

Canada: Ruling in O'Neill case underlines threat to democratic rights

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An October ruling by Ontario Superior Court Justice Lynn Ratushny in the case of *Ottawa Citizen* journalist Juliet O'Neill highlights the extent to which the Canadian ruling elite is prepared to break with democratic norms in order to prosecute its right-wing program of militarism, cuts to public and social services and closer cooperation with the Bush administration.

Justice Ratushny ruled that the Royal Canadian Mounted Police (RCMP) had egregiously violated O'Neill's rights as a journalist, with the aim of intimidating the press as a whole, when it raided O'Neill's home and office in January 2004 and seized box-loads of her notes and files.

The events dealt with in Ratushny's ruling took place in late 2003 and early 2004, shortly after Maher Arar's return to Canada had created a not insignificant crisis for the Canadian elite. Arar, a Canadian citizen of Syrian origin, was detained in late September 2002 by US authorities in New York en route to his home in Montreal. On the basis of spurious "intelligence" provided by the RCMP and possibly other sections of Canada's national-security apparatus, US authorities sent Arar to Syria, where he was imprisoned and tortured for nearly a year.

The rendition to torture of an innocent man—with the obvious complicity of elements of the Canadian state—threatened to focus unwelcome public attention and outrage on the wider agenda of the Canadian ruling class. Like its counterparts around the globe, it has seized on the events of September 11, 2001 to advance, in the name of the "war on terror," a massive assault on democratic rights, twinned with a program of expanded military intervention overseas.

During Arar's ordeal in Syria, the Canadian Security Intelligence Service (CSIS) maintained contact with Syrian authorities. CSIS agents even traveled to Syria, so as to pass interrogation questions to Arar's torturers and, in return, received the "confession" that Arar's Syrian jailers beat out of him. Even after the Canadian government had concluded that there was no evidence whatsoever that Arar was, or ever had been, a terrorist, CSIS and the RCMP sought to prevent his release from a Syrian prison, refusing to affix their signatures to a Ministry of External Affairs' appeal to Damascus to release Arar.

After Arar returned to Canada, O'Neill penned newspaper articles citing leaked documents from Arar's interrogation, including a torture-induced "confession" in which he said he had participated in terrorist training camps in Afghanistan.

O'Neill thus served as a conduit for the slander campaign that elements within Canada's national security establishment mounted against Arar—a campaign aimed at giving the public the impression that Arar was a terrorist and at derailing his efforts to uncover the role that the Canadian government and its agencies had played in his arrest and subsequent ordeal.

This slander campaign cut across the strategy the Liberal government was evolving to contain the fallout from the Arar affair. The strategy involved conceding that Arar had been a victim of an injustice, while

laying the blame for that mainly, if not entirely, on US authorities, and insisting that the mistreatment of Arar was an isolated case. For a long time the Liberals resisted calls for a public inquiry into the Arar affair.

But shortly after Paul Martin succeeded Jean Chretien as prime minister, and under conditions where the RCMP raid on O'Neill had generated much unfavorable press coverage, Martin ultimately convened a Royal Commission of Inquiry headed by Judge Dennis O'Connor—the better to bury any potentially explosive revelations beneath an official aura of reconciliation, and a protracted, tightly controlled bureaucratic process.

According to the statement of facts in Justice Ratushny's ruling, the Privy Council Office of the Government of Canada pressured the RCMP to put an end to the "leaks" organized to discredit Arar and it continued to exchange "media lines" with the RCMP as the investigation into the leaks proceeded.

O'Neill soon found herself subject to multiple forms of RCMP surveillance, and finally, in January 2004, the force staged a provocative raid on the journalist's home and office, seizing numerous documents.

Ratushny's ruling in favour of O'Neill declares this raid to have been a blatant violation of freedom of the press and strikes down aspects of the *Security of Information Act*, which served as the RCMP's legal justification for the raid. The judge also ordered that the material seized from O'Neill by the RCMP be returned to her.

According to Justice Ratushny, while the RCMP was following the letter of the law in enforcing the Act against O'Neill, the raid's "purpose was an abuse" aimed at "intimidating her into compromising her constitutional rights of freedom of the press." The ruling also points indirectly at the force's motive in acting so heavy-handedly against an ostensibly friendly journalist, stating that the warrants to raid O'Neill's home and office "chilled media reports on the Arar matter specifically and had a general chilling effect on political and investigative reporting."

The warrants were granted under the *Security of Information Act*, which was part of the battery of anti-democratic "anti-terrorism" legislation that the federal Liberal government passed in the months following the terrorist attacks of 2001. The substance of the law dates back, however, to a 1939 version of the *Official Secrets Act* (legislation first passed in 1889). The re-enacted legislation had two key draconian features: it brought virtually any non-public government document within its ambit; and it stipulated, as did the 1939 legislation, that anyone can be charged for "leaking" offences; not just those with an "official duty to the government," that is, select government employees.

The judge ruled that the *Security of Information Act* "fails to define in any way the scope of what it protects, and then, using the most extreme form of government control, criminalizes the conduct of those who communicate and receive government information that falls within its unlimited scope, including the conduct of government officials and members of the public and of the press." On this basis, she declared the legislation to be in violation of Canada's Charter of [constitutionally-protected] Rights and Freedoms.

Government representatives requested that the effect of the ruling be suspended for a year, meaning that the *Security of Information Act* would have remained temporarily in force. But the judge denied this request. Justice Minister Vic Toews soon announced that the minority Conservative government would not challenge the ruling. Instead, the government would pursue “legislative options.” In other words, the Conservatives will make minor revisions to the anti-terrorism laws advanced by their Liberal predecessors, with the aim of crafting legislation that is less vulnerable to judicial challenges.

For their part, the big business media are holding up the Ratushny ruling, just as they did the final report of the O’Connor commission, as proof that Canada’s authorities have gotten to the bottom of the Arar case and that democratic rights are secure.

The *Globe & Mail* celebrated the ruling as “red-letter day for press freedom” and “a nice coda to the Arar affair.” According to Canada’s newspaper of record, “The RCMP raid on [O’Neill’s] home backfired spectacularly; it created so much political pressure that Mr. Martin called a judicial inquiry into Canada’s role in the deportation.” The *Globe* editorial concluded with a sigh of relief: “Thank goodness, in retrospect, for the raid. It allowed Canada to demonstrate that it is not a police state, after all.”

The deepest hope of the Canadian elite vis-à-vis the Arar affair is vividly on display in this *Globe* editorial—the hope that Justice Ratushny’s ruling, together with the O’Connor report, will allow the lid to be finally shut on the Arar case. The affair had threatened to expose the Canadian state’s involvement in gross violations of the most basic rights of several of its citizens and could cause the public to take a far more critical attitude to the raft of changes made to the law in the name of fighting terrorism.

As the *World Socialist Web Site* has previously explained, several other Canadian citizens like Arar were detained without charge and tortured by Syrian or Egyptian authorities with the connivance of Canada’s national security forces. The only conclusion one can draw from what happened to such Canadians as Abdullah Almalki, Ahmad El Maati, and Muayyed Nureddin is that Canada’s security establishment developed its own form of rendition, collaborating with authoritarian governments to circumvent Canadian prohibitions on the detention of persons without charge and the use of torture (see: Maher Arar’s ordeal, the Harper government and the assault on democratic rights).

Ratushny’s ruling does not even exhaust the unanswered questions left regarding the narrower sequence of events surrounding the O’Neill raid. What was the full content of the documents leaked to O’Neill and what will now be their fate? Who was the source of the defamatory leaks about Arar to O’Neill? To what extent were Liberal government figures involved with, and apprised of, the nature of the RCMP’s “crackdown” on the leak?

The events surrounding the O’Neill raid point to a vicious struggle within Canada’s elite—the national-security apparatus, the government, and the corporate media—over how the fallout from the Arar affair was to be contained. While powerful elements in the security apparatus were mounting a dirty tricks campaign of slander against Arar with the support of the *National Post* and *Ottawa Citizen*, the two most influential newspapers in the Canwest media chain, the Liberal government and other sections of the press were by fall of 2003 conceding that Arar was an innocent victim.

And this struggle continues. Several former Liberal cabinet ministers have alleged that the RCMP lied to them about the Arar affair to cover up the fact that the RCMP had fingered Arar to US authorities. CSIS has likewise sought to blame the RCMP for the “mistaken” intelligence concerning Arar. The minority Conservative government, meanwhile, has expressed its full confidence in RCMP Commissioner Giuliano Zaccardelli.

Based on the facts in the public domain, the *World Socialist Web Site*

cannot render judgment on all the claims and counter-claims. There is a long history of bad-blood between the RCMP and the Liberal government. In the last federal election, RCMP Commissioner Zaccardelli let it be known that his force was investigating elements in and around the Liberal government for possible insider-trading. His announcement served to lend an aura of truth to Conservative claims of Liberal corruption and arguably played a major role in the election’s outcome.

The Liberal complaints about RCMP lying, however, have been very much in the form of an alibi for their role in the Arar affair. The Liberals have not shown the slightest interest in alerting the public to the danger to democracy represented by a national-security establishment that refuses to accept civilian control. Moreover, it was the Liberals who, with the support of the Conservatives and the other parliamentary parties, unleashed the RCMP and CSIS. In the aftermath of 2001, they dramatically raised the RCMP’s and CISIS’s budgets and gave them new powers, while passing a battery of laws that overturn longstanding judicial principals such as the right to remain silent.

As for the corporate media, it has been complicit in the assault on democratic rights. The *World Socialist Web Site* condemned and opposed the raid on O’Neill for it constituted a flagrant attack on the rights of the press and would have set an ominous precedent. That said, it is important to note the striking contrast between the media’s reaction to the raid on O’Neill, who was serving as a conduit for a dirty-tricks campaign mounted from within the country’s national-security apparatus, and its support for the battery of anti-terrorism laws and the role it played last June in amplifying the sensationalist claims of the RCMP and CSIS in the purported Toronto terrorist plot.

The ruling in the O’Neill case upheld traditional press freedoms and struck down parts of an especially reactionary piece of legislation. But in no way does it reverse the ongoing assault on democratic rights. It is being celebrated by the establishment with the aim of continuing the coverup of the Arar affair and, beyond that, the much larger pattern of Canadian “rendition” cases. And it is being used, politically, to give a “liberal” veneer to the militaristic and anti-democratic agenda that the Canadian ruling elite is implementing in the name of the war on terror.



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