the result was that the Tamil Canadian community became caught in the crossfire.

#### *iv. National Post Coverage of Tamils at the Liberal Convention*

Politicians such as Paul Martin and Maria Minna are not the only ones who have faced scrutiny for their involvement with the Tamil community. A United Nations diplomat has also been accused of having “Tamil Tiger links”. Tamil students, who attended the Liberal leadership convention in Montreal in 2006, had taken photos with several members of the Liberal party, including former Minister of Health Alan Rock. These photos were published on a social networking website, and were retrieved by a Sri Lankan newspaper which published the photo with Alan Rock and the Tamil students and alleged that Alan Rock, who was at the time the Special Advisor to the U.N. on Children in Armed Conflict, was associating with “Tamil Tigers”.<sup>356</sup> The intent of the publication of the photograph was to discredit Alan Rock who was about to release a report to the U.N. General Assembly on complicity of the Sri Lankan government in child soldier recruitment by government sponsored paramilitary groups.<sup>357</sup> The National Post also republished the photo in Canada under the headline “Rock accused of link to Tigers”.<sup>358</sup> In fact, the paper even drew links to the students and the infamous Waterloo Tamil Students Association, alleging that the students were from the Waterloo TSA.<sup>359</sup> It is interesting to note that neither student had attended the University of Waterloo, nor were they part of the Waterloo TSA, yet the connection was being alleged due to the negative image of the Waterloo TSA. After being contacted by legal counsel of the individuals in the photo, the National Post published a retraction.<sup>360</sup> This example illustrates the how

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<sup>355</sup> Henry & Tator state “The Post was using the controversy incited by the Tamil dinner to launch a fight against the Liberal government as personified by one of its leading ministers. It was using this event for its own political agenda.” *Ibid.* at 128.

<sup>356</sup> Steven Edwards “Rock accused of link to Tigers.” *The National Post* (26 January 2007).

<sup>357</sup> *Ibid.*

<sup>358</sup> *Ibid.*

<sup>359</sup> *Ibid.*

<sup>360</sup> Subject C, *supra* note 258.

profound the negative connotation of politicians being associated with members of the Tamil Canadian community has become.

#### *v. Tamil Political Involvement*

Several members of the Tamil community have tried to enter the political arena themselves to advance the interests of the community. However, when members of the Tamil community do exercise their agency and become involved in the political process, they are immediately accused of being terrorist “sympathizers”. Tamil candidates in elections face increased stereotyping and bias because of public perceptions and media portrayals of Tamils as terrorists.

For example, there are several Tamil individuals who have sought to run in local elections in Markham who have had terrorist labels thrust upon them to discredit their candidacy. In 2003, there was a record number of registered candidates from the Tamil community in the Markham election; six Tamil Canadians were vying for 5 positions within the Markham municipality.<sup>361</sup> One of the individuals who ran for Regional Council was Elagu Elagupillai a prominent and established member of the Tamil-Canadian community. However during his campaign, he was targeted as a Tamil Tiger supporter. An article written by John Thompson of the Mackenzie Institute, shortly before Election Day, described Elagupillai as a having links to the LTTE:

Elagu Elagupillai is running as a candidate for the municipal council in Markham Ontario, and his campaign ads are featuring an endorsement from our next Prime Minister, Paul Martin. The well-educated and well-connected Elagupillai was (and still may be) a part of the support network for the Liberation Tigers of Tamil Eelam.<sup>362</sup>

None of the Tamil candidates were successful in their bid to become the first Tamil elected representatives in Canada in 2003. However, another group of Tamil individuals attempted to enter politics in the local elections in Markham and Toronto in 2006. Rather than being discouraged by the smear campaign in the local Markham election, Elagupillai also run again for Regional Council in 2006, unsuccessfully. However, during this election, two Tamils were elected, Neethan

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<sup>361</sup> Nicholas Keung, “Tamils finding their niche in politics” *The Toronto Star* (18 October 2002).

<sup>362</sup> John Thompson, “Terrorists and Gangsters as Candidates?” Mackenzie Institute, (2 November 2003) online: <<http://www.mackenzieinstitute.com>>.

Shan who had ran previously in 2002 as a school board trustee in Markham (who also faced accusations of connections to the LTTE), as well as Logan Kanapathi, who ran for Markham councilor for Ward 7, making them Canada's first Tamil elected representatives. Neethan Shan decided to try his hand at running in the 2007 Ontario provincial elections as the NDP candidate for Scarborough-Guildwood. During this campaign too, Shan faced intense scrutiny about his involvement in the Tamil Canadian community and was once again accused of being a Tamil Tiger supporter.<sup>363</sup> The election was a close race, but in the end, the Liberal candidate took the seat and Shan returned to his position as school board trustee in Markham.

Not only do Tamil candidates face increased scrutiny because of their ethnicity as Tamils, but the Tamil community as a whole faces scrutiny when they become politically active. The presence of Tamil Canadians within the personnel ranks of political offices also causes a measure of panic and controversy. For example in 2004, a Tamil man was fired within weeks after being employed in a former Immigration Minister's office for suspected links to the LTTE. According to the *Toronto Sun*, "a national security probe" was launched to investigate the incident.<sup>364</sup>

As we have seen, the media and law enforcement agencies also play a role in creating this climate of fear. In a headline that states "Tamil Tigers trying to influence politicians: CSIS report" the *National Post* asserts that members of the Tamil community in Canada are waging a "propaganda campaign".<sup>365</sup> The article is based on a report by the Integrated Threats Assessment Centre branch of CSIS claiming that the LTTE is engaging in a lobby campaign in Canada directed at the expatriate Tamil population, politicians and the general public in an effort to portray the Tamil's independence struggle as legitimate.<sup>366</sup> The newspaper report also cites a former diplomat, Martin Collacott, a former Canadian High Commissioner to Sri Lanka who states that "the Tigers are clearly trying to

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<sup>363</sup> Mike Strobel, "Swingin' in the reign" *The Toronto Sun* (11 October 2007).

<sup>364</sup> Tom Godfrey, "Police Probe Sgro Security" *The Toronto Sun* (14 December 2004).

<sup>365</sup> Stewart Bell, "Tamil Tigers trying to influence politicians: CSIS report" *The National Post* (6 November 2007).

<sup>366</sup> *Ibid.*

influence MPs.”<sup>367</sup> The problem with such reports is that there is a failure to distinguish between the LTTE and legitimate Tamil-Canadian advocacy organizations. Once again the blurring between the Tamil Tigers and the Tamil-Canadian community results in political activities of the Tamil-Canadian community being viewed as “Tiger propaganda”.

As we can see from these examples, the Tamil Canadian community faces significant challenges in exercising their agency in the legal and political avenues. While this has not deterred the community from attempting to challenge their victimization, it has been at times a frustrating process and has resulted in some members of the community continuing to perceive themselves as victims of the national security discourse.

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<sup>367</sup> *Ibid.*

## CONCLUSION

### *i. A Multi-prong Approach*

Terrorism is a significant global challenge in our modern world. Legislative action to respond to terrorism has significant and often negative impacts on society, as we have seen with the example of the Tamil-Canadian community. The prevalence of the discourses on terrorism and national security can create a climate of fear and result in the victimization of particularly vulnerable community groups, such as Tamil Canadians. Fear and victimization can become a dangerous combination that may lead to increased social exclusion of community groups and alienation of vulnerable segments of society. As demonstrated by the experiences of some members of the Tamil-Canadian community, national security policies can have a negative impact on the perception of community groups who are stereotyped and labelled as “terrorist” supporters or sympathisers. These impacts include day-to-day experiences of individual and systemic discrimination at school, places of employment, in the general public and even from government agencies. The discourse of agency is necessary to break this *cycle of fear and victimization* and propel communities to become empowered. However, there is a Catch-22: the more that the Tamil Canadian community tries to assert its collective identity as Tamil and advocate for the Tamil-Canadian community’s interests, the more they are perceived and labelled as terrorists. We have seen this through the political advocacy efforts of the Tamil-Canadian community. On the other hand, legal advocacy also proves to have limitations on a community’s ability to vindicate its collective reputation, as the resource implications are significant.

While there are challenges and barriers, namely backlash, financial and temporal, to both political and legal advocacy, the Tamil-Canadian community could use a multi-pronged approach to combat the perceived discrimination faced by the community. Despite its flaws and drawbacks, the Tamil Canadian community must continue to engage with the political process in traditional as well as creative and inventive methods to assert its own agency. In addition to engaging in the political process, the community can also launch legal challenges

to the ATA in cases where the community has been impacted in a discriminatory manner. When the situation arises, the Tamil Canadian community can utilize the legal system to assert individual and collective rights that may become infringed by the discourses of fear and terrorism, such as the impending legal challenge to the listing of the WTM, challenging the provisions of the ATA. It is only through a combination of political and legal advocacy that the Tamil Canadian community's interests will be achieved.

Moreover, since terrorism is a highly politicized term that carries with it emotional reactions, a multi-prong strategy must include a national dialogue on issues of terrorism and national security that involves all segments of society. As the AI 2007 Report on the World's Human Rights states:

A sustainable strategy promotes hope, human rights and democracy, while a security strategy addresses fears and dangers.<sup>368</sup>

Developing a sustainable strategy requires a truly national dialogue on national security, involving equally all segments of the society. Such a dialogue must include societal actors that have a significant influence in national security policy making as well as all relevant stakeholder community groups. National security concerns us all, as Canadians. Therefore, Canadians voices should be engaged in determining our national security interests, priorities and the best means to preserving fundamental Canadian values such as multiculturalism and non-discrimination while protecting our collective national security. While it is true that the State has a right, and in fact a duty to its citizens<sup>369</sup>, to protect its borders, these citizens are a part of the State and have the right to be protected from government infringements.

Since it is the very purpose and objective of terrorism, threats of terrorist attacks will continue to elicit fear in our society. While it is up to each individual to determine how they will respond to such fear, there are several societal actors that have a significant influence in either promoting or helping to manage this fear in the general public. It is necessary that a cooperative framework is established

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<sup>368</sup> AI, *supra* note 84.

<sup>369</sup> Citizenship here does not refer to immigration status, but rather as civic citizenship of all residents within a political community.



to address and manage fear created by the discourse of terrorism in order to ensure that vulnerable segments of society are not victimized. In particular, governments, media and law enforcement and security agencies have an important role to play to ensure that such fear in society is managed rather than exploited to the detriment of vulnerable communities.

However, groups that are victimized must assert their own sense of agency and not fall victim to the hopelessness that the cycle of fear and victimization can create. There are several methods of advocacy available for community groups to utilize, including political and legal advocacy. While there are drawbacks, community groups targeted by the national security discourse cannot allow themselves to be re-victimized by external agencies appropriating their voice. Agency is a necessary ingredient to breaking this cycle of fear and victimization that is created by discourses of fear and terrorism. The Tamil-Canadian community is reaching a crossroads and under increased pressure from various societal actors, such as law enforcement and the media. At this juncture, the Tamil-Canadian community must determine the most effective use of its community resources to resist the labels thrust upon it. Although terrorism can never be completely eradicated, the fear of terrorism can be effectively managed through a cooperative and multi-pronged framework.

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## APPENDIX A



Research Ethics Board Office  
McGill University  
845 Sherbrooke Street West  
James Administration Bldg., rm 419  
Montreal, QC H3A 2T5

Tel: (514) 398-6831  
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Ethics website: [www.mcgill.ca/researchoffice/compliance/human/](http://www.mcgill.ca/researchoffice/compliance/human/)

### Research Ethics Board I Certificate of Ethical Acceptability of Research Involving Humans

REB File #: 177-0207

**Project Title:** Discourses of fear and victimization: the impact of national security legislation on the Tamil-Canadian community

**Principal Investigator:** Harini Sivalingam

**Department:** Law

**Status:** Master's student

**Supervisor:** Prof. Evan Fox-Decent

**Funding Agency and Title:** N/A

This project was reviewed on March 7, 2007 by

Expedited Review ☐  
Full Review ☒

Catherine Lu

Catherine Lu, Ph.D.  
Chair, REB I

**Approval Period:** March 19, 2007 to March 18, 2008

This project was reviewed and approved in accordance with the requirements of the McGill University Policy on the Ethical Conduct of Research Involving Human Subjects and with the Tri-Council Policy Statement: Ethical Conduct For Research Involving Humans

- 
- \*All research involving human subjects requires review on an annual basis. A Request for Renewal form should be submitted at least one month before the above expiry date.
  - \*If a project has been completed or terminated and ethics approval is no longer required, a Final Report form must be submitted.
  - \*Should any modification or other unanticipated development occur before the next required review, the REB must be informed and any modification can't be initiated until approval is received.



## APPENDIX B

### Survey on the impact of national security legislation on the Tamil-Canadian community

Dear Participant:

I am currently undertaking a research project for my Masters of Law (LL.M.) thesis at McGill University. The topic of my research is the impact of national security legislation on the Tamil-Canadian community. I am seeking the participation of individuals and organizations that are members of the Tamil-Canadian community to take part in a short confidential survey questionnaire. As a member of the Tamil-Canadian community, your input and insights will prove to be a valuable component of my research. All records of your participation, including copies of the questionnaire, will be kept strictly confidential, such that only I will have access to the information. The results of the research will be reported in a written thesis and may be presented orally at conferences. Participation in this survey is completely voluntary. You may choose not to answer any of these questions. Please note that this survey is anonymous and you should not record your name or other identifying information anywhere in the questionnaire. If you return this questionnaire by e-mail, be assured that your contact information will be stripped from the survey immediately to protect your anonymity. If you have any questions about the nature of my research or the methodology that I am using please contact me at the address/phone number listed below. Thank you for your participation.

Principal Investigator:

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Masters of Law (LL.M.) Candidate 2007  
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Faculty Supervisor:

Prof. Evan Fox-Decent  
Assistant Professor  
McGill University, Faculty of Law

.....  
**PART 1 - Background Information:** (please select one answer that best describes your circumstances)

1. Gender:  
☐ Male                      ☐ Female
2. Age:  
☐ 18-24    ☐ 25-34    ☐ 35-44    ☐ 45-54    ☐ 55-64    ☐ 65+
3. Immigration Status:  

<input type="checkbox"/> Canadian citizen	<input type="checkbox"/> Student/Work Visa
<input type="checkbox"/> Canadian permanent resident	<input type="checkbox"/> No Status
<input type="checkbox"/> Refugee claimant	<input type="checkbox"/> Other: _____
4. Arrival in Canada:  

<input type="checkbox"/> Born in Canada	<input type="checkbox"/> 1990-1995
<input type="checkbox"/> Prior to 1983	<input type="checkbox"/> 1996-2000
<input type="checkbox"/> 1983-1990	<input type="checkbox"/> 2000-present
5. Employment Status:  

<input type="checkbox"/> Student	<input type="checkbox"/> Unemployed
<input type="checkbox"/> Employed	<input type="checkbox"/> Other _____
<input type="checkbox"/> Self-employed	

6. How would you describe your involvement in the Tamil-Canadian community  
☐ Very active                      ☐ Somewhat active                      ☐ Not active
7. What kind of community organization(s) are you or have you been involved in? (check all that apply)
- |  |  |
|--|--|
| <input type="checkbox"/> Youth organization        | <input type="checkbox"/> Arts/Dance/Cultural group       |
| <input type="checkbox"/> Student association       | <input type="checkbox"/> Political/advocacy organization |
| <input type="checkbox"/> Social service provider   | <input type="checkbox"/> Seniors organization            |
| <input type="checkbox"/> Religious organization    | <input type="checkbox"/> Business organization           |
| <input type="checkbox"/> Sports organization       | <input type="checkbox"/> Women's organization            |
| <input type="checkbox"/> Humanitarian organization | <input type="checkbox"/> Other: _____                    |

## **PART II - Views on National Security in Canada**

Please answer according to your views about national security in Canada. National security for the purposes of this research is defined as being government policies invoked against "threats to the security of Canada".

8. Protection of national security interests should be a high priority for the Government of Canada  
☐ Strongly Agree                      ☐ Agree                      ☐ Disagree                      ☐ Strongly Disagree
9. Are you aware of the following measures introduced by the government of Canada to protect national security? (check all that apply):
- |   | Yes                      | No                       |
|---|--------------------------|--------------------------|
| a. Anti-Terrorism Act (formerly Bill C-36)                        | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Increased security measures at the borders/airports            | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Increased screening of immigrants and refugees entering Canada | <input type="checkbox"/> | <input type="checkbox"/> |
| d. Increased funding for security agencies                        | <input type="checkbox"/> | <input type="checkbox"/> |
| e. Sharing information with U.S. and other countries              | <input type="checkbox"/> | <input type="checkbox"/> |
10. Protecting the national security interests of Canada necessarily involves the limitation of some freedoms and rights of all Canadians.  
☐ Strongly Agree                      ☐ Agree                      ☐ Disagree                      ☐ Strongly Disagree
11. Multiculturalism is a Canadian value that must be respected when designing national security legislation.  
☐ Strongly Agree                      ☐ Agree                      ☐ Disagree                      ☐ Strongly Disagree
12. National security measures have a particularly negative impact on immigrant and refugee communities.  
☐ Strongly Agree                      ☐ Agree                      ☐ Disagree                      ☐ Strongly Disagree
13. Where should the balance rest when considering the protection of national security interests and respect for human rights?
- |  |
|--|
| <input type="checkbox"/> Always in favour of national security                         |
| <input type="checkbox"/> Always in favour of human rights                              |
| <input type="checkbox"/> Depending on the circumstances in favour of national security |
| <input type="checkbox"/> Depending on the circumstances in favour of human rights      |
| <input type="checkbox"/> No proper balance can be obtain                               |

14. Who is in the best position to determine the proper balance between national security interests and human rights? (Please select only one)
- |  |   |
|--|---|
| <input type="checkbox"/> Prime Minister            | <input type="checkbox"/> Law enforcement agencies (e.g. police) |
| <input type="checkbox"/> Minister of Public Safety | <input type="checkbox"/> Security agencies (e.g. CSIS)          |
| <input type="checkbox"/> Cabinet                   | <input type="checkbox"/> Courts                                 |
| <input type="checkbox"/> Parliament                | <input type="checkbox"/> Other: _____                           |
| <input type="checkbox"/> Senate                    |   |

15. Rate the influence of each of the actors below in determining national security priorities in Canada:

- |                               |   |   |                                       |
|-------------------------------|---|---|---------------------------------------|
| a. Prime Minister:            | <input type="checkbox"/> Strong influence | <input type="checkbox"/> Some influence | <input type="checkbox"/> No influence |
| b. Cabinet:                   | <input type="checkbox"/> Strong influence | <input type="checkbox"/> Some influence | <input type="checkbox"/> No influence |
| c. Minister of Public Safety: | <input type="checkbox"/> Strong influence | <input type="checkbox"/> Some influence | <input type="checkbox"/> No influence |
| d. Parliament:                | <input type="checkbox"/> Strong influence | <input type="checkbox"/> Some influence | <input type="checkbox"/> No influence |
| e. Law enforcement agencies:  | <input type="checkbox"/> Strong influence | <input type="checkbox"/> Some influence | <input type="checkbox"/> No influence |
| f. Security agencies:         | <input type="checkbox"/> Strong influence | <input type="checkbox"/> Some influence | <input type="checkbox"/> No influence |
| g. Courts:                    | <input type="checkbox"/> Strong influence | <input type="checkbox"/> Some influence | <input type="checkbox"/> No influence |
| h. Media:                     | <input type="checkbox"/> Strong influence | <input type="checkbox"/> Some influence | <input type="checkbox"/> No influence |
| i. General Public:            | <input type="checkbox"/> Strong influence | <input type="checkbox"/> Some influence | <input type="checkbox"/> No influence |
| j. Minority Groups:           | <input type="checkbox"/> Strong influence | <input type="checkbox"/> Some influence | <input type="checkbox"/> No influence |
| k. Tamil-Canadian community:  | <input type="checkbox"/> Strong influence | <input type="checkbox"/> Some influence | <input type="checkbox"/> No influence |

### **PART III - Impact of National Security on Tamil-Canadians**

16. Prior to 9-11 (September 11, 2001), government policies on national security has impacted the Tamil-Canadian community:
- |  |  |                                    |
|--|--|------------------------------------|
| <input type="checkbox"/> Very negative     | <input type="checkbox"/> Somewhat negative | <input type="checkbox"/> No effect |
| <input type="checkbox"/> Somewhat positive | <input type="checkbox"/> Very positive     |                                    |

17. Since 9-11 (September 11, 2001), government policies on national security has impacted the Tamil-Canadian community:
- ☐ Very negative      ☐ Somewhat negative      ☐ No effect  
☐ Somewhat positive      ☐ Very positive
18. Since the listing of the Liberation Tigers of Tamil Eelam (LTTE) as a terrorist organization under the Anti-Terrorism Act in April 2006, government policies on national security has impacted the Tamil-Canadian community:
- ☐ Very negative      ☐ Somewhat negative      ☐ No effect  
☐ Somewhat positive      ☐ Very positive
19. The Tamil-Canadian community has faced an increase in discrimination since the enactment of the Anti-Terrorism Act in 2002
- ☐ Strongly Agree      ☐ Agree      ☐ Disagree      ☐ Strongly Disagree
20. The Tamil-Canadian community has faced an increase in discrimination since the listing of the LTTE as a terrorist organization under the Anti-Terrorism Act
- ☐ Strongly Agree      ☐ Agree      ☐ Disagree      ☐ Strongly Disagree
21. Since the listing of the LTTE as a terrorist organization under the Anti-Terrorist Act in April 2006, my involvement in the Tamil community has:
- ☐ Increased      ☐ Stayed the same      ☐ Decreased
22. Do you believe that you have personally experienced discrimination because you are a member of the Tamil-Canadian community?
- ☐ Yes (Please answer the following questions)      ☐ No (Go to Question 23)
- (a) Where did you experience this discrimination:
- ☐ School      ☐ Work      ☐ General Public      ☐ Airport  
☐ Community Organization      ☐ Other: \_\_\_\_\_
- (b) Since 9-11, my personal experience(s) of discrimination has:
- ☐ Increased      ☐ Stayed the same      ☐ Decreased
- (c) Since the listing of the LTTE as a terrorist organization my personal experience(s) of discrimination has:
- ☐ Increased      ☐ Stayed the same      ☐ Decreased
23. In your view the LTTE is a:
- ☐ Social Organization      ☐ Terrorist Group  
☐ Political Organization      ☐ Humanitarian Organization  
☐ National Liberation Organization      ☐ Other: \_\_\_\_\_

24. In your view what has been the dominant method of advocacy that the community has used in the past (Please select only one):

- ☐ Protest and Demonstrate in Public
- ☐ Education of the General Public
- ☐ Education of law enforcement officials
- ☐ Engage in the Political Process
- ☐ Challenge discriminatory legislation through the courts
- ☐ Build Coalitions with community groups that face similar problems
- ☐ Dialogue with media outlets
- ☐ Other: \_\_\_\_\_

25. In your view the most effective means for the Tamil community in Canada to respond to perceived discrimination is through (Please select only one):

- ☐ Protest and Demonstrate in Public
- ☐ Education of the General Public
- ☐ Education of law enforcement officials
- ☐ Engage in the Political Process
- ☐ Challenge discriminatory legislation through the courts
- ☐ Build Coalitions with community groups that face similar problems
- ☐ Dialogue with media outlets
- ☐ Other: \_\_\_\_\_

General Comments on National Security and the Tamil-Canadian community:

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Thank you for your participation in this survey!

Harini Sivaligam, LL.M. Candidate (McGill University)

**IMPORTANT:** Please return completed surveys to [harini.sivalingam@mail.mcgill.ca](mailto:harini.sivalingam@mail.mcgill.ca) or by mail to the address above or by fax to (416) 490-8734.