



True North In Canadian Public Policy

Straight Talk

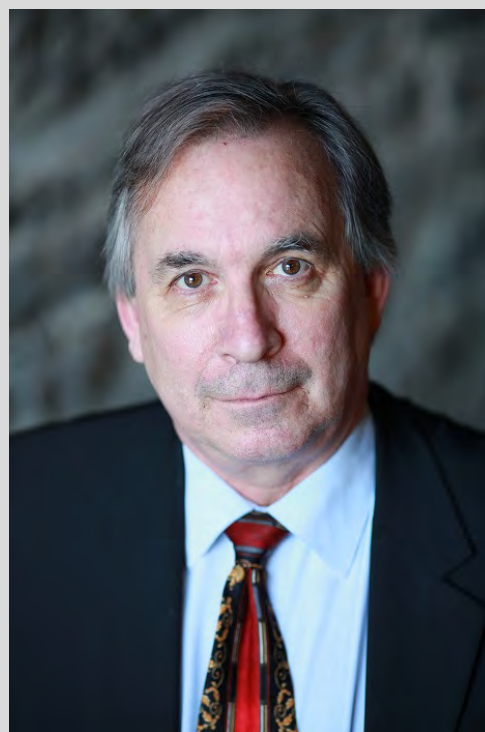
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Scott Newark on immigration and national security

This is the final 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 assesses recent immigration reforms enacted by the Government of Canada compared to the problems and recommendations provided in previous instalments.

MLI: You have made a number of recommendations on immigration and security, from big picture questions to details of screening, the physical border, and deportation. Now that the government has enacted Bill C-31 and C-45 and various supporting Regulations, I want to run through them and see how many are being legislated or have been implemented in other ways. Your first recommendation was for better screening including biometrics so we would be able to spot people coming in with fake documents.

Newark: I am very pleased that Bill C-31 specifically authorized taking biometric samples from people who are seeking entry to Canada. Not everybody; it starts with those seeking temporary residence from 30 designated non-visa countries, so it will affect people who are already required to seek some sort of pre-arrival screening. C-45 also authorizes a new



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screening of persons from non-visa countries through what is known as an ‘Electronic Travel Authorization’. It also approves Canada Border Services Agency (CBSA) receiving passenger data of persons heading to Canada so we can do the security and inadmissibility checks *before* departure rather than after arrival. I was watching Minister of Citizenship, Immigration and Multiculturalism Jason Kenney testify before the House Immigration Committee on this and it’s clear how completely he gets it because he was talking about the need to use this tool to match the biometrics taken against persons who were inadmissible to Canada. At the end of his appearance, he provided examples of people already deported for criminality that re-entered Canada illegally and thereafter committed new crimes. The Minister clearly understands the potential benefits that biometric screening offers and C-31 is a big first step in that direction. It is very good news.

MLI: Is this biometric screening face recognition?

Newark: C-31 is not specific but the newly published regulations specify both face and fingerprint recognition samples. It’s critical to deploy the cameras to capture the facial images to match to the databases at both point of departure and port of entry because lots of bad guys use legitimately issued documents that are then altered to add their photograph.

MLI: The next issue we discussed was expediting the removal of non-citizens who commit crimes in Canada that make them ineligible to be here, or are found to have lied about things that made them ineligible to get in the first place.

Newark: That is an area C-31 did not touch on although the regulatory process under C-11 is now in place to reduce rights of appeal on refugee claims when the refugee claimant is coming from a country (and 27 were so designated in December 2012) determined to presumptively be “safe”. Speeding up the process of rejecting such claims would also speed up the process of removing the claimants. And it’s also a step in the right direction in terms of making judgements based on the facts in front of you. C-31 did not deal with the expedited removal of people convicted of crimes but that’s in C-43 which is still before Parliament.

MLI: Another screening recommendation you made was to amend the *Immigration and Refugee Protection Act* to update the legal definition of security-related inadmissibility to better reflect the looser organization and transnational nature of modern terrorist networks.

Newark: There’s nothing specifically on that subject in any of the Bills that have been passed or are before Parliament, although C-43 creates an unspecified discretion for the Minister to deny temporary resident status to a person on unspecified ‘public policy considerations’. But in fairness, and this will bear repeating, it would be unrealistic to expect a single Bill to address all of these issues. Immigration and security is a very complex subject that raises a huge number of issues and I would not have expected to see them all dealt with in a single Bill. I want to stress, that re-defining what constitutes grounds for ‘security’ inadmissibility is something that needs an open, candid and public debate.

MLI: Did it deal with your suggestion to try to extend the Safe Third Country Agreement to the European Union, Australia, New Zealand, and Thailand and other such places so we would deal with potential refugee claimants who had reached those countries before they got on a boat to Canada, not after?

Newark: That is not specifically within C-31 although Canada has taken fairly aggressive and to my understanding successful steps in relation to working with countries overseas, particularly Thailand and India, to prevent people getting on the boats to begin with. Also, as noted earlier, the Regulations under C-11 now empowers the government to make fact-based judgements whether, for example, it makes sense for somebody

to claim refugee status from Hungary given its legal system, lack of persecution, and so on. C-31 also adopted some of the measures that were originally in C-4 dealing specifically with human trafficking and organized human smuggling which are also improvements.

In the Minister's testimony I mentioned above, I also thought he was exactly right in saying the whole purpose is to create disincentives for people to break our laws. There was even an exchange with the Liberal immigration critic who was appalled that in effect the Minister was creating a double standard for different refugees and the Minister basically said there should be one standard for people who obey our laws and another for people who break them, which is a very good idea. I doubt that's a revolutionary concept for most Canadians.

MLI: I would not expect them to move quickly on matters involving the physical border because it's a major physical infrastructure issue, but you talked about automated and integrated sensor networks to keep an eye on the physical border without having to have boots on that open, unforgiving ground.

Newark: Right. And C-31 or C-45 didn't have anything on that, but they wouldn't because it's an operational, not legislative, matter.

MLI: Okay. Would that also be true of your suggestion to deploy resources for mobile joint force interdiction?

Newark: Yes. Buried within C-38, the Budget Bill was legislation that ratified the Canada-US Shiprider Agreement that covers the joint force cross border marine patrol. But as I said before, for reasons which have never been explained, the agreement excludes the CBSA which makes no sense. Even more alarming is that a government that appears to consider border security a high priority announced last year that they are going to allow CBSA to cut 350 border service officer positions and eliminate 100 or more intelligence positions as well. The key to border security, as the Canada-US Border Agreement reflects, is intelligence-led enforcement so it's bizarre to cut hundreds of front line operational and border intelligence positions. There are also cuts to in-land enforcement, namely tracking down criminal deportees within Canada. That has nothing to do with C-31 but in terms of overall government actions, eliminating or reducing CBSA operational capacity will definitely undo some of the good the legislation does.

MLI: Okay, I think that may partly answer this because the next thing I was going to touch on was engaging in full inter-agency and cross-border information sharing.

Newark: C-31 expressly includes authorization for Citizenship and Immigration Canada to provide services to CBSA and others. Frankly, from the work I've done, I think there is already ample legal authorization in relation to that. It is more of an operational issue and we do not know the extent to which that is occurring. It is not a good sign, however, to learn CBSA intends to cut intelligence capacity and that we are seemingly backing away from some of the commitments on the border agreement. I do not want to over-state this because nobody really knows how it is going to play out, but, as I say, when the Border agreement so wisely emphasizes intelligence-led enforcement and then 3 months later CBSA says they are cutting all of these front line positions – well, I hope somebody knows what they are doing in there or that the Minister's office is paying very close attention to the details. Do you remember when Minister Flaherty said the cuts they were talking about were to head office bureaucracy? Well, boots on the ground, intelligence operations, in-land enforcement, and even dog teams are definitely not head office bureaucracy.

MLI: Okay. This takes us to the next subject, which is the removal of people who have somehow gotten in here improperly or else have gotten here and misbehaved themselves. One of the things that we had talked about was

the need to streamline the appeals process and create greater objective certainty about the process. Have you done anything on that?

Newark: Yes, C-31 is a big step forward on that, and specifically, for the first time we can make this objective certification that if you are coming from countries that we objectively determine are not likely countries that there would be a refugee claim from, then there is a streamlined, expedited process. That is actually in legislation for the first time which is significant in itself plus, in doing that, there is a commitment to stop using resources for things that are in effect counter-productive and thus be able to dedicate resources to expedite all of the other steps along the way. The same is true for the changes dealing with future cases like the people who arrived on the Sun Sea and were smuggled into Canada instead of going through the required pre-arrival screening. C-31 consciously builds in a variety of disincentives to the people who are abusing the system in the first place and that is a good step towards making it work more efficiently. C-43 proposes to remove duplicative appeals to more convicted non-citizen criminals which should also translate into more expeditious removals.

MLI: Okay, one very specific thing that you talked about was to remove the requirement for non-citizen prisoner consents for transfer to their home country.

Newark: No, that is not there.

MLI: And then there was the idea to make removal of criminals and security risks a higher priority and improve co-ordination, which I take it, is policy in operation?

Newark: It is, but I would tell you just from my observation in watching the stuff in relation to the human smuggling and looking at the making of expedited removal decisions on bogus refugee claims, that tells me that message has gotten through. It may not be manifested specifically on the kinds of operational things that I was talking about, but that would not necessarily be part of legislation anyway.

MLI: What about the use of electronic monitoring for high risk individuals, whom we would find inadmissible?

Newark: That is not in any legislation passed or before the House although the Supreme Court authorized its use pursuant to IRPA's general release authority in the *Charkaoui* case. Similar provisions to EM for federal parolees is now in place with the passage of the Crime Bill (C-10) and the House Public Security Committee has completed a study examining the use of electronic monitoring including for *Immigration and Refugee Protection Act* applications. This appears to be a work in progress but it definitely needs to get finalized and deployed.

MLI: There is one final issue, which is the idea that we should be paying more attention to integrating immigrants and that we should consider revoking the landed immigrant status of people who are deliberately trying to radicalize immigrant populations against Canadian and Western culture.

Newark: Sort of like Mr. and Mrs. Khadr?

MLI: Yes.

Newark: No, that is not in the legislation. We talked about modernizing the inadmissibility criteria to reflect the reality of the threat of extremist Islamism. Revoking the acquired citizenship of people engaging in that activity in Canada would be the mirror image, if you will, and would have to be added to the Citizenship Act. Neither of these issues have been dealt with so far which is not surprising as they are larger issues that require full and candid public debate. C-31, C-38 and C-45 create targeted amendments on specified targets which are

extremely important precisely because there is so much to be done. The stuff we are talking about is a linked subject, but it does not surprise me that it is not included in a bill like this. It is work left to be done which should begin with that candid debate about what constitutes a security threat to Canada today. The debate won't be easy but it needs to happen.

MLI: Okay. At this point, is there anything else that we have not touched on or something that you really think should be the next step?

Newark: Maybe just a couple general comments. I am encouraged because I think that the legislation enacted has taken some very precise steps at recognizable situations that required change such as human smuggling or people making claims from the European Union or the US for refugee status. The same thing is true about the biometric screening; it is a very targeted screening measure that will produce results. The Minister's comments before Committee demonstrate that he understands this and that there is a determination to make the system work better by expediting decision-making. I am not surprised it does not cover everything but, to be fair, it took us 25 years to get to the situation we are in now so it would be unreasonable to expect that we were going to fix it in a single Bill overnight. The *Beyond the Border Agreement* and its Action Plan are also enormously positive developments especially because of the detail, timelines and assigned responsibilities they provide. Precision promotes accountability which promotes productivity and that's where I think we're headed.

MLI: Thanks, and we'll be watching with interest to see if you're right.

Recommendations

1. Include Canadian Border Services Agency in the Shiprider program.
2. Reverse cuts in operational capacity of CBSA particularly intelligence positions.
3. Introduce electronic monitoring of high-risk individuals.
4. Expedite removals by eliminating or reducing appeals following criminal convictions.



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