



True North in
Canadian public policy

Commentary

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It's Time for an Effective Strategy to Deal with Canadian 'Jihadis' Detained Abroad

Scott Newark

In retrospect, it was inevitable. Since 2014, Canadian intelligence and national law enforcement agencies have confirmed that there are an estimated 180 Canadians who are known to have travelled abroad to engage in Islamist jihad despite it being a crime in Canada to do so. These reports even pre-date the October 2014 Islamist-inspired terrorist attacks that took place in Ottawa and Saint Jean sur Richelieu, Quebec. They also confirmed that while approximately 60 of these persons had returned to Canada, without subsequent criminal prosecution, the rest were believed to have been killed or were still be abroad fighting to promote the cause of the Islamic State, Al-Qaeda or other Islamist groups.

Thanks to excellent media reporting, Canadians have gained increased awareness of this alarming situation with investigative reporting on individual cases including Canadian jihadis who are believed to have been killed abroad and how they were radicalized and recruited into these Islamist death cults in the first place.

At the same time, the Canadian government continues to offer multi-million-dollar payoffs to Canadians who were detained abroad by foreign governments on Islamist terrorism security grounds. These payoffs were made following the return of these individuals to Canada and were based on closed door assumptions that their Charter rights had been violated by Canadian actions or inactions on their cases. The going rate for these payoffs appears to be set at \$10.5 million, as has been handed over to Maher Arar in 2007 and to Abdullah Almalki, Ahmad El-Maati and Muayyed Nureddin in 2017.

Most egregiously, however, a similar \$10.5 million payoff was made in 2017 to Omar Khadr, a Canadian who was actually *convicted* (pleaded guilty) of multiple terrorist offences by a US military court. That payoff, made

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without even fighting the civil suit claim for supposed Charter breaches by *Canadian* officials, enraged many Canadians as it demonstrated a lack of principle in our national government and a disturbing politically correct motivation.

Several commentators, myself included (Newark 2018), also noted that a common justification for these payoffs was the supposed inappropriate actions, or inactions, of public officials in how these cases were handled once the person had been detained by a foreign government. In my analysis, I also noted that Canada lacked a national strategy to deal with these cases, including a statutory mandate for officials that could reduce the chances of after-the-fact Charter breach findings. Having spent a career in and working with law enforcement and the national security sectors, I also warned that a failure to do so would create a culture of risk aversion and inaction among officials rather than the targeted and effective actions that were necessary.

An opportunity to address this problem was clearly available when the current government introduced C-59, which was promoted as providing improvements to the previous Conservative government's anti-terrorism legislation, Bill C-51. In speaking to Bill C-59, Public Safety Minister Ralph Goodale specifically advised that he would welcome suggested amendments to address the issue of Canadians detained abroad on security-related investigations. Unfortunately, those amendments have not been forthcoming, and the Bill is now before the Senate.

The absence of a proactive strategy in this area was revealed during C-59 House Security Committee hearings. Conservative MP Glen Motz had asked RCMP Deputy Commissioner (Federal Policing) Gilles Michaud about whether Canada is prepared to deal with returning Islamist jihadis. Deputy Commissioner Michaud has previously demonstrated a bureaucratic and politically correct approach to these controversial issues, which was repeated when he stated:

When it's time to investigate Canadians who have gone abroad, the work begins abroad. We have relationships with different police forces, including the police force of Five Eyes or of other countries. We start to compile evidence. Once the individual arrives in the country, we can implement other measures to continue our work and to try to determine whether that individual does indeed represent a threat and whether we have the evidence needed to lay charges. (Standing Committee on Public Safety and National Security 2018)

In other words, reactive not proactive.

As the Islamist control over Syria and Iraq has dissolved, there have been an increasing number of cases where foreign fighters and their families have been captured, especially by our Kurdish allies in northern Iraq and Syria. The male and female foreign fighters captured include Canadians who remain in custody. Other persons captured include wives and children of jihadis and some of them also remain in custody. Another high-profile

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case with a Canadian connection is 'Jihadi Jack' Letts. A young man with joint UK-Canadian citizenship, Letts left the UK to travel to Syria and Iraq. Now in Kurdish custody, Letts' parents are disputing the notion he supported Islamist groups and are actively seeking his transfer to Canada. Strangely, rather than insisting that the UK take its own citizen and resident back, Global Affairs Canada has reached out to Letts to offer assistance in having him transferred to Canada (Bell 2018d).

The issue of how Canada is dealing with returning Islamist jihadis exploded into the public spotlight in May 2018 when the media revealed that Abu Huzaifa (self-identified as Abu Huzaifa al-Kanadi) was living in Toronto. Huzaifa had given an extensive podcast to the *New York Times* in 2016 (which he has since recanted) in which he described serving as an executioner for the Islamic State in Syria. He was apparently able to return to Canada without being detected but has since been questioned by the RCMP and CSIS, although he remains at large without charges.

This case demonstrates the difficulty law enforcement faces with regards to pursuing prosecutions for these kinds of offences committed abroad. A criminal prosecution must be based on sufficient, credible and admissible evidence - and that can be difficult to achieve. It is especially hard in cases like this where the suspect's story repeatedly changes. This reality underscores the need for a case-specific proactive strategy where individual circumstances, including foreign detention, could be used to achieve appropriate outcomes.

Following the uproar over the Abu Huzaifa case, the federal government revealed that it had created a new High Risk Returnee Interdepartmental Taskforce that includes Global Affairs Canada, RCMP, Canadian Security Intelligence Service, Canada Border Services Agency, Passport Canada, Public Safety Canada and Transport Canada. A Ministerial Briefing Note explained that once the RCMP becomes aware a foreign fighter is preparing to come back to Canada, the task force meets to discuss what measures are needed to control the return.

While it is important that Global Affairs Canada is now included in this new interagency effort, it is unclear if this initiative is an enhancement of the existing RCMP-led Integrated National Security Enforcement Team (INSET) or just another piece of bureaucracy. A glaring issue is also why the Public Prosecution Service of Canada (PPSC) is *not* included in both groups. This omission is critical with respect to Canadians detained abroad on security cases because early prosecutorial involvement is essential to achieve successful public safety outcomes. The Canadian government could avail itself to a variety of actions if a Canadian has been detained abroad on jihadi terrorism cases but having a proactive and strategic mandate and capability is necessary.

In October, *Global News* (2018a) confirmed this deficiency when it reported on the case of Mohammed Ali, a Canadian from Toronto who was a sniper and trainer for ISIS and is now detained by Kurdish authorities in northern Syria. Stewart Bell from *Global News* led an investigative team that included renowned terrorism expert Amarnath Amarasingam from the University of Waterloo, which travelled to the Kurdish territory and interviewed Ali (Bell 2018b), his Canadian wife and other Canadian wives of jihadis (Bell 2018c), all of whom are detained as are their children.

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To be clear: while Canadian officials have *not* taken action, *Global News*, with the full cooperation of Kurdish authorities, has interviewed the detained Canadian jihadi, his wife and other detained Canadian wives. We should all be grateful to *Global News* for this reporting. But surely the larger question is: if the media could interview the ‘bad guy’ and related detainees, why could our officials not?

The *Global News* interviews, which are recorded, reveal that Ali left Canada to join ISIS in April 2014 and, like others, he entered Syria from Turkey. His activities included acting as a sniper and training others to do the same. He also made extensive social media posts promoting the jihadist ideology and encouraging others in Canada to commit terrorist acts in Canada. While there he met Rita Jabbar, a Canadian woman from Vancouver who had travelled to Syria to live in an Islamist society governed by shariah law. They now have two children, born in Syria, and the entire family was captured several months ago while attempting to escape through Turkey. All are now detained by Kurdish authorities who are calling on foreign governments to take action and cooperate in having their citizens returned.

In the *Global News* interview, Ali confirmed that he had previously been interviewed by US, UK and Kurdish officials and that his interviews were voluntary. Further, he also confirmed that he had not been subject to any abuse from authorities while in custody. This information is critical in terms of evidence admissibility in any future prosecution which again illustrates the absurdity that it was a news outlet and not our national law enforcement agency assigned with the task that secured the evidence.

Global News, as well as other local media, reports that the Kurds currently have 13 Canadians in custody, including Ali, Letts and a third male jihadi as well as Ali’s wife and two children and two other wives of jihadis and their children. The jihadis are confined to a prison while the wives and children are being held in secure camp facilities.

Abdulkarim Omar, co-chair of Foreign Affairs for the Democratic Self-Administration of North Syria, told *Global News* that while the actions taken by the Canadian jihadis were crimes, they lacked the capability to imprison, bring to justice and rehabilitate 2,000 foreign captives. He also expressed concern that due to the uncertainty in the region, including the hostility from Turkish forces against the Kurds, the ISIS members might escape. As he noted:

This is a good chance for the international community because we have them in our custody. They should take on their moral responsibilities and address this issue. We have sacrificed a lot to be able to capture those dangerous and notorious criminals, 900 people, ISIL fighters, every country should assume their responsibilities and try to help us to address this issue and take their citizens back to their countries and try them in countries. (Bell 2018a)

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It is certainly understandable that the Kurdish government wants foreign governments, including Canada's, to work with them to arrange for the removal of their citizens that have committed crimes in Syria and Iraq. It is also understandable that many Canadians would prefer to see these persons, who often have acquired citizenship, not be returned to Canada and instead remain locked up abroad. Unfortunately, that instinctive reaction shifts the burden of dealing with these thugs and ideologues – and their children – to a country that was victimized by them and may not have the resources or stability to do what's needed. Equally, it needs to be acknowledged that these jihadi terrorists came from *our* country, where they had been radicalized and recruited and were able to freely depart to do what they did.

It is also essential to recognize and accept that the best way to prevent future harmful conduct by these people is to take appropriate action once they have been detected and apprehended. This means different things for different people and ranges from lock up to community supervision to deradicalization to ensuring they are fit to raise their children. Fortunately, in Canada we have the necessary legal tools to accomplish these different goals and it is also generally understood that a 'one size fits all' approach is not the best way to proceed.

If Canada is to return captured jihadis held abroad, a final reality must be addressed. It's easy to say that we can prosecute these people on return but that has to happen in our rule of law criminal justice system. To secure a conviction we must have sufficient relevant *and admissible* evidence related to the applicable charges and allegations involved. That is by no means an easy task but rather than shrug and accept the 'no can do' approach that seems to be in place, we need to take targeted and proactive measures that facilitate our achieving desired outcomes. This strategy applies in dealing with foreign governments and the Canadian jihadis/supporters whose primary goal is to return to Canada.

In deciding on specific actions, we should also be guided by our expectation of shared international cooperation as well as the priority of public protection from this Islamist threat. As is now generally accepted, such protection is achieved through a variety of measures that deliver punishment for the crimes committed, deterrence for others, targeted supervision where necessary, and deradicalization and rehabilitative efforts to prevent reoccurrence.

So what actions need to be taken?

First, Canada should enhance its operational abilities by adding Global Affairs Canada, Correctional Services Canada, and Public Prosecution Service of Canada to the RCMP-led INSET units. The Public Prosecution Service should also be added to the High Risk Returnee Interdepartmental Taskforce. These entities need to ensure proactive foreign fighter files with relevant information and evidence as well as community links for deradicalization and ongoing child welfare analysis

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Second, INSET units should then immediately be deployed to Kurdish controlled territory where Canadian jihadis and their families are being held. These specialized teams should be accompanied by publicly funded defence counsel to assist the detainees. The following actions should then be taken:

- review existing evidence and conduct new interviews, if necessary, to build a case for criminal prosecution or terrorism peace bond imposition;
- attempt to arrange a plea bargain or agreement to enter a peace bond with the detained jihadi that includes the return of their families as well as confirmation that no Charter violation by Canadian officials has occurred;
- engage in discussions with local officials to explain why local prosecution with an agreed upon plea bargain with the offender followed by immediate transfer to Canada under our *International Transfer of Offenders Act* (used in the Omar Khadr case) as authorized by s. 31 and 33 of the Act is the best way to expeditiously proceed;
- if local prosecution cannot be achieved, Canada should still attempt to achieve a plea bargain with the detainee and thereafter arrange their return and that of their family following which the case can be dealt with in Canada either by plea bargain or criminal trial of the detainee and peace bond supervision pursuant to s. 810.011 including, if appropriate, of their wife and child welfare screening of the family's children.

Third, Canada should publicly call on the UK to accept responsibility for the investigation and return of UK citizen and resident Jack Letts with prosecution thereafter if appropriate.

Lastly, Canada should also enact express statutory authorization for defined interactions and information sharing by designated Canadian officials on terrorism cases with international entities. This should include a statutory approval process in advance of such actions for defined actions and defined purposes, including restrictions and report backs. This is a function that specially designated Federal Court Justices could perform. As illustrated in the Supreme Court ruling in the Spencer case, this proactive judicial approval would convert Charter breaches into Charter compliance.

These operational and policy reforms are essential for the protection of the Canadian public. Global circumstances also make clear that this must be a priority for Government because the problems are not going away. What's required now is real leadership.

About the Author



Scott Newark is a former Alberta Crown Prosecutor who has also served as the founding President of the Canadian Resource Centre for Victims of Crime, Executive Officer of the Canadian Police Association, Vice Chair of the Ontario Office for Victims of Crime, Director of Operations for Investigative Project on Terrorism, and as a Public Safety and Security Policy Adviser to the governments of Ontario and Canada. He is currently an adjunct professor in the TRSS Program in the School of Criminology at Simon Fraser University.

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