

PROFESSIONAL DEVELOPMENT INSTITUTE

THE SOCIALIZATION OF TERRORISM IN CANADA

BRIEFING NOTE



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“Terrorism is a peculiar category of violence, because it has such a cockeyed ratio of fear to harm”

– Ben Saul (UN Special Rapporteur on Human Rights and Counterterrorism)

The academic and institutional battlefields are littered with the best intentions of those attempting to bring a universally recognized definition to the term ‘terrorism’. The concept of ‘where you sit is where you stand’ certainly applies to such endeavors. In addition to considering how best to integrate such fundamental questions as who, what, where, why, and how in a definition of the term, attempts have been confounded and complicated by where definitional efforts have been centered within a particular community. Do you adopt a social science or quasi-scientific approach? From a jurisprudence and law enforcement perspective? Terrorist financing? Intent and motivation? Psychological drivers and personal profiles of individual terrorists? Organizational structures? Cultural and anthropological approaches? Rationality and mental health? Historical considerations? Critical study interpretations? Does the centre of definitional efforts impact on how counter-terrorism policies, strategies and programs are designed?

All this has made for terrorism remaining a contested concept over the decades. As observed by Schmid and Jongman (1988, p. 101, as cited in Jackson, 2009), and as we shall explore, “The nature of terrorism is not inherent in the violent act itself. One and the same act can be terrorist or not, depending on the intention and circumstances.” But how terrorism is defined by whatever community is not a trivial issue. Definitions carry political and policy consequences that govern the counterterrorism space and impacts how threats and risks are articulated going forward (Goodin, 2006, p. 4). How the threat environment endures is often just as much an outcome of how a state elects to respond to the threat, as it is the agenda of terrorist entities. Terrorism charges cannot be successfully prosecuted absent clearly defined offence elements.

Finally, in something of a personal irritant, terrorism is often conflated by politicians or media pundits with the terms “insurgency”, “extremism”, or “guerrilla warfare”, which are not the same forms of political violence at all. All this to say, any sort of an informed discussion related to the definition of terrorism remains something of a scholarly minefield, and not for the faint of heart.

Consequently, this narrative is not in any way attempting anything so ambitious as to be yet another stab at a universal definition. Rather, it seeks to provide something of an overview of, and contribute to, recent discussions of how terrorism is situated and considered within the broader context of extremism and ‘national security’ in a specific country (Canada), with references to a specific agency (the Canadian Security Intelligence Service - CSIS) and absent any suggestion there is a need to amend how terrorism is currently defined within Canada’s *Criminal Code* or other legislation.

The Genesis of Current Discussions in the United States

In the immediate aftermath of 9/11, and in the 15 or so years that followed, the concept of terrorism and how it was defined and refined was linked closely to the *modus operandi* of groups or individuals engaged in what was termed jihadist, Salafist, or most broadly, religiously-motivated terrorism. While academic efforts examined terrorism in this context from a number of different perspectives as noted previously – organizationally, psychologically, motivation, judicial, attack planning and targeting, underlying causes – the conceptual goal posts as to what constituted terrorism were reasonably well defined and accepted.

Yet even at the peak of the Islamic State of Iraq and Syria's (ISIS, or Daesh) control of large swaths of Syria and Iraq circa 2014 and 2015 and beyond, there was an emerging undercurrent of parallel definitional discussions centered largely in the United States serving to shift definitional questions away from an exclusively religiously motivated-based focus. A number of high-profile attacks by a lone gunman against both random and targeted populations (e.g. Charleston Church Shooting, Chapel Hill North Carolina, Orlando nightclub shooting, Las Vegas Strip, Fort Lauderdale Airport Shooting, Dallas police shooting, Tree of Life synagogue in Pittsburg), generated debate as to whether such attacks should be classified as terrorism in the 'traditional' sense. New considerations arose such as whether a dedicated terrorism category aligned with right wing or white supremacist groups was warranted, whether attacks were hate crimes, or random criminal acts in the 'ordinary' sense, apolitical mass casualty incidents.

The motivation behind these attacks and the resulting fatalities seemed to suggest a continuing focus exclusively on jihadist terrorism was misplaced, at least in the United States. A report by the Centre for Strategic and International Studies (CSIS - not to be confused with the Canadian agency) organization indicated 94 percent of recent terrorist incidents in the US were linked to what it defined as "domestic terrorism", while jihadist-based attacks amounted to only five percent (Doxsee and Harrington, 2021). Resulting academic discussion and investigations examined the definitional and judicial complexities associated with where intentions, motivations, objectives, psychologies, affiliations and other characteristics of individual attackers overlapped between terrorism, hate crimes and random mass shootings and where, conversely, there was a clear delineation between the three (Sullaway, 2017).

There is a need to introduce hate crimes in the equation at this point. Hate motivated violence is a defensive posture by those who seek to protect against an erosion of their traditional cultural norms, values, power and influence. In many cases, the threat to traditional culture is seen as a perceived outcome of an abrupt and negative change to society or its norms and values. In the extreme, some individuals elect to take the law into their own hands or incite a mass push-back by like-minded 'traditional' societies.

Again, how one chose to view a particular attack was largely a matter of "where you sit is where you stand." In the case of the Charleston church shooting, for example, then US Attorney General Loretta Lynch stated "... These types of crime, which involve hatred and racial animus are specifically seen as domestic terrorism." On the other hand, as it pertained to the same attack, then FBI Director James Comey stated "Terrorism is an act of violence... to try to influence a public body or citizenry, so it's more of a political act... I don't see this as a political act" (Sullaway, 2017, p. 92). Such obfuscation obviously makes it difficult for law enforcement agencies and prosecutors to apply the appropriate charges to individuals where the specific elements of a case overlapped into terrorism, hate crimes or apolitical mass shootings. Of course, the definitional issue gained more attention as a result of the January 6, 2021 assault on the Capitol building in Washington, characterized in some circles as a terrorist attack.

The various definitions of terrorism within the US' national security and law enforcement communities provided for a wide array of ambiguous offences that were prosecuted as terrorism offences but were perhaps better situated as

hate or conventional crimes. In order to pursue maximum sentences, overly-keen prosecutors sometimes chose to apply terrorism charges in situations that were clearly unrelated to terrorism (Buchhandler-Raphael, 2012; Demleitner, 2003).

One outcome of the discourse within American academic and practitioner communities was the release of the first *National Strategy for Countering Domestic Terrorism* in June 2021. The *Strategy* is interesting for five main reasons. First, despite the fact the *Patriot Act of 2001* contained a specific definition of domestic terrorism, the *Strategy* represented something of a 'back to the future' moment. Though recognizing it references certain transnational aspects of domestic terrorism, it once again bifurcates the terrorism threat into two distinct geographic zones – here and 'over there'. A similar view prevailed prior to 9/11, but the Chinese wall came down in the immediate aftermath of 9/11 when there was a recognition the transnational nature of jihadist terrorism transcended the domestic – global jurisdictional split.

Second, the strategy was clearly implemented to address perceptions domestic white supremacist / xenophobic and anti-government communities represented the main terrorist threat to the fabric of the country (National Security Council, 2021). Third, while the *Strategy* noted the nature of the domestic terrorism threats and proposed a framework for countering them, it didn't provide political or policy support for new legislative or legal reforms to address ongoing debates regarding the need for greater clarity of how terrorism / hate crime / conventional crime charges should be applied.

Fourth, while there is clearly a focus on xenophobic and anti-government threats (arguably all hate crimes are, by default, right wing or white supremacist in origin as they target people based on their group membership), the *Strategy* notes it makes no distinction of political ideologies – left, right or centre (National Security Council, 2021). This is most appropriate in today's threat environment where domestic-based individuals or groups engage in what has been referred to a "salad bar ideologies", "fringe fluidity" or "ideological convergence". This describes the phenomenon where ideologies of individuals or groups overlap in the short term, often resulting in strange bedfellows – white supremacists going green, incels with jihadist groups, etc. Individuals shop around the ideological menu to find something that fits their respective ideological tastes, resulting in a patchwork of beliefs that makes for a difficult pre-emptive mitigation strategy.

Fifth and finally, "the *Strategy* served to tie counterterrorism efforts to broader *social issues* (my italics) such as systemic racism, police reform and gun control" (Doxsee and Harrington, 2021). This suggests a willingness on the part of senior decision makers within political and security communities to recognize and accept there is something more behind the motivation and intent of domestic terrorism attacks than a nexus to political agendas exclusively, and that specific ethnic, religious, gender and sexually oriented communities are vulnerable to violent attacks. As such, mitigation efforts will require greater involvement by non-traditional partners in both government and civil society.

At the time of writing, I do not believe any other government has elected to make a formal policy or strategic distinction between domestic and globally-based terrorist threats. Nevertheless, the *Strategy* acknowledges the jihadist threat that consumed intelligence and national security agencies in the US for two decades, while still a concern, no longer represents the main threat to the safety and security of its citizens, at least at the domestic level. The *Strategy* also acknowledges that attacks no longer originate primarily with structured, hierarchical terrorist organizations, and the fluidity of 'salad bar' ideologies of individuals and attacks undertaken by self-radicalized or 'lone wolf' unassociated individuals continues to represent a significant security challenge.

The *Strategy* does not clarify the challenges faced by law enforcement and judicial communities in the United States when it comes to how attacks are classified when it comes to criminal charges – terrorism, hate crimes, or mass attacks. Furthermore, as noted in a recent article for *Foreign Affairs*, Hoffman and Ware (2023) note "Today,

violent American extremists cannot be charged for providing material support of patently violent domestic groups or for plotting acts which are otherwise classified as terrorist attacks when a foreign terrorist entity is involved". And unlike policy responses to 9/11, the *Strategy* may not get the same degree of wide-based public support, as recent attacks have not resulted in the same sort of unifying effect. The suggestion by media and academic communities that certain ideologies animating groups or individuals potentially prone to violence have become part of the legitimate political discourse, with an associated sympathetic base, is addressed in the *Strategy* only inasmuch as sensitivities associated with the First Amendment must be recognized.

In Canada

In parallel, academic and institutional discussions in Canada noted what was taking place in the United States, and agreed there was a need to move beyond a jihadist-centric focus when it came to identifying trending threats to the security of Canada. The Canadian Security Intelligence Service (CSIS) published in 2019, "*Threats to The Security of Canada and Canadian Interests*". The document served to generally support the direction of the American narrative, though perhaps not as dogmatically, in the sense that terrorism was positioned in two distinct environments - global and domestic. As reflected in the document, the former continues to face threats from "religiously motivated violent extremism" as defined therein (the term jihadist or Salafist terrorism is no longer used), while the latter involves low-resource, high impact attacks within a broadening violent extremist spectrum (Canadian Security Intelligence Service, 2019).

While the document acknowledges prevailing threats (returning foreign fighters, espionage and influence, cyber), it managed to generate considerable discussion in the aftermath of its release as it also included a number of non-traditional elements in how it chose to define "Ideologically Motivated Violent Extremism (IMVE)". These included "xenophobic violence" (racially motivated, ethno-nationalist), "anti-authority violence" (anti-government, law enforcement, anarchist), "gender-driven violence" (violent misogyny including "incels", anti-LGBTQ) and "other grievance-driven violence" as a catchall.

The inclusion of xenophobic and gender-based violence in particular served to push the boundaries of what CSIS traditionally considered threats on a day-to-day basis. This was consistent with how the US *National Strategy for Countering Domestic Terrorism* that followed sought to broaden the parameters of terrorism, by linking certain social drivers and community-based targets to the motivations and intentions of those who chose to engage in violent attacks. The document is also consistent with the US *Strategy* in that it forgoes traditional right wing / left wing characterizations in favour of broader ideological motivation monikers.

The CSIS document was subsequently augmented by a number of official threat-based updates by different agencies. All served to support a broadening of the IMVE threat spectrum beyond religiously motivated terrorism and to respond to concerns from certain communities that counter-terrorism strategies and related jurisprudence were glaringly Islamophobic. However, while IMVE remains a key threat to Canada's national security" (Public Safety Canada, 2022), at the time of writing, foreign interference is currently considered the greatest strategic threat to Canada's national security, according to CSIS (Mundie, 2023).

Unlike the discourse in the United States, focused on the overlap and definitional and judicial challenges associated with terrorism, hate crimes, and random mass shootings, and how terrorism charges are at times gratuitously applied, debate in Canada has focused instead on two main issues in parallel. First, whether issues linked to xenophobic, gender-based or some "single issue" attacks constitute threats to national security, and second, whether they're most appropriately designated as terrorism or perhaps something else.

As to the first point, while certain case law has defined it, in Canada there is no statutory definition as to what constitutes 'national security'. The closest generic definitions are identified in section 2 and section 12. 1(1) of the *CSIS Act* ("threats to the security of Canada") or section 2 of the *Security of Canada Information Disclosure Act-SCIDA* ("activity that undermines the security of Canada").

As a point of reference, in section 2 of the *CSIS Act*, threats to the security of Canada are defined as:

- (a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,
- (b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
- (c) activities within or relating to Canada directed toward or in support of the threat or use of acts of *serious* (my italics) violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and
- (d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,

but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d). (*menaces envers la sécurité du Canada*).

The preamble of the *Act* reads, in part:

"Whereas the protection of Canada's *national security and of the security of Canadians* (my italics) is a fundamental responsibility of the Government of Canada;

And whereas the Government of Canada, by carrying out its *national security* and information activities in a manner that respects rights and freedoms, encourages the international community to do the same;

Section 12. 1 of the same *Act* gives CSIS its primary mandates:

"The Service shall collect, by investigation or otherwise, to the extent that it is strictly necessary, and analyse and retain information and intelligence respecting activities that may on reasonable grounds be suspected of constituting threats to the security of Canada and, in relation thereto, shall report to and advise the Government of Canada" (Canadian Security Intelligence Service, 2023).¹

As to whether the inclusion of non-traditional threats should or should not be considered terrorism, of note, section 2 of the *CSIS Act* does not make a specific reference to the term "terrorism". It's captured generically in section 2 (c) and (d). The SCIDA is more specific – terrorism is referred specifically in paragraph 2 (d).

The 2019 CSIS document seems to want to maintain an ambiguous reference to terrorism as does the *Act*. At the same time, however, it characterizes violent extremism alongside with the term 'terrorism'. In doing so, it categorizes three main types of terrorism for the reader– religiously motivated, politically motivated, and ideologically motivated, all of which may realistically share attributes in some fashion when it comes to the motivation and intent behind individual terrorist acts. Furthermore, it states one of the purposes of the document is to "develop comprehensive terminology which is linked not only to the *CSIS Act* but also Section 83 of the

¹ *CSIS Act*, 2023

Criminal Code of Canada" (Canadian Security Intelligence Service, 2019), wherein terrorism offences are explicitly defined. There is, therefore, an implied nexus for the reader between how IMVE threats are defined in the CSIS document and terrorism. That is the assumption carried forward in this narrative.

As to the second issue, the 'something else' debate is confounded by the fact Canada does *not* currently have any clearly defined hate crimes covering violent conduct associated with hate. There are three sections referenced in the *Criminal Code* that define crimes has been undertaken for 'hateful' purposes. Section 319 (1) addresses public incitement of hatred, s.430 applies to mischief (that in Canada, as we shall see later, comprises most of the charges linked to what is judged to be a hate-crime by law enforcement). Section 718.2 allows a sentencing judge to consider 'aggravating circumstances' and whether an offence is motivated by bias, prejudice or hate based on race, nationality, language, religion, sex, age, sexual orientation, etc. for sentencing term considerations.

Unlike other countries, there is no statutory means to *charge* somebody with violent hate crime beyond incitement and mischief as noted above. Despite the absence of a comparative or parallel statutory or judicial framework vis-à-vis terrorism and hate crime as is available in the US, for the purpose of this narrative, certain elements defined as IMVE threats as described in the CSIS document will be characterized, in part, as being akin to hate-crime or "bias" motivated attacks, as they are in other jurisdictions.

In parallel, questions regarding inconsistencies as to the rationale behind when terrorism charges were and were not applied to attacks in Canada have also fueled discussions within the academic and practitioner communities. By way of example:

- In June 2014, Justin Bourque killed three Royal Canadian Mounted Police (RCMP) officers in an act of anti-government and anti-police violence, with the objective of triggering a rebellion against the Canadian government. He was charged with murder and attempted murder, but not terrorism.
- In January 2017, Alexandre Bissonnette killed six people at a mosque in Quebec City. He felt inspired by other mass shootings, he wanted to save Canadians from being attacked by Muslims, and he felt immigrants were a threat to his family and Canadian society. He was charged with multiple counts of murder and attempted murder. Although described as an act of terrorism by both politicians and the media, Bissonnette was not charged or sentenced under the terrorism provisions of the *Criminal Code*.
- In September 2017, Abdulahi Sharif stabbed an Edmonton police officer and then used a van to run down four pedestrians. While previous investigations of Sharif back to 2015 suggested there was an established link in his support of ISIS ideologies and there was hint that terrorism charges would be pending, no such charges were laid.
- In April 2018, Alek Minassian drove down Young Street in Toronto in a rented van, killing ten people and injuring sixteen. He declared himself an "incel" and the purpose of the attack was to incite an incel rebellion. The attack is still often cited as an example of extreme incel violence. Again, questions were raised as to why terrorism charges were not applied as a result (murder and attempted murder charges were laid). However, during the trial, experts testified Minassian did not actually believe in incel ideology, but had merely used it to increase his shock value (defence lawyers also cited mental health challenges as a defence). The judge agreed, and she wrote, "It is almost impossible to tell when Mr. Doe (Minassian) is lying and when he is telling the truth. Working out his exact motivation for this attack is likewise close to impossible, but that, nevertheless, I am inclined to accept the assessment of all of the experts that Mr. Doe did lie to the police about much of the incel motivation he talked about and that the incel movement was not in fact a primary driving force behind the attack. Notoriety was his main motivation" (Snowden & Rozdilsky, 2021).

- In February 2020, a youth entered a spa in Toronto, armed with a machete, killing an employee and wounding another before he was subsequently arrested. He was originally charged with murder and attempted murder, but subsequent investigation revealed the attacker's association with violent incel-based extremism, and the Crown agreed to upgrade the charge to "murder (and attempted murder) – terrorist activity." The attacker plead guilty to the murder charges, as the judge found his actions met the definition of terrorism from the *Criminal Code* due to the links to incel ideology. This represented the first-time terrorism charges in Canada were applied to a non-jihadist-based attack, and for a misogynist-motivated attack.
- July 2020, Corey Hurren rammed his truck against the gates at Rideau Hall (home of the Governor General, where the Prime Minister was residing at the time) and then set off on foot while armed looking for the Prime Minister. When detained, he had on hand a restricted revolver, a prohibited pistol, a prohibited rifle, two shotguns and a prohibited high-capacity magazine. The presiding judge at his trial commented "Corey Hurren committed a politically motivated, armed assault intended to intimidate Canada's elected government.... This was an armed aggression against the government, which must be denounced in the strongest terms." However, there was no mention of terrorism either in the initial charges or sentencing. He plead guilty on weapons and mischief charges.
- In June 2021, in London, Ontario, Nathaniel Veltman dove his pickup into a Muslim family out for a walk, killing four and wounding one. He was charged with four counts of "terrorist murder" and one count of "terrorist attempted murder". At the time of writing, he has been found guilty of four counts of first-degree murder and one count of attempted murder. The trial judge indicated terrorism will be given consideration as a motive during sentencing. It was revealed at the trial Veltman told police the attacks were undertaken in the belief that mass immigration and Muslim crimes perpetrated against white people had to be stopped (Dubinski, 2023). As with the Minassian trial, the defence claimed mental health issues ultimately drove the attack. Those familiar with the final Minassian decision and the charges applied to Sharif wondered why the London attack resulted in terror charges and Minassian and Sharif attacks did not, given the *modus operandi* of the attacks were so similar.

The foregoing debates and the issues that form them raise three key questions that need to be considered as a means of contributing to the discourse:

1. Whether, in the absence of hate crime statutes / offences in Canada, terrorism is serving as a judicial proxy for attacks that, intuitively, appear to be bias or hate-crime violence and absent any sort of broader or sustained agenda. Should lethal attacks driven by hate, prejudice, personal intolerances and inner demons, and absent any apparent larger agenda, be considered terrorism? Are the concepts of hate crime and terrorism being used interchangeably as a result, perhaps in error?
2. Somewhat linked to question 1, do certain kinds of attacks or crimes characterized as IMVE in the CSIS document really fall within what one would consider issues of 'national security' or 'threats to the security of Canada'?
3. Why the change of heart on the part of prosecutors to suddenly start applying terrorist charges when there was a perceived reluctance to do so in the not-too-distant past?

Let us look at two salient issues associated with these questions.

The Nexus of Terrorism to Politics

Leading terrorism academics have consistently affirmed that political motivation is an essential factor in defining terrorism. Access to technologies and weapons once available only to the state, and the use of social media, have provided terrorist groups or individuals with a capacity to intimidate or provoke governments around the world as never before, thereby playing an enhanced role in the conduct of either the local or global political arena. Quite early in his seminal work *Inside Terrorism*, Bruce Hoffman notes “The notion of terrorism as a political concept...is absolutely paramount to understanding its aims, motivations and purposes, and is critical in distinguishing it from other types of violence” (Hoffman, 2017, pp. 2). Walter Laqueur (1987, p. 149; 2007, p. 238), known for highlighting the challenges associated with defining terrorism, nevertheless adds “Terrorism is, above all, a technique of political warfare”, and is “the systemic use of murder, injury, and destruction, or the threat of such acts, aimed at achieving political ends”. Chenoweth and Moore affirm that terrorism is the “intentional use or threat of force by a non-state actor to evoke fear in a population to affect a political outcome” (Chenoweth & Moore, 2018). Demleitner (2003, p. 38) adds “The hallmark of a terrorism offence is that it is politically motivated” ... A group’s political concerns do provide a rationale for their actions...and defines how the group members see the world around them (Drake, 1988, cited in Gentry, 2022).

A review of terrorism legislation from around the globe is replete with terms like “The threat or use of violence, for political purposes”; “The use of force or violence to intimidate or coerce a government”; “The use or threat of violence in furtherance of a political aim”; “premediated politically motivated violence”; “Is the enduringly conducted struggle for political goals”. You get the point.

The means to achieve political objectives through terrorist violence has historically been accomplished through two main approaches, not necessarily mutually exclusive. One is to pressure governments through direct attacks on state assets – law enforcement, the military, assassinations or kidnappings of state officials, or against key infrastructure – to force an overreaction by the state against the general population resulting in strategy ineffectiveness and increased support for terrorist narratives and objectives. Alternatively, groups adopt a strategy of attrition through a demonstrated and sustained terrorist campaign to influence the cost/benefit calculus of the state – it’s ultimately less costly to give in to the demands of the terrorists than to continue ineffective strategies against them.

The other strategic approach is to intimidate the civilian population through various means to demonstrate the state is paralysed, exhausted and otherwise incapable of fulfilling its obligations to provide basic functions - security, or economic and social stability on behalf of the population - and is therefore by definition illegitimate. This strategic use of terror against society in support of achieving some sort of political advantage is often viewed as what separates terrorism from other forms of violence (Goodin, 2016, pp.1).

In either case, attacks continue until terrorist objectives are met, whether this means, for example, the creation of an independent nation-state, greater autonomy for a distinct community, removal of a foreign occupier, or in the extreme, the total implosion of the government. From strictly a terrorism perspective, as opposed to insurgency or guerrilla warfare, the historical record of *strategic* success, defined as achieving primary objectives, does not favour terrorist groups. Even if the objective of an attack is considered successful at the tactical level to attract attention to a particular cause or grievance, as noted by Schelling, at the strategic level, “It’s hard to see that attention and publicity have been of much value except as an end themselves” (Schelling, 2000, as cited in Abrams, 2004, 537).

This suggests terrorist attacks need to be both sustained and organized in some fashion for any hope of strategic (political) success, and implies some form of formal or loose organizational structure is required, as opposed to one-off self-radicalized or ‘lone-wolf’ operations that lack any coordinated strategic approach. How can an

individual, 'one-off' attacker hope to intimidate a population or coerce a government, other than hoping his or her one act of violence will lead to an uprising or revolution on the part of the broader population? Not to say this hasn't been the narrative of many a self-radicalized individual's manifesto or affirmed through evidence of one's personal support or affiliation with broader terrorist group objectives. But again, history has demonstrated, in the most diplomatic of terms, this sort of outcome is highly 'aspirational'. Certainly, in the case of North America, terrorism is increasingly becoming a solitary venture, primarily perpetrated by lone actors operating outside formal organizations. Consequently, the nexus of attacks by self-radicalized individuals to broader political objectives within the contextual definition of terrorism is something to be considered in support of the broader discussion herein (Hoffman et al., 2020).

Key to this discussion point is how one perceives the term 'political', how its role and influence is conceptualized within society, and how terrorism seeks, in turn, to shape government agendas. For simplicity, the world going forward in this narrative is divided into two camps – the "traditionalists" and the "progressives".

For the traditionalists, it is suggested the term 'political' refers to society writ large, and terrorism is seen as a threat to the national fabric, foundations and institutions of government, the rule of law, and sovereignty of the state and basic order. Traditionalists are of the view that, when the rhetoric of terrorist groups is ultimately peeled away, whether religiously or ideologically based, the underlying objectives, perhaps other than revenge, are ultimately political in nature. The targeting of specific communities through one-off attacks by lone actors motivated by internal bias is not considered sufficient or realistic to undermine society as a whole or the political fabric of a country, as terrorism seeks to do.

The concept of 'national security' is therefor seen in a big picture context by traditionalists. As observed by Munthe and Brax (2017), "It is notable that terrorism is more often understood as a threat to *society*, whereas hate crimes are seen as threats to specific groups (their italics).

Consequently, traditionalists view the inclusion of 'socialized' threats such as xenophobic or misogynist violence against particular communities protected by human rights legislation within the threat spectrum as being driven more by other factors. Is the inclusion a result of what Jackson (2009) refers to as the "politics of fear", where the media uses fear to construct news and popular culture, political elites manipulate these fears to enable social control and achieve political goals, and various economic and social interests profit materially from the production of fear? Are limited national security and intelligence resources being applied to the prevention or investigation of violence that is better situated in traditional criminal law or hate crime (if you have them) enforcement and prosecutorial regimes?

Progressives, on the other hand, adopt a more 'community-based' approach to how terrorism and national security should be interpreted. Individual attacks against a particular individual or groups of individuals represent a terrorist threat to members of that community as a whole. Though not subject to a specific attack, a particular community may nevertheless feel threatened and intimidated as a result. Though hard to calibrate or research (although post-9/11 studies did examine the psychological harm to individuals in terms of trauma and distress caused by 'anticipatory' fear), the psychological aspect of attacks in this regard is certainly worth consideration. The fact their safety and security are seen as being at risk is interpreted by progressives as being a threat to national security.

The recognition in the US' *Strategy for Countering Domestic Terrorism*, that systemic racism, police reform and gun control play a role in the targeting of specific communities, the FBI's definition of domestic terrorism ("Violent, criminal acts committed by individuals and/or groups to further ideological goals stemming from domestic influences, such as those of a political, religious, social, racial, or environmental nature") (Federal Bureau of Investigation, 2023) and the UN interpretation of terrorism since 1994 ("whatever the considerations of a political, philosophical, ideological, racial, ethnic religious or any other nature that may be invoked to justify them") and

inclusion of xenophobic and gender-based threats in the CSIS document, support a more “social” and community-based interpretation of national security. It is implied governments at whatever level are therefore required to take the necessary steps to protect communities who feel at risk.

The main challenge of a terrorist’s broader political strategy is that, in many cases, there is really nothing to negotiate in real political terms in order to address the grievances of an either a group or individual, as demands or objectives are most often patently unrealistic (Schelling, 1991, p. 21). Furthermore, in the post-colonial era, “If terrorism exerts any detectable effect on the platforms and activities of governments, it is to steel them in their resolve to resist and eliminate the aggressors” (Lomansky, 1991, p. 90).

Motive and Intent

Renowned terrorism academic Martha Crenshaw (2011, p. 3) notes “As we have known from the beginning of the study of terrorism, we need to know intent or motivation in order to judge whether or not an attack represents terrorism.”

From a contextual standpoint, and unlike US concerns about how terrorism charges are at times applied for the wrong reason, Canada’s *Criminal Code* (section 83.01.1 and forward) is very clear what is required to charge somebody with terrorism. As noted by Forcese and West (2020), three main elements *must* be present to charge somebody with terrorism in Canada:

- The ‘act’ or ‘consequence’ or the attack as defined in the Code – death or bodily harm, property damage, etc. The ‘act’ component is important, otherwise defense council could assert a person was only a wannabee when it came to messaging motive and intent. It is also important to note the wording in the *Criminal Code* allows for a *pre-emptive* counter-terrorism strategy when it comes to the act, in stating an act “includes a conspiracy, *attempt or threat* to commit any such act or omission.”
- The ‘motive’ for the attack, (“in whole or in part for a political, religious or ideological purpose, objective or cause”). As noted previously, traditionalists would say regardless of religious or ideological rhetoric, terrorism is ultimately all about politics. Progressives would say ‘ideology’ would provide the judicial coverage for the ‘social’ elements reflected in the CSIS paper – xenophobia and misogynistic-based attacks.
- The ‘purpose’ or intent of the attack – whether to intimidate the public *or a segment of the public*, (my italics) or compelling an entity (a person, government, organization) to do or not do something (Forcese and West, 2021, p. 51). Note the intent is either intimidation of the public *or* coercion of an entity. They are alternative rather than cumulative requirements as written. In other definitions, the purpose is somewhat more connected as alluded to previously – the purpose is to intimidate the public for the purpose of influencing governments. Progressives would note the wording incorporates sub-sets of the general population (i.e. certain communities), not necessarily ‘society’ as a whole.

As noted by Lee (2017, p. 47), “If an attacker is motivated by idealism, politics, or a desire to instill fear to influence politics, that is all it takes.” However, as suggested in the cases referenced previously, the devil is in the details when it comes to linking motivation and intent to applying terrorism charges.

In addition, the *Criminal Code* denotes charges for facilitation and incitement activities in support of terrorism, resulting in 14 specific terrorism offences.

Whether an attack is planned and operationalized by a group or individual is not material in the *Criminal Code* requirements, which is fortuitous given the importance of networks and sub-cultures in today’s threat environment, and the fact most attacks are undertaken by self-radicalized or “lone-wolf” individuals. As other countries that do have membership in a terrorist group as a criminal charge have found, it has been a challenge to determine what the

threshold is for determining a person is a member of an established terrorist group. It has added another challenge for the prosecution. Nor is declaring oneself a member of a terrorist group a crime in and of itself in Canada.

To apply terrorism-based charges in the event of an attack, motive by the perpetrator (group or individual) would presumably have to be linked to the narratives, theoretical underpinnings or objectives of known or acknowledged terrorist entities, proven in Canada to beyond a reasonable doubt standard. From a group perspective, this is typically ascertained by groups or cells taking credit for specific attacks. For an attack by an individual, determination of motive is more difficult. This is most often obtained by reviewing an attacker's phone or computer records or household belongings to identify evidence to the extent terrorist narratives or affiliation played a role in driving the attack, in addition to verbal confession evidence of course. As per Munthe and Brax, "Terrorism needs to be linked to a background motivation in the form of a commitment to a more or less elaborated ideology. Thus, the mayhem caused by a rogue armed cadre running amuck without any sort of ideological plan or sense of purpose beyond private interests would not be terrorism, although it may very well be said to "terrorize civilians" (Munthe & Brax, 2017, p. 327).

McCann and Pimley (2017, p. 286, 304) also raise an important question related to motivation that is central to answering some of the questions we have posed in turn. Is there a need to distinguish between ideological and "bias-based" drivers on the part of an attacker's motive? "Many times, the difference between hate crime and terrorism hinges on this question."

Proving motive is probably the most difficult challenge for the prosecution, as it requires exploring the attacker's personal reasons and internal thought process to undertake an attack. If a person has an ISIS flag hanging over their bed, is this sufficient evidence to prove motive? What is the evidentiary threshold in this regard, and does it create potential for prosecutorial inconsistencies if determination of motive is left to law enforcement and prosecution on a case-by-case basis? Furthermore, over time, individuals are prone to interpret past behavior in different ways, even though the specifics behind an attack haven't changed, Alek Minassian being a good example (Sageman, 2008, p. 19).

Is an individual's attack against a particular community – Muslim, black, women, LGBTQ- part of that person's master plan for changing government policy, suggesting there is some objective 'ends' behind an attack? Or is it instead the result of personal prejudice or bias, hatred, disgust and rage, inner demons, or a variety of other reasons (notoriety, the internal satisfaction an attack on a particular community may bring, mental health issues) absent any nexus between attack 'ways' and strategic 'ends'? Does the targeting of specific communities differentiate xenophobic or gender-based attacks from terrorist attacks that are typically more random in their targeting, with victims simply being in the wrong place at the wrong time?

McCann and Pimely (2017, p. 303) note "If an individual impulsively attacks someone because they hate their religion, that is different than somebody who plans to attack a mosque because they are motivated by a desire to expel that group from the community. The level of intent should matter. And while it is noted that "terrorism is meant to be about some form of change, whether it be political, *social or cultural, at the communal level* (my italics), hate crime laws serve to protect victims of specific groups, not to achieve some form of change" (McCann and Pimely, 2017, p. 299). While a number of attacks may target specific communities creating a sense of 'terror', attacks by different individuals are most likely not coordinated in any fashion, and certainly not to the extent where there is any sense of a strategic political motive in mind. Consequently, from a traditionalist's perspective, the intent of many xenophobic or misogynist attacks has absolutely nothing to do with national security, nor do they fall within the terrorist rubric as there is no articulated agenda to influence government or its policies. As suggested by Buchhandler-Raphael (2012, p. 833), "A person's act of hate or revenge committed by a delusional perpetrator does not meet the defining characteristic of terrorism." He adds "Terrorizing victims, is an inherent feature of most crimes, rather than a unique feature of terrorism. Conflating the two (hate crimes and terrorism) thus leads to unwarranted

expansion of terrorism offenses to cover additional contexts beyond legislated intent” (Buchhandler- Raphael, 2012, p.833). McCann and Pimely (2017, p. 300) add more succinctly, “Terrorism has seemingly evolved to become a catchall for mass violence as well,” both compelling opinions in favor of the traditionalist view, absent of course a robust hate crime regime in Canada.

An Examination of Two Communities in Particular

Incels and Misogynistic Attacks

The inclusion of the ‘involuntarily celibate (incel)’ community specifically, and misogynistic-based violence in general in CSIS’ definition of IMVE, makes for something of a microcosm of the broader traditionalist - progressive debate. Considered an element of the broader categorization of misogynistic violence within the IMVE rubric, the inclusion of incels in the CSIS *Threats to the Security of Canada* document in particular has served as a catalyst for current discussions. Why should the national security or counter-terrorism communities care about incels or misogyny? Aren’t related attacks more appropriately dealt with through ‘traditional’ criminal prosecutions or hate crimes (if we had them)?

Incels comprise a sub-branch of the broader online community known as the ‘manosphere,’ the former being of the view, in general terms, they are socially disenfranchised and victims of society in their inability to find romantic or sexual partners. They believe, in part, the female community is predisposed to pick male partners who are good looking, tall and wealthy, leaving those who don’t measure up to go through life without the benefit of romantic or sexual relationships, something they see as a right and entitlement as a male to possess. In parallel, they are also of the view that radical feminism is resulting in women controlling too much of the socio-economic and political agenda, so men in general are being disadvantaged as a result. (This has been compared to the white supremacist narratives regarding Jewish elites controlling the world) (DiBranco, 2020). Violence is justified within extreme elements of the incel community as retribution in response. There have been a number of high-profile incel-inspired mass attacks in North America and Europe.

Interestingly enough, from a ‘critical studies’ and somewhat contrary viewpoint, Leiding and others (Gentry, Blee) are of the view the emergence of the incel community does not come from a position of social disadvantage, but is instead merely an extreme manifestation or extension of broader societal norms and culture that, throughout history, directly or indirectly support and promote violent misogyny and male and patriarchal supremacism (Leiding, 2021). Misogyny in general has always been present in the IMVE/terrorism universe particularly in the various ideologies assorted with the ultra-right community. It’s just that academic culture has historically shied away from acknowledging and investigating its causes.

Arguments have been presented that suggest incel and misogynistic-based attacks (though not all) do meet the ‘political’ (motivation) criteria as reflected in Canada’s *Criminal Code* definition of terrorism. “By their very nature, misogyny and patriarchy are *political*: misogyny supports patriarchy as an order that shapes political institutions, laws, social and cultural norms, and what kind of privilege and access to power (most) women (do not) have” (Leiding, 2021).

Hoffman et al take something of a less overarching societal view, but support the view the motivation behind the more extreme elements of the incel community can be consistent with the political objectives necessary to be considered as terrorism. He notes “Admittedly, the incel worldview is not obviously political. But because its core ethos revolves around the subjugation and repression of a group and its violence is designed to have far-reaching *social effects* (my italics), incel violence arguably conforms to an emergent trend in terrorism with a more salient hate-crime dimension Accordingly, the extreme fringes of the incel community as well as the violence they have

committed, should be considered terrorism” (Hoffman et al., 2020. p. 568).

Incels connect almost exclusively on social media over a range of different platforms. There is clear evidence in the online world there is significant and ongoing overlap with other violent ideologies, including ultra-right and white supremacy ideologies– male supremacism being part of a broader mosaic of ‘supreme-isms’ associated with ultra-conservative ideologies (Clarke and Turner, 2020). In short, these fringe narratives suggest men are entitled to control women’s bodies and decisions. In terms of politically driven motivation and intent, it is suggested incels want governments to enforce policies where countries adopt a more conservative “mythical patriarchal time-typically before the sexual revolution of the 1960s - when men were presumably “owed” sex from women. Online fora often celebrate the Taliban’s medieval treatment of women-forced monogamy, tolerated spousal abuse, and minimal rights for women.² Leiding adds “Not all incels have suicidal impulses, and aggrieved male sexual entitlement is not a mental health issue but rather an ideological one” (Leiding, 2021).

In the extreme, incel websites have called for a radical overthrow of the existing status quo through a “Beta Uprising”, a revolution in which ‘beta males’ who have been overlooked by women finally get revenge (Dewey, 2015).

Clarke and Turner conclude “They do justify violence to assuage their grievances, their violence is ideological in nature and they have attacked civilians in order to have a psychological impact on society, all classic hallmarks of terrorism” (Clarke & Turner, 2020).

Conversely, the drivers behind incel motivations are not seen as exclusively seeking some sort of societal or political change, but are instead an outcome of personal hostility and hatred towards women solely on the basis of their gender and the personal experiences of those who choose to engage in violence. These individuals merely feel deserving of something that society is not giving them – termed “aggrieved entitlement” (DiBranco, 2020). Researchers have suggested incel identity is based largely on psychological and personality driven factors- physical appearance, disability, mental health challenges (depression, hopelessness, autism, suicidal tendencies), abuse at home, historical bullying, all of which are more prevalent than beliefs about masculinity, sex and relationships (Moskalenko et al., 2022). In a study she conducted, surveying 300 self-identified incels, Sophia Moskalenko noted the rate of self-reported depression (95.5 % of incels surveyed) and anxiety (94%) were considerable higher than national survey results (28.4 and 35.8 % respectively), and that incels who received formal diagnosis of psychopathology rarely found relief through mental health services. Her surveys suggest “incels are in dire need of psychological help” (Moskalenko et al., 2022, p. 10, 18-19) and, in an important metric, most members of the incel community that were surveyed (79%) rejected violence.

Moskalenko concludes that “Subscribing to incel ideology was not a good predictor of radical attitudes *or intentions* (my italics) and vice versa” and that “Radical ideas are typically not good predictors of radical action.” ‘Classifying incels as terrorists based on the action of a tiny minority among them might do more damage than it would help protect society’, suggesting interventions by the mental health community would be a better overall approach to addressing their unique psychological needs (Moskalenko et al., 2022, p. 19-20). Traditionalists in Canada take the view that incel-related violence specifically, and misogynistic violence in general, should not be considered national security issues as the motivation and intent behind attacks is driven by personal bias and inner demons associated with an attacker’s psychological makeup, not something that would represent a clearly articulated and sustained threat to the political fabric of the country.

The goal of getting governments to facilitate a normative change in the male- female relationship back to the 1950s is just as unrealistic as establishing a global caliphate or replacing western capital governments with a

² Email Correspondence with masters student Connor Coles, April 13, 2023

communist/socialist utopia. The presumed irrationality of broader terrorist strategic objectives has not influenced how terrorism charges have been applied to those who nevertheless seek their stated intentions or objectives through violence. But does the scope of the necessary change to existing norms and values and the size and demographics of the targeted global female community warrant some kind of consideration or 'reality check' when it comes to weighing the legitimacy of the 'intent' filter for incel-generated attacks to meet the terrorism definition of the *Criminal Code*?

How do we square that circle to contribute to the current discussions?

Hoffman, Ware and Shapiro (2020, p. 569) actually break down incel-inspired attacks into four different categories, and this could provide some insight into how to consider incel or misogynistic attacks going forward within a Canadian context. The first category is "clear incel-motivated terrorist attacks", acts of political violence with explicit political and ideological aims committed by males claiming to be part of the incel community via its online presence". If political motivation and intent can be established, this would meet the three criteria noted in the *Criminal Code* - motivation, intent and the act - to be considered terrorism. "The violent manifestations of the ideology pose a new terrorism threat which should not be dismissed or ignored by domestic law enforcement agencies" (Hoffman et al., 2020, p. 581). The second category is "Attacks with mixed motives that evidence incel ideological influences. While conducted by members of the incel community, the distinguishing factor of these incidents is they are not obviously perpetrated expressly for political purposes or in furtherance of the incel agenda. Rather, the perpetrator simply refers to or mentions their incel ideology in the lead up to the attack" (Hoffman et al., 2020, p. 570-572). The other two categories – acts of targeted violence perpetuated by self-professed incels, and those who claim incel affiliation after the fact, are also presumed to be absent the political motivator, with attackers blaming their acts of violence on the incel narrative of sexual frustration or loneliness. These attacks should be prosecuted through hate crime regimes or, in their absence, normal criminal processes, but not as terrorism, as the three terrorist offence *Criminal Code* elements are not present.

Xenophobic Attacks

The CSIS *Threat to the Security of Canada* document strives to get away from "right wing / left wing" verbiage within the IMVE rubric as definitions of both are notorious for being unreliable descriptors. But by identifying xenophobic-motivated violence within the IMVE definition it serves, perhaps unintentionally, to shine the light on ultra-conservative (my term going forward) or white supremacist activity. While left-wing or anarchist communities typically engage in violence against state-based or corporate assets in support of anti-government narratives, xenophobic attacks are almost exclusively carried out by those who adhere to ultra-conservative or white-supremacist narratives and ideologies – reflecting a "we-they" or "in group-out group" viewpoint. Violence in whatever form is designed to intimidate the 'out-group'.

Ultra-conservative ideologies comprise a number of sub-narratives – nationalism, racism and xenophobia, anti-democracy/ anti-government, fascism, Christian extremism, misogyny, and so on. They are not mutually exclusive, and many narratives blend together at both the community/organizational and individual level, again resulting in 'salad-bar' ideologies described previously. But there is general agreement that ultra-conservative groups or individuals inclined to engage in violence belong to two major groups – those who go after targets based on race, ethnicity, religion, or sexual orientation, and those who are essentially anti-government. It's something of a fortuitous outcome then that the *Threat to the Security of Canada* document agrees with this view, as it considers xenophobic and "anti-authoritarian" ideologies as two distinct forms of motivation to violence within the IMVE rubric.

Of the two, there is enough quantitative evidence to suggest xenophobic-motivated attacks are responsible for most of the recent ultra-conservative linked fatalities. Between 2009 and 2018, 76 % of ultra-conservative killings in the US were tied to xenophobic attacks, while anti-government motivations resulted in 19% of the fatalities (Auger, 2020).

In terms of anti-government motivations, ultra-conservatives who focus on this sort of ideology have traditionally complained about the ever-increasing involvement of government into the day-to day lives of citizens, primarily through over-regulation, or the self-serving interests and agendas of political, cultural and economic elites at the expense, and in complete disregard of, the common Joe. However, anti-government narratives that would intuitively be consistent with the traditionalists need for a political nexus, have more recently started to merge with white-supremacist ideologies. Governments are accused of allowing the genocide of the white race and its values through policies permitting greater immigration of non-whites, tacit support for mixed-race or same-sex relationships, and policy priorities based on diversity and inclusion – the “great replacement” theory. Governments need to revert back to a time via policies when the norms and values of white culture were not being threatened or undermined by government support for non-white, diverse and inclusive agendas. Or in the extreme, the white race needs to be awakened to the need for a more permanent solution through a race war, leading to a more ethnically homogenous homeland.

In any event, it seems intuitively clear that violence driven by an anti-government or anti-democratic motivation and intent, clearly political in nature, would be considered terrorism as per the *Criminal Code*. Where things may get tricky, albeit within the same vein, is how the *Criminal Code* and prosecutors would differentiate terrorism charges with a nexus to anti-government political motivation and intent, and how the *Criminal Code* defines the concept of ‘sedition’, in section 59 (4) “as the use, without the authority of law, of force as a means of accomplishing a governmental change within Canada. Presumably force in this context would involve some form of violence. As I understand it, sedition has not actually been charged as an offence in a very long time.”³

Something more challenging to consider is whether xenophobic-driven attacks should be considered terrorism or an issue of national security, akin to the incel / misogyny debate, and whether attacks against a particular community, as a segment of broader society, meets the ‘intent’ or purpose filter of the *Criminal Code*. It has been suggested there is very little in the way of clinical, academic study that points to the degree to which broader communities are indirectly impacted by a specific attack on members of a specific community (Lee, 2017, p. 45). At the very least, the jury is still out on this issue. It would seem intuitively appropriate that sustained bias-based attacks against a particular community would erode a sense of security. But the absence of any sort of information or data in this regard means the presumed nexus between specific attacks on individuals and the possible impact on the larger, targeted community is otherwise based on supposition and assumption. Does this serve to undermine a key pillar of the progressive argument – that an attack on a specific segment of society, as opposed to society at large, is political in nature?

And more to the view of the traditionalist camp, once again are bias-based attacks instead the violent manifestation of a person’s internalized demons where violence simply makes the attacker feel good, with no connection of any sort to a broader political agenda? As concluded by Deloughery in the course of her research, those involved with hate or biased-based attacks “lack strong political affiliations or ideological commitments and seem to shun formal organizations...while terrorist acts are part of a sustained effort that draw attention to a political or social cause...The two behaviors are conceptually unique and driven by different social processes” (Deloughery et al., 2012).

As a consequence, does the fact there is no comprehensive hate-crime regime in Canada, other than incitement and mischief, where perhaps prosecution of these sorts of violent crimes would be better situated, mean that terrorism charges are being used incorrectly as a proxy?

To a degree, the Government of Canada has served to answer the question of whether ultra-conservative attacks, whether xenophobic or anti-government in nature constitute terrorism, by listing nine ultra conservative groups

³ Author’s correspondence with Craig Forcese, November 8, 2023. The author could find no judgements for conviction under s. 59(4)

under its Listing of Terrorism groups beginning in 2019. The listed groups are on record as having either xenophobic or anti-government narratives, and have engaged in acts of violence. But like the religiously-motivated groups on the list, the violence need not have been carried out in Canada for the purposes of listing, but anywhere in the world. And while the listing added mostly groups, it also added an individual (James Mason) who is more of a 'theoretician' within the community, promoting the need for a race war. In the absence of any sort of violent attack undertaken by Mason himself, his activities presumably were captured by the terrorist facilitation and counseling sections of the Criminal Code that would be required for listing purposes. But it is important to remember that in listing a group, the group itself is not outlawed, nor is it an offence to declare yourself a member of a terrorist group.

From a 'messaging' perspective, in addition to a symbolic recognition of the threat posed by ultra-conservative violence, the listings serve three main objectives on the part of the Government of Canada. First, it responds to criticism from the Muslim and legal communities that terrorist listings were, until recently, limited to Islamist-based jihadist terrorist groups or individuals. Second, and somewhat related, the terrorism threat spectrum in Canada has officially expanded beyond the jihadist threat, although in reality the Bourque, Bissonnette, and Minassian attacks had already indicated as such. Third, ultra-conservative violence is being taken seriously by the Government. Listing serves as a trigger to potentially engage investigative resources at the national level, and eases the burden of the prosecution if a group or individual can be linked to a listed terrorist entity. And beyond 'messaging', operationally being listing seeks to interdict the funding of a listed entity.

The timing of the most recent listings in 2021 was viewed in some circles as being politically motivated, as opposed to being based on the usual analysis of the actual threat or risk posed by the listed entity, coming in the aftermath of the January 6 storming of the Capital building, and viewed even more cynically, as being introduced prior to an upcoming election in Canada (Roach, 2021, p. 6). Indeed, Simon Cottee has suggested an absence of a sustained tempo of jihadists- based attacks in the west, (more so in North America than in Europe) has led to greater interest in the right-wing threat by elites, journalists and academics to fill the 'angst' vacuum.

All of a sudden, white supremacists seemed to be everywhere too. And then something strange happened: journalists and extremist experts who had once made careers out of covering jihadists started to cover the far- right in exactly the same way [they had covered the jihadist threat] ... And they have done so not because they are objectively more threatening, but because they reflect the shifting existential anxieties of Western elites in a moment of great and rapid change. These anxieties were once focused on the threat of Islamism to democratic norms. Now, they are entangled in fears and loathing around gender and race. And when these moral panics eventually burn out, no doubt a new breed of devil will emerge too (Cottee, 2023).

The FBI, the agency in the US with the primary mandate for preventing and investigating domestic terrorism, is now focusing most of its domestic terrorism investigations on 'civil unrest' and anti-government activity, up to 90 % of its cases. As a result, it has changed the general classification of white-supremacy, antisemitism, and anti-LGBTQI+ extremism to hate crimes. "If an act is focused on the government, it's terrorism. But if extremism is focused on private individuals or institutions, it's considered just a crime or as a hate crime. ... A hate crime is targeted violence motivated by the offender's bias against a person's actual or perceived characteristics" (Arkin, 2022).

What degree of xenophobic attacks have some sort of clear intent or purpose as defined in the Criminal Code, and how many are merely cases of purely nihilist violence, with no further broader 'end' in view? Furthermore, beyond hate crimes, targeted or mass shootings should also not be considered terrorist attacks. "Angry employees 'going postal', doom-obsessed adolescents, and deranged killers are not domestic violent extremists" (Jenkins, 2022, p.35).

Other Considerations

In practical terms, attacks directed at certain communities are less lethal than those classified as terrorist attacks. While lethal, xenophobic-driven attacks against communities certainly receive considerable exposure, in reality “most hate crimes are, on average, nonviolent, and instead target property or *seek to intimidate people* (my italics)” (McCaan and Pimely, 2017, p. 306). A Statistics Canada report released in March 2023, noted “As in previous years, more than half (56%) of police-reported hate crimes were non-violent offences, mostly mischief” (Statistics Canada, 2023). General mischief was the most common hate-crime related offence, accounting for 45% of all police-reported hate crime incidents. Violent crimes amounted to uttering threats, common assault, criminal harassment, and major assault. In the absence of a formal hate-crime regime in Canada, it is assumed the data contained in the report is based on how the motive or intent behind certain attacks was subjectively classified by various law-enforcement agencies. Consequently, the criteria for classifying an attack as a hate crime may differ between respective law enforcement forces nationally.

While the number of hate crimes – 3,360 reported in Canada increased year-over-year (2020 to 2021) by 27% as per the Statistics Canada report – there was only one incident that resulted in terrorism charges in Canada in that year – the vehicle attack on a Muslim family in London, Ontario. While the numbers certainly indicate a rise in IMVE / hate-crime motivated incidents, is this an acceptable metric in differentiating terrorism from hate crimes, or characterizing such attacks as a matter of national security, especially if a majority of the reported hate crimes were considered non-violent, such as mischief?

The question was posed previously as to why certain misogynistic or xenophobic attacks that were intuitively terrorism (Bissonnette, Minassian) were not charged with terrorism offences. First, getting into the mind of the assailant as to “why” is most challenging on the part of investigators when it comes to evidence in a courtroom, the Minassian attack being a good example. Stories and statements on the part of an attacker may change over time, and the threshold for establishing a nexus between one’s ideologies and motivations to meet *Criminal Code* requirements seems to be subjective as illustrated by the cases referenced previously. Second, established clinical mental health issues of the assailant may serve to raise doubts about the ability to establish the necessary ideological motivation put forward by the prosecution. It certainly is used by defense counsel during judicial proceedings to undermine the prosecution’s case, again Minassian and Veltman trials serve as examples. Finally, if murder or manslaughter charges are clearly demonstrable for the prosecution, the effort required to tack on terrorism charges - motivation or intent – may be considered as being too labor-intensive in relation to the prosecutorial ‘ends’. As noted by Roach, “Charging far right violence extremists with terrorism after they have committed murder can only ever be a symbolic act. It will generally not change the overall sentence or the violence that has been done” (Roach, 2020, p. 9). Nesbitt (2021) adds “A terrorism sentence adds little to the ultimate punishment where murder is charged, while adding plenty to the complexity, uncertainty and cost of the trial.” Jenkins concludes “Researchers examining the terrorist trials after 9/11 concluded that when prosecutors sought to emphasize the political motivations of the defendant, the case was more likely to go to trial and more likely to result in dismissal or acquittal... in other words, invoking the terrorism enhancement, while increasing the possible penalty, could imperil conviction” (Jenkins, 2022, p. 36). It is therefore argued the application of terrorism charges to recent IMVE attacks that involved fatalities, as with recent terrorist group listings, is more about ‘messaging’ on the part of different levels of government, and again serves to point to terrorism charges being used as a proxy for hate or bias-based crimes absent any sort of comprehensive hate-crime regime in the *Criminal Code*.

Analysis

This narrative has sought to contribute to the current discourse within the national security practitioner and academic communities in Canada in examining three specific questions:

- Should some of the ‘non-traditional’ IMVE threats identified in CSIS’ *Threats to The Security of Canada and Canadian Interests*’ document be considered terrorism as defined in Canada’s Criminal Code?
- Should these same threats be considered “threats to the security of Canada”, and
- Why has there been some uncertainty and inconsistency as to what warrants the application of terrorism charges when it comes to IMVE- motivated attacks?

As to the first question, Goodin notes, “Figuring out what exactly terrorism is and what exactly makes it so wrong is crucial to framing an appropriate response to that evil” (Goodin, 2006, p. 5).

The core of the debate in a nutshell, and in consideration of the views presented herein, is that terrorist attacks are generally regarded as an attempt to influence government policy, programs or ideology through intimidation of society or a portion thereof. This is not a new concept. David Fromkin noted some fifty years ago that terrorism is “aimed at creating fear in order that the fear, in turn, will...accomplish whatever it is the terrorist really desires” (Fromkin, 1975, p. 693).

It is interesting to note the *Criminal Code* does not make the definitional linkage between the use of violence against a particular community as a means of changing the political status quo as a basis to apply terrorism charges. Instead, it notes the intent of an attack is either to intimidate the public or a segment of the public, or compelling an entity (a person, government, organization) to do or not do something. Not to say the two ‘ends’ are mutually exclusive, but it is interesting the drafters of the clause chose to bifurcate the intent instead of connecting the intimidation / influence relationship for definitional purposes as others have done.

There is a sufficient legal case history in Canada that links ‘religiously motivated violent extremism’ as defined in the CSIS document with the *Criminal Code* definitions of terrorism so there is little debate here (Nesbitt and Hagg, 2020). As previously observed, however, this is not always crystal clear when it comes to IMVE inspired violence, as cited by the examples where terrorism charges seemed intuitively applicable but were not assessed. Attacks that fall within ‘politically motivated violent extremism’ as well as ‘anti-authority violence’ within the definition of IMVE within the CSIS document, would seem to adequately fill the requisite political motive and intent drivers to apply terrorism charges.

The current terrorist listings for Canada do include a number of groups that are best characterized as being motivated by politically motivated violent extremism (nationalism) as defined in the CSIS document, such as the LTTE, ETA, PKK, Sendero Luminoso, and others. At the time of writing, however, no terrorism charges have been applied to any of these groups, or individuals associated with these groups. This is probably because their period of greatest activity in Canada (primarily facilitation activity- the Air India bombing by Sikh extremists being the exception) took place either prior to the introduction of terrorism provisions in the *Criminal Code* (however, some individuals associated with this activity were subject to the ‘security certificate’ regime), or the nature of the threat was not seen as meeting investigatory approval thresholds, or warranted the application of limited resources, after the introduction of the *Anti-Terrorism Act* in 2001. Presumably investigations of these groups leading to terrorism charges, and consideration of them being a threat to the security of Canadian interests, would nevertheless be triggered should levels of violence within Canada perpetrated by these groups increase over time.

There is certainly an acknowledgement that the more traditional IMVE threat streams reflected in the CSIS document, those associated with anti-government or anti-authority violence, lend themselves to pre-emptive, terrorism-based investigation. The inclusion of the “non-traditional” categories in the definition of IMVE in the CSIS document – xenophobic violence and gender-driven violence in particular- is where discussions have been centered.

We have seen previously that in either case, the motivation and intent behind attacks conducted in Canada (exclusively by individuals), can either be driven by a mission to change the current political status quo in some fashion, or by an individual's personal bias or emotion. As to the latter, the attacker's personal prejudice and inner demons, not necessarily a desire to influence a government agenda, serves as the motivation, and violence for the sake of violence may be the only intent.

While there are characteristics common to both terrorism and bias-generated IMVE violence, (and even random mass shootings), there are also differences (Sullaway, 2017, p. 113). Munthe and Brax (2017, p. 321) add “While at some levels at least, some hate crimes may be viewed as analogous to acts of terror, most of them may not be as easily conceived. ... They are at best second cousins in virtue of some shared features in hypothesis about background causes... What appears most likely is that patterns or bundles of hate criminality may have ‘terror-like functions’ for communities and societies, even if the single hate crimes making up the pattern or bundles cannot be classified as acts of terror.”

It comes down to a question of the desired “end” – is there evidence of some sort of broader strategic objective or is it something more intrinsic? But don't forget as the intent clause in the *Criminal Code* is bifurcated between intimidation and compelling change, it would appear where intimidation of a particular community as a result of an attack can be established, that alone would meet the intent filter without the need for any political nexus. In this I believe the *Criminal Code* is clear - the “purpose” or intent of the attack is to intimidate the public *or a segment of the public* (my italics). This would seem to buttress the position of the progressives who adopt the view that attacks and the assumed intimidation of a specific targeted community, as opposed to society writ large, meets the intent filter. The challenge as noted previously, is how do you ascertain or demonstrate the impact of a specific attack on a broader community?

Finally, the rationality of an attacker's broader intentions is not material. There is an established history of terrorist groups having unrealistic strategic ends – the replacement of western capital governments by social / communist utopias sought by leftists in the 1970s, or the establishment of a global caliphate by Al Qaeda or ISIS. Attacks hoping to start a race or gender war or to have governments revert social policy back to the 1950s are unrealistic and unfounded, but rationality of the strategic political outcome is not material when considering intent for terrorism charges and prosecution. As noted subsequently, it should, however, have a determination of whether the source of the threat tied to the rationality behind its political objectives are considered a threat to the security of Canada.

Consequently, if post-attack investigations of xenophobic or gender-based attacks clearly make a link between intrinsic motivation and intent with a political nexus (and cases have demonstrated this on its own may be somewhat subjective in terms of meeting necessary thresholds in a judicial setting), or there is a clinically established impact on how an attack impacts a broader community as suggested by the progressive community as to intent under the *Criminal Code*, it would appear to be terrorism. How to link clinical assessments in this regard to the application of terrorism charges in judicial proceedings would be an obvious challenge. In a recent Senate-based report, Dr. Arfeen Malick described how such a causal connection can be established. He noted:

Most research demonstrates a correlation between Islamophobic incidents and rates of mental illness, such as depression and anxiety, not dissimilar to the impacts of anti-Black racism on individuals

identifying as Black. Islamophobia is a type of racism and discrimination where at the level of the brain, it is understood as an exposure to a threatening life event that destabilizes a sense of security and safety on an individual and on a community level (Malick, 2023, p. 21).

Some further thought and study would most likely lend itself to the subjectivity issue. Do different forms of attack result in the same level of impact within a community? How far and wide is a specific community impacted by an attack actually defined? Otherwise, the link can only be assumed and abstract, potentially harder for prosecution to make any sort of a case. Absent this, and any sort of a clearly established political agenda, attacks should be considered as bias-based, violence for the sake of violence only, and charged under normal criminal protocols, or hate crime statutes if they exist.

Even if an attack has the demonstrated motivation and intent to designate it as a terrorist attack consistent with the *Criminal Code*, does this by extension automatically characterize it as an issue of national security? In the starkest terms, CSIS does not conduct its investigations under the *Criminal Code*, it conducts investigations under the *CSIS Act*, even though its investigations examining threats to the security of Canada may ultimately result in criminal offences through law enforcement agencies. While an individual engaged in gender-based or xenophobic attacks could be criminally charged under the *Criminal Code* with terrorism offences, would this by default be considered a “threat to the security of Canada?” What is the threshold or filter necessary to designate something a threat to national security, and who makes the call?

As the *CSIS Act* contains the closest thing we have to a definition of national security, let us look at things from the perspective of that agency.

Every two years, CSIS receives cabinet direction regarding what the latter perceives to be intelligence collection priorities over the short to medium term. This direction may, for example, specifically call for intelligence collection on gender-based or xenophobic threats, or it may merely refer to IMVE threats generically, with CSIS management determining what specific threats within that category require attention. Ideally, some consideration would be given to the actual *risks and vulnerabilities* associated with the broader interpretation of the threats posed by gender-based and xenophobic attacks. Why is this important?

Any lawyer will tell you ‘words matter’. So, it is necessary to point out under s. 2(c) of the *CSIS Act* that threats that are politically, religiously or ideologically motivated must be assessed as being “acts of *serious violence* (my italics) against persons or property” (Canadian Security Intelligence Service, 2023).⁴ This would intuitively narrow the definitional goal posts as to the degree IMVE threats are characterized as threats to the security of Canada as compared to the definition of terrorism in the *Criminal Code*, which has no similar metric. How is “serious violence” to be determined or defined? Is there case law or other sources (Hansard and parliamentary debates) that provide guidance? Does it apply to specific attacks, or is it to be defined from a broader societal perspective? Does it include random, bias-motivated attacks? And as noted previously, while the rationality of politically-linked strategic ‘ends’ or intent sought by groups or individuals has no bearing in terms of definitional thresholds for terrorism as long as stated intent can be demonstrated for judicial reasons, it may bear some consideration when it comes to determining if it meets the ‘serious’ violence threshold. If the intent of a one-off attack by a self-radicalized individual is to reverse social policy so attitudes towards the entire female population returns back to the 1950s, immigration of non-whites is prohibited, or to start a race or gender war, how ‘serious’ (realistic) is the intent and risk associated with the violence? Is there any clear evidence of what is termed “programmatically coherence” (English, 2016, p. 111) or linked strategy between different one-off attacks that suggest a sustained, organized campaign against the state is in play?

⁴ *CSIS Act*

Metrics associated with white supremacy in particular are most often judged by considering the number or nature of attacks committed. But other filters should be considered through a comprehensive risk assessment lens, at least in the case of Canada– the political impact, organizational strength, strategic plausibility and broader societal concessions to movements as a whole. For example, there is concern in a number of communities within Canada that motivations behind an uptick in the tempo of IMVE-motivated attacks in the United States has somehow crossed the border. But is this actually the case from a risk perspective? Does Canada have a similar, sustained history to the presence of IMVE activity when compared to the US? As noted by author Michael Fellman, “Violence aimed at inspiring terrorism in order to impose political objectives has never lain far beneath the surface of American life” (Fellman, 2010, p. 1). It is submitted the political, cultural and social history and foundation of Canada does not lend itself to a similar observation. This must bear consideration when linking actual trends and metrics linking risk to threats as it applies to ideologically motivated violence in Canada.

More recently, competing viewpoints and interpretations were raised on what constituted a “threat to the security of Canada” under different legislation regarding the invocation of the *Emergencies Act* in response to the ‘Trucker Convoy’ in February 2022. The need for a formal commission on whether requisite thresholds were met in this regard suggests the interpretational issues are opaque as opposed to being clear-cut (Tunney, 2022). The ambiguities surrounding how to define “serious violence” suggest the litmus tests necessary to provide a threshold for ‘threats to the security of Canada’ are underdeveloped, and more work is required.

Either way, should it be determined xenophobic or gender-based threats warrant further intelligence collection, they would be considered de facto threats to the security of Canada in accordance with CSIS’ statutory mandate. It is also presumed that collection efforts would be in support of pre-emptive or preventative investigations, but only after the requisite internal thresholds and approvals to conduct an investigation are met and obtained. But while xenophobic or gender-based threats may be considered threats to the security of Canada under cabinet direction and CSIS’ mandate, in reality the investigation of individuals associated with these threats would take place only if limited resources are available to do so, in competition with more traditional threats and risks (espionage and influence, religiously motivated violence).

If there is either no broad cabinet direction or specific internal direction for CSIS to apply resources to gender-based or xenophobic threats, then there is a compelling argument to be made they do not warrant being considered threats to the security of Canada under the *CSIS Act* or its mandate. Such an outcome may be the result of decision makers or internal management not fully understanding the true domestic nature of the threat, risk and vulnerabilities associated with these sorts of ideologies, threats that may be evolving and where old assumptions regarding the threat need to be revisited.

Once an attack takes place, CSIS may retain an interest in the post-attack environment in order to determine the possibility of follow-on attacks, other cell members or supporters, how was the threat missed etc. But then the matter becomes primarily a law-enforcement / jurisprudence issue, and ‘intelligence to evidence’ protocols come into play. If an attacker was not known to CSIS in advance of an attack, is he or she considered a threat to national security after the fact, or limited to being characterized as a terrorist for prosecutorial purposes if *Criminal Code* thresholds are met?

The *Royal Canadian Mounted Police Act* (and probably local law enforcement agencies) does not have on its own a specific definition of what constitutes ‘national security’, so the RCMP’s mandate has evolved overtime as to the concept of what it entails and it is broad – espionage and influence, terrorism, sabotage, sedition, and the like. In parallel, its related duties are also broad - prevent, investigate and gather evidence *to support the prosecution* involved in national security related criminal acts (presumably in this case the terrorism provisions of the *Criminal Code*), VIP and infrastructure protection, and the sharing of intelligence with other agencies. What constitutes national security for the RCMP is narrowed to some degree under the *Security Offences Act*. This act, broadly

speaking, gives the RCMP the mandate to provide a law enforcement capacity in support of “threats to the security of Canada” (CSIS has no power of arrest or detention) as defined, somewhat circuitously, in the CSIS Act, or internationally protected persons under the *Criminal Code*.

Essentially this suggests the RCMP can investigate from a national security perspective if it feels the threshold has been met. But from an evidentiary perspective, we again run into challenges proving motive and intent for ideologically or anti-government threats as reflected in sections 2 (c) and (d) of the *CSIS Act*. If CSIS has, in some manner, reflected that gender-based or xenophobic attacks represent threats to the security of Canada, is the RCMP obliged to pursue pre-emptive investigations as provided for under the *Security Offences Act* against these threats, or after an attack, from a national security perspective? In doing so, does this add anything material to its investigative mandate? A re-prioritization of investigative resources for example? Conversely, if CSIS has not determined gender-based or xenophobic threats fall within the threat to the security of Canada rubric, can the RCMP assume its own interpretation of 2 (c) and pre-emptively investigate these threats under the threat to the security of Canada rubric? It can if it feels the threshold has been met.

It is therefore argued that unless CSIS has specific cabinet or internal management direction to pursue pre-emptive investigations on gender-based or xenophobic threats as per its mandate, they would not otherwise be considered threats to the security of Canada. Whether there are sufficient resources to pursue such investigations even if deemed a threat to the security of Canada against parallel investigations on competing threats, is another issue.

It is of interest to note the nexus of terrorism to national security was addressed by the Supreme Court of Canada in 2004. Individuals involved in judicial proceedings associated with the Air India bombing of 1985 were challenging the constitutional validity of s. 83.28 of the *Criminal Code*. At the time, the section provided for judicial investigations linked to terrorism, one of the new provisions added to the *Code* as a result of the enactment of the *Anti-terrorism Act* in 2001. (This provision was last repealed in 2019).

The outcome of the decision notwithstanding, it is interesting in its judgement the Court noted how terrorism threats were to be managed via the *Anti-Terrorism Act of 2001* and *Criminal Code*, but why such provisions did not automatically translate by extension into what constitutes national security. Paragraph 39 of the judgement reads:

It was suggested in submissions that the purpose of the Act should be regarded broadly as the protection of “national security”. However, we believe that this characterization has the potential to go too far and would have implications that far outstrip legislative intent. The discussions surrounding the legislation, and the legislative language itself clearly demonstrate that the Act purports to provide means by which terrorism may be prosecuted and prevented. As we cautioned above, courts must not fall prey to the rhetorical urgency of a perceived emergency or an altered security paradigm. While the threat posed by terrorism is certainly more tangible in the aftermath of global events such as those perpetrated in the United States, and since then elsewhere, including very recently in Spain, we must not lose sight of the particular aims of the legislation. Notably, the Canadian government opted to enact specific criminal law and procedure legislation and did not make use of exceptional powers, for example under the *Emergencies Act*, R.S.C. 1985, c. 22 (4th Supp.), or invoke the notwithstanding clause at s. 33 of the *Charter* (Supreme Court of Canada, 2004).

Finally, this narrative has provided examples of where the specifics associated with gender-based or xenophobic attacks in Canada intuitively suggested the attacks met the three key criteria for terrorism charges to apply as per the *Criminal Code*. Such charges, however, were not forthcoming given challenges associated with proving motivation and intent (potentially putting a prosecution at risk), or issues of whether there was any value added in tacking on terrorism charges where lethal attacks occurred. Only recently have terrorism charges been applied to IMVE- based attacks, possibly because, as some have suggested, there was a need for certain social messaging on

the part of the government directed to certain communities absent a more comprehensive hate-crime regime, with terrorism charges being used as a proxy.

Inconsistencies with how jurisprudence has responded to recent gender-based and xenophobic violence, and the chance that motivation and intent filters required for the laying of terrorism charges may be prosecutorially 'soft', suggests a more structural fix is required to buttress the laying of charges when it comes to these types of violence. It is argued the establishment of a formal statute / charging regime that would apply to hate-crime violence would serve to eliminate some of the existing judicial ambiguity, and the current absence of such a regime represents a serious gap in the judicial framework of Canada. As a result, attacks that would intuitively be considered hate crimes are being conflated with terrorism. And while there are common attributes to both, there are also a sufficient number of differences in terms of motivation and intent. As noted by Buchhandler-Raphael (2012, p. 862), "What distinguishes terrorism from other crime is its specific intent to coerce governments." And while it has been suggested that terrorism charges should apply where a nexus can be clearly established between the political motivation and intent and specific attacks as dictated by the *Criminal Code*, not all gender-based or xenophobic attacks have such motivation or intent. Again, from Munthe and Brax (2017, p. 323), we hear "in countries with no hate crime legislation, and where the concept of a hate crime has not been established, the sort of criminality that would be classified as such elsewhere can be addressed using the notion of domestic terrorism or politically motivated criminality... In this, there is a tendency to view these crimes not only as crimes against particular groups but also against the state, which emphasizes the similarity to terrorism."

This is an incorrect interpretation as certain hate crimes, rather than being driven by political motivation and intent, are driven instead by a person's individual psyche and experiences, and for limited objectives, often the application of violence for the sake of violence. It is suggested it is incumbent upon the judicial and policy communities in Canada to understand the subtle differences in motives and intent behind ideological and bias-based attacks as other countries have done, and to implement the necessary statutory framework in recognition of the differences – in essence the introduction of a robust and comprehensive hate-crime regime. As such, the motivation and intent behind crimes against particular communities would be based on clearly established personal bias, as opposed to political, social or religious goals. This may have its own challenges from an evidentiary perspective, but this is something that statutory frameworks could address as with the terrorism regime within the *Criminal Code*. And a review of the wording of global hate-crime legislation suggests it can be fairly simplistic, as already reflected in the 'alternative measures' of the *Criminal Code* (s.718) that states for the purposes of sentencing (not charges): "Evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor."

While this consideration can currently be added during sentencing for an attack that was otherwise processed in a 'normal' criminal proceeding, and outside of the terrorism regime, having a dedicated hate-crime regimen would only serve to buttress the social and political messaging the government is seeking when it comes to particular communities. The alternative, absent any demonstrated political or broader social objective on the part of an attacker, is to prosecute perpetrators under normal criminal regimes. This 'either-or' alternative fails to support the views and narratives of the Canadian government that hate or bias-based attacks against a particular community have no place in this democracy. The establishment of a dedicated hate-crime regime would send all the right messaging desired by the Canadian government and support clearer prosecutorial intentions in this regard.

CONCLUSION

The inclusion of certain non-traditional threats in a CSIS defined IMVE lexicon - gender-based and xenophobic violence in particular - has generated discussion within practitioner and academic communities. Should individuals who engage in gender-based or xenophobic violence be considered terrorists, who are generally defined as using violence to support broader political agendas? Should they be considered threats to the security of Canada? Inconsistencies in how such attacks have been treated judicially have only served to contribute to the debate.

The foregoing narrative has hopefully provided some points to consider as part of ongoing discussions.

- Where there is clearly established and robust evidence of a narrative that links motive and intent behind gender-based and xenophobic violence to broader political agendas, by groups or individuals, which case history has demonstrated is very possible, this can be considered terrorism. Otherwise, attacks need to be characterized as something else. Of course, what is considered “clearly established evidence” will continue to be subjective absent any further definitional clarity as to what this means. Furthermore, some consideration should be given as to how risk is considered and associated with the plausibility and unlikely outcome of the stated intent behind specific, one-off gender-based or xenophobic attacks from the context of “threats to the security of Canada”;
- Absent any sort of a nexus to political agendas, the degree to whether the ‘intent’ provisions of the *Criminal Code* as they relate to terrorism can be applied to gender-based or xenophobic violence depends on how easy it is to demonstrate specific attacks result in the broader intimidation of targeted communities. While some clinical reports in this regard are available, I believe further study is warranted especially when it comes to the impact of gender-based attacks on the broader female community however this is defined. If there is a lack of clinical analysis, research or modelling on this in Canada, concepts of how broader communities are actually impacted by specific attacks on communities, whether a result of the direct attack or in anticipation of future attacks, can only be judged in the abstract. Reports such as the recent (November 2023) Senate Committee report on the impact of Islamophobia in Canada, noting that Canada leads the G7 in terms of targeted killings of Muslims, and that “The horrific acts of violence targeting Muslims in recent years have left Muslim communities feeling like they are constantly under attack and that they are physically unsafe” (Malick, 2023, p. 9) are helpful in this regard, but this is something that researchers may want to further address. As mentioned, investigation along these lines were conducted in the aftermath of the 9/11 attacks. Otherwise, investigative efforts should focus on internal, biased- based motivations and intent on the part of individuals, typically driven by a desire for violence for the sake of violence;
- Unless there is specific cabinet or internal managerial direction for CSIS to collect information on gender-based or xenophobic threats as per its mandate, they should not otherwise be considered threats to the security of Canada from a ‘threat-risk’ perspective, as distinct from whether they meet the threshold for terrorism; and
- Canada does not have a fulsome judicial enterprise when it comes to hate crime violence. At the present time, the ability to lay hate crime charges under the *Criminal Code* is limited to incitement and mischief. Hate crime motivation can be considered by a judge come time for sentencing. But a dedicated hate-crime violence regime will more appropriately position law-enforcement and judicial efforts in this regard between terrorism, where it is not an exact fit absent any sort of political nexus, and criminal activity in the

normal course. As noted previously, hate crime laws are designed to protect victims of specific groups, not to counter politically-driven violence. It would also send the appropriate messaging sought by government that it takes hate-crime violence and its impacts on certain communities seriously, the alternative being prosecution within traditional criminal proceedings (and other than continuing to use terrorism charges as a proxy). There is a serious gap in this regard that needs to be addressed. While wording associated with the application of hate crime violence to various communities is intuitively clear (reference s. 718 or the definition of 'genocide' in the *Criminal Code* as examples, or the wording from other countries or agencies readily available), other issues require consideration. As with terrorism, is it intended to provide a framework for preventative strategies and investigations, or responsive, after-the-fact investigations? Are specific criteria to be met to define hate crime violence as is the case with terrorism, or is the wording for how hate crime violence is defined relatively straight forward? If hate crime violence actually gets dedicated statutes behind it, will it still be considered an issue of national security?

It is important to further think and discuss these afore-mentioned issues, for practitioners, courts, the Crown, academia, and the law enforcement community. Understanding the differences and nuances will help all involved to ensure that best efforts are made within the intelligence, investigative, enforcement and judicial sectors in dealing with these types of serious violence.

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