



*True North In Canadian Public Policy*

# Straight Talk

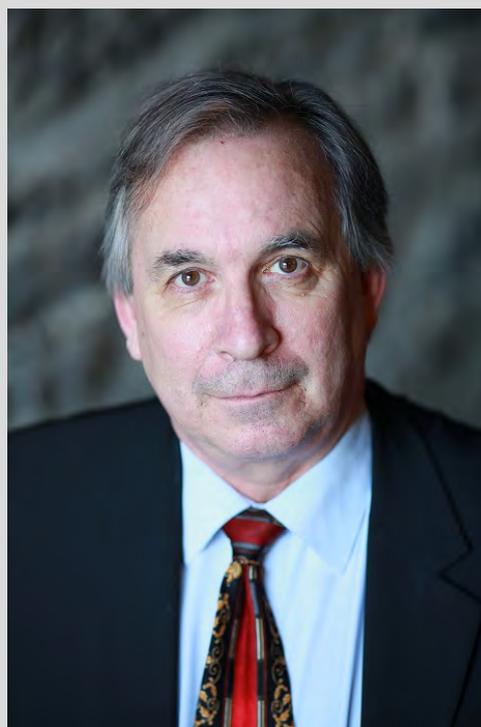
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## Scott Newark on immigration and national security

*This is the second instalment in a dedicated six-part series of the Macdonald-Laurier Institute's Straight Talk on the subject of immigration and national security with nationally-recognized expert Scott Newark. This instalment examines a number of broad issues affecting Canadian immigration such as our screening and removal processes, as well as assessing the security risks arising for Canada from our immigration policies and laws.*

**MLI:** Most Canadians want to maintain an open and welcoming immigration system, but keep out the criminals and security threats. So what are the big picture weaknesses in our immigration laws?

**Newark:** People need to appreciate that the immigration system is not just about screening people before letting them into the country. It also has to be effective in removing people, either because we discover they lied to get in or because they committed a serious crime once here. And it's also important that the system contribute to immigrants generally integrating into Canadian society, especially given the changed nature of security threats in the last 25 years.



**Scott Newark's** 30-year criminal justice career began as an Alberta Crown Prosecutor, with subsequent roles as Executive Officer of the Canadian Police Association, Vice Chair and Special Counsel for the Ontario Office for Victims of Crime, and as a security and policy advisor to both the Ontario and federal Ministers of Public Safety.

**MLI:** The first step in this process, screening people, means we want to keep criminals out. Is that correct or is there a broader context for screening applicants?

**Newark:** We obviously try to keep serious or career criminals out. We also try to reject people on a broader ground called “security inadmissibility”. This refers to not just actual terrorism or fundraising for political violence, but also a pattern of associations with menacing people or groups. It’s especially important for both criminals and security threats to get it right before the person sets foot in the country because current legislation makes it extremely difficult to remove them once they’re here.

**MLI:** Before moving to the issue of removing criminals and security threats once they’re in Canada, perhaps you could expand on the idea of aiding immigrants in their integration into Canadian society, which is a contentious issue.

**Newark:** In the west, including Canada, we have a distinct culture of secular democracy, rule of law, individual liberty, gender equality, and toleration and not everybody agrees with that. We need to make sure people don’t come here intending to undermine those basic principles. We also want to make sure people don’t import foreign quarrels into Canada. We understand that we have people coming from countries they have good reason to get away from, for example Tamils fleeing Sri Lanka, but we want to make sure they are not coming here to set up a base to continue the battle back home. Or take Somalia. There is probably no country with as long a history of, to put it mildly, difficult circumstances. But while helping people get away from there, we want to screen out those coming here to raise money for al Shabaab or recruit people to go back to Somalia and fight.

**MLI:** You talked about whether we have a culture then mentioned al Shabaab. And there was recently an attack in Mogadishu by a Somali-American who left a message telling fellow North American Muslims not to “just sit around and be a couch potato and just chill all day”. So that is what he thinks our culture is and clearly it rubbed him the wrong way.

**Newark:** That is the fundamental challenge in relation to Islamism. Their complaint is not necessarily something we have specifically done. It is who we are and it is very aggressive intolerance and there are repeated examples where recruiters targeted not just immigrants but second or third generation people here. Likewise, there are people who set up a mosque in a Toronto school and told the children that the boys sit at the front and the girls sit at the back and you are not allowed in the room if you are menstruating. If somebody in a screening interview is asked about replacing secular rule of law by imposing Shariah law in Canada and they say they want it, we need to say, ‘I am sorry, that is inconsistent with Canadian cultural values and you are not welcome in Canada’.

**MLI:** I presume the traditional focus of immigration screening was to watch for criminals, including checking with the authorities in the country they were coming from?

**Newark:** Correct. And it has expanded now into security. Let me repeat how important it is to get it right at the front end. Look at the thousands of people who have come here and then committed crimes that, under law, make them ineligible to stay and see how many are here still years later because of how our laws are drafted, especially the repetitive appeal processes. Frankly, the best way for somebody ordered removed from Canada for a crime to get to stay is commit a new crime because we will take you through the entire process all over again before we remove you. Fortunately, the Government has started to make reforms which are designed to improve screening and expedite removals for people who commit serious crimes after they’ve arrived.

**MLI:** With that many cases, we must not be doing that good a job on initial screening even of criminals.

**Newark:** The example I often use is a guy named Edmund Ezemo who was busted a few years ago for high-end vehicle theft, fraud, and shipping stolen vehicles out of the country, and the Toronto media reported that he was a non-citizen who had been deported from Canada for basically the same offences eight previous times. Think of the millions of dollars we have spent investigating and prosecuting him. And when Canada Border Services Agency (CBSA) was questioned about how he kept coming back, in follow-up stories, they just said it was very difficult to deal with him because he had ‘good’ documents. That is not a satisfactory answer. Ezemo is by no means an isolated example. The bottom line is we can prevent abuses like this through deploying technologies like face recognition biometrics, and it is past time we did so. Full disclosure: I help a number of security technology companies which is part of how I’m aware of the potential technological solutions to some of these issues.

This is also an area where Citizenship and Immigration Minister Jason Kenney has championed improvements to our system such as in C-31 which expressly authorizes the taking of biometrics in defined applications. There’s more to do but we finally appear to be headed in the right direction.

Look at those cases where the CBSA was finally forced to release identities of wanted criminal inadmissible, and how many have long records of crimes in Canada which the law theoretically says should have got them removed long ago. Anybody wonder why they’re still here and how they were released on bail? Deporting such people is also a form of crime prevention because it keeps them off the street where they may commit very serious crimes. The case in this area I originally got involved in was in the early 90s with a guy named Clinton Gayle who was a drug dealer with several convictions that should have been removed but wasn’t. Ultimately he was released because it was taking so long to remove him and he went back to drug dealing and thereafter shot and killed a young Toronto constable named Todd Baylis. Fifteen years later this thug is still sitting in a Canadian jail because under the International Transfer of Offenders Act, he has to consent to be removed to his home country of Jamaica. Guess what — not many foreign criminals consent because they’d rather stay in Canada, even in jail, than return to their home country. We’ve even got cases of non-citizen criminals serving sentences in Canadian jails and committing *new* crimes while in jail which means they’ll be here even longer. Clearly, we need to change the law to remove the requirement of offender consent to transfer.

**MLI:** In the last 10 or 20 years the security threat has changed, from people like the IRA coming here to raise money for activities back in the United Kingdom, to people coming here not just to raise money and recruit for terrorism elsewhere but to recruit people to attack Canadian targets. Where are we roughly in screening out that kind of threat?

**Newark:** Obviously better than what we used to be, but cases like Abdulmatallab, the 2010 underwear bomber on the plane to Detroit, demonstrate we have a long way to go. In 2005, I was part of a review done for the Border Officers Union on border security which included assessing the effectiveness of the ‘bad guy’ lookout information provided to front line officers. I had just come from working in Washington DC with the Investigative Project on Terrorism and I was aware that there were five people with a Canadian connection on the FBI’s most wanted Terrorist Watchlist including one reported as travelling on a Canadian passport. I checked how many were on the CBSA watchlist for security — zero. The C-31 biometric screening and the Minister’s comments suggest that we are about to get that biometric bad guy database to match against who we screen but it can’t come soon enough. My understanding, as well, is that CBSA is itself taking steps to modernize its lookout system which is definitely encouraging.

Security is more difficult than criminality because we need to identify connections of interest globally, which means we have to do a better job of sharing information with other countries so we understand who the guy really is before he gets on the plane. This is made more difficult because of increasingly sophisticated phoney

documents and false I.D. Hence the need for face recognition biometric screening at both points of departure and ports of entry.

I think the security perimeter agreement with the United States is the beginning of a far more thorough job of cooperating with the Americans...and others... to identify exactly who we are looking for. Having now seen the details, I'm optimistic we're heading in the right direction.

**MLI:** In general terms, if someone is admitted to Canada and commits a crime here, what does the law say is meant to happen to them?

**Newark:** They are deemed to be inadmissible. There are some nuances in the Immigration and Refugee Protection Act, depending on the nature of the crime measured either by sentence actually imposed or number of offences that are committed but generally speaking, somebody is rendered inadmissible, and I quote Section 36 (1a), "*Having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.*" And remember that our system has very broad maximums so for instance, if someone was convicted of a break and enter that section would apply. Then, we also have a lesser ground just called criminality, which is Section 36 (2a): "*Having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment.*" Now that means virtually anything. The issue is not so much the legal criteria as what we actually do about people who render themselves inadmissible; that is the real problem.

**MLI:** If somebody were to shoplift a pair of socks might they in principle become ineligible?

**Newark:** Yes in theory but there are, appropriately, pre-determined legislative presumptions against an inadmissibility finding in single, less serious cases. And while I think most people would be okay with officials using their discretion to not remove a one-time shoplifter, that would probably change if the person kept committing crimes including more serious crimes.

**MLI:** Then what is meant to happen if somebody does this? And what really happens?

**Newark:** Theoretically, what happens is an officer – it used to be any peace officer but the Immigration and Refugee Protection Act narrowed it to only designated federal immigration or border service officers – issues an 'inadmissibility report'. You would think that would be automatic based on convictions, but it isn't. Somebody has to notice that someone has been convicted. They then write a report that goes up to the bureaucracy of the Ministry and the Minister then makes a decision. More exactly, he or she can make a decision; they don't have to. It can be sent to another administrative process, the Immigration and Refugee Board, for processing to determine whether the person should be removed. If they say yes it triggers a further slow process with appeals from individual decisions, grounds of appeal on humanitarian and compassionate grounds and grounds for appeals if somebody claims that they are at risk of torture, if they are sent back to their country. And each of these has separate internal appeal mechanisms. It is this repetitive duplicative process that makes it very difficult and time consuming to remove people. The Government has now introduced C-43 which will, in effect, lower the standard from a custodial sentence of two years or more to six months or more to trigger an exemption from one of the appeal processes. It's a start.

**MLI:** In principle should there be a presumption that they are going to be removed unless they are successful in an appeal? If the Immigration and Refugee Board gets hold of the case why don't they just say they should get out now?

**Newark:** Because their lawyers can and do say they that have built a life here with their family and really he's not a bad guy and they just made one (or more) mistake and then ask for another chance. And the IRB has to ponder the claim and make a ruling, which can be appealed, which causes delay and a chance to argue again that things have changed all of which combine to explain why it often takes years for a supposedly final decision.

One point Immigration Minister Kenney has been making effectively is that even if you get away from the administrative procedure and get into the legal appeals, courts are not supposed to be substituting their judgment for lower boards or Ministers about whether humanitarian grounds should apply. They are just supposed to be looking at and asking did the body do its job by considering the evidence that was before it. Minister Kenney made that point in a speech at Western Ontario Law School about a year ago and got attacked for challenging the judiciary. I think we could even raise the bar on what creates a presumption of removal provided we streamlined the process of considerations, appeals and so on, because one of the basic truths of public policy and law enforcement is that clarity and certainty promote accountability.

**MLI:** How aggressive do we need to be about making sure immigrants don't create a cultural climate that radicalizes people after they get here, and how far are we from where we ought to be on this?

**Newark:** I'm not sure aggressive is the right term but I think we need to realize that the basic principles of our society need to be asserted and protected including when it comes to immigration policy and practices. Unfortunately, I think we are very far from where we need to be.

Take the Omar Khadr case. People are largely focusing on whether he should be allowed to come back to Canada. Frankly, that's not the real issue because he was born here and is a Canadian citizen. That's the case because his parents made the deliberate choice to have him and his siblings born here. This practice is known as creating 'anchor babies' because it creates an extra link to the parents' adopted country, which is what his parents wanted. Canadian authorities were aware of what his parents were up to before 9/11 and Prime Minister Chrétien even visited the Pakistani Prime Minister to help get Mr. Khadr Sr. out of jail in the 1990s. We knew or certainly should have known that these kids were being raised in this jihadi cult atmosphere, so where were the armies of social workers to move in and take them away so as to protect them as Canadian kids from their parents? That same issue comes to mind with the so called Shafia 'honour killings' in Kingston where it is clear that the murdered daughters had repeatedly tried to tell authorities in Canada that they were at risk but got no useful protection from public authorities. Surely as Canadians...these kids deserved better.

**MLI:** What about schools banning Halloween costumes partly because of cultures that do not celebrate Halloween, which might be code for "Muslims", saying we will change our ways so you don't have to change yours.

**Newark:** I think it is really silly for us to be doing things like that, but that is not necessarily a security issue. What concerns me more are public authorities tolerating prayer services inside public schools where boys sit at the front and girls sit at the back. Those kids are in Canada and that kind of promotion of gender inequality is not something we should be allowing to happen just because it's being done in the name of 'religion'. The message sent is as unacceptable for the boys as it is for the girls. By the way, this is probably an example where the population is well ahead of its political leadership.

## Recommendations

- 1) Improve screening including through biometrics to better identify people seeking entry to Canada with false documents.
- 2) Take legislative and policy actions to expedite the removal of non-citizens who commit defined crimes once in Canada or who have lied to gain admission.
- 3) Prioritize immigrant integration into Canadian culture and proactively target for removal or citizenship revocation and removal those who seek to radicalize others into actions harmful to Canadian security and inconsistent with Canadian values.



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