

# Introduction

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On June 2, 2006, in Toronto and its Western suburb, Mississauga, Ontario, hundreds of police officers and security operatives mobilized in simultaneous raids as part of an inter-agency operation dubbed “Project Osage.” This was the single largest terrorism-related sting in Canadian history. It resulted in the largest apprehension of individuals implicated in a “homegrown” terrorist plot that the Western, English-speaking world had ever seen, including the immediate arrest of 15 individuals (including three minors); a further arrest of two other individuals already in prison; and the subsequent arrest of an 18th individual two months later.<sup>1</sup> Notoriously, these 18 individuals became known as the “Toronto 18” and their criminal proceedings as the Toronto 18 trials.

The arrests made shock waves in Canada and internationally, with national and global headlines revealing the Toronto 18’s plans to bomb buildings in Toronto and attack Parliament in Ottawa.<sup>2</sup> Of course, all this took place within a climate that was already alive to the threat of terrorism, particularly Islamist Jihadi terrorism. Recall that in June 2006, memories remained fresh of the 9/11 terrorist attacks in neighbouring New York state, the 2004 Madrid bombings, and the 2005 London “7/7” bombings. At the time, media reporting reflected this fear: a *Toronto Star* columnist wrote that “the Jihad Generation – nothing alleged about it” could make Toronto “look like London... Madrid... Bali... New York City. Blood streaming,

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<sup>1</sup> For more information on the accused, see Appendix A: Cast of Characters.

<sup>2</sup> “Toronto 18: Key events in the case,” *CBC News*, June 4, 2008, <https://www.cbc.ca/news/canada/toronto-18-key-events-in-the-case-1.715266>.

mangled metal, severed limbs, inchoate and immeasurable grief.”<sup>3</sup> International media laid their fears on the table too. On June 4, 2006, the *New York Times* reported that the Toronto 18 planned to attack Parliament in Ottawa and a Canadian Security Intelligence Service (CSIS) building in Toronto. It also noted the concerns of American security officials about the “porous northern border,” a trope that had concerned Canada since (false) allegations after 9/11 that some of the perpetrators had crossed from Canada.<sup>4</sup>

The day after the Toronto 18 arrests, a well-publicized press conference took place. It was unlike any press conference Canada had seen – or arguably has seen since. Officials from the Royal Canadian Mounted Police (RCMP) and CSIS participated, as did the chiefs of the Toronto, Durham, York, and Peel police services. What was extraordinary about the press conference was that the police came with evidence normally reserved for the courtroom to display to the television cameras. They displayed a bag of ammonium nitrate, a Luger handgun with an ammunition clip, a “Rambo-style” knife, a door riddled with bullet shells, a computer hard drive, a detonator, and camouflage clothing.<sup>5</sup> This was not the usual press conference where the police read a prepared statement and perhaps answered or refused to answer questions after the statement.

The police described the accused as “adherents of a violent ideology inspired by al-Qaeda” and noted that some of the accused had been arrested attempting to purchase what they thought was three tonnes of explosive fertilizer but was actually an inert substance. The assistant commissioner for the RCMP added: “If I can put this in context for you, the 1995 bombing of the Murrah Federal Building in Oklahoma City that killed 168 people was completed with only one tonne of ammonium nitrate... it was their

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<sup>3</sup> Rosie DiManno, “Take a good hard at what’s going on here,” *Toronto Star*, June 4, 2006, A10. A fellow columnist, however, noted past abuses such as the arrest of 23 Muslims in Toronto in 2003 as part of Operation Thread with allegations of terrorism that only resulted in immigration fraud concerns and raised the question: “suppose, just suppose, that one or more of the 17 charged yesterday is innocent.” See Thomas Walkom, “So many possibilities...for the courts to hash out,” *Toronto Star*, June 4, 2006.

<sup>4</sup> Ian Austen and David Johnston, “17 Held in Plot to Bomb Sites in Ontario,” *New York Times*, June 4, 2005, <https://www.nytimes.com/2006/06/04/world/americas/04toron.to.html>.

<sup>5</sup> Stewart Bell and Kelly Patrick, “Arrests part of global operation,” *Ottawa Citizen*, June 3, 2006; Timothy Appleby and Colin Freeze, “Plot targeted peace tower,” *Globe and Mail*, June 5, 2006.

intent to use it for a terrorist attack... [t]his group posed a real and serious threat... [i]t had the capacity and intent to carry out these acts."<sup>6</sup> This statement captured the imagination of the national and international media, who continued to report the three times as much as Oklahoma City quote in many references to the case. But the media rarely mentioned that it was the police who had supplied the Toronto 18 with the inert substance.

The following day, on June 4, the 15 individuals arrested made their first court appearances: "Family members wept as 15 of the 17 accused, five of whom were youths at the time of the alleged crimes and cannot be named, were escorted into a Brampton courtroom in small groups, handcuffed and shackled at the feet."<sup>7</sup> The press reported on "[u]nprecedented security, including rooftop snipers and machine-gun toting tactical police officers [that] greeted members of the Muslim community, reporters and worried family members Saturday as the accused appeared in court."<sup>8</sup>

That same day, with the Canadian War Museum as a background, Canadian Prime Minister Stephen Harper spoke to military recruits about the Toronto 18, saying: "Their alleged target was Canada, Canadian institutions, the Canadian economy, the Canadian people... [w]e are a target because of who we are and how we live, our society, our diversity and our values – values such as freedom, democracy and the rule of law. The values that make Canada great, values that Canadians cherish and values that citizens like you are willing to defend."<sup>9</sup> Now not only had the police engaged in an extraordinary display of evidence, but the Prime Minister had weighed in too.

The subsequent media and political coverage were both immediate and polarizing. On the one hand, the RCMP had made a spectacle of the arrests with the press conference complete with evidence. On the other hand, the police took pains to avoid describing the suspects as Muslims and rather described them as representing a "broad strata of our community... [s]ome are students, some are employed, some are unemployed. Aside from the fact

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<sup>6</sup> Gregory Bonnell, "Terrorism threat becomes reality for Canadians as cops allege homegrown plot," *The Canadian Press*, June 3, 2006.

<sup>7</sup> Bonnell, "Terrorism threat becomes reality."

<sup>8</sup> Kelly Patrick, Adrian Humphreys, and Stewart Bell, "Terror probe details emerge: Alleged leaders described as 'nice guys'," *National Post*, June 5, 2006.

<sup>9</sup> Allan Woods and Dave Rogers, "Our values are 'under attack,'" *Ottawa Citizen*, June 4, 2006.

that virtually all are young men, it's hard to find a common denominator."<sup>10</sup> The police description of the accused was taken by some in the Canadian media as an example of favouring political correctness over simple correctness. Writing on the front page of the *Globe and Mail* on June 5, 2006, well-known commentator Christie Blatchford asserted: "the accused men are mostly young and mostly bearded in the Taliban fashion. They have first names like Mohamed, middle names like Mohamed and last names like Mohamed."<sup>11</sup>

Blatchford belittled concerns that a mosque had been vandalized in the wake of the arrests, causing an estimated \$15,000 in damages.<sup>12</sup> Yet this approach to covering the arrests did not go unchallenged. Robert Fisk, writing in the British press, criticized the Canadian media in particular for describing the accused as "Canadian born," suggesting that "there are now two kinds of Canadian citizen: the Canadian-born variety (Muslims) and Canadians (the rest)."<sup>13</sup>

But this initial flurry of domestic and international media attention quickly dissipated. As the criminal process started in late June 2006 – the same month as the arrests – judicially-mandated publication bans connected with both the bail hearings and then the preliminary inquiry shut down much of the publicity regarding the case. The result left some defendants feeling like there was a deliberate effort to prevent the accused from telling their side of the story.

The RCMP had been in front of the story with the spectacular initial press conference. During a pre-trial process that lasted for years, the criminal charges and evidence presented at that initial press conference that formed the factual basis upon which the media had reported on the accused. The accused and their lawyers generally offered their side(s) of the story in the courtroom with a media ban in place, and thus outside of the public eye.

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<sup>10</sup> Surya Bhattacharya, Nasreen Gulamhusein, and Heba Aly, "The ties that bind 17 suspects?: 'They represent the broad strata of our community,' the RCMP says," *Toronto Star*, June 4, 2006.

<sup>11</sup> Christie Blatchford, "Ignoring the biggest elephant in the room," *Globe and Mail*, June 5, 2006, <https://www.theglobeandmail.com/news/national/ignoring-the-biggest-elephant-in-the-room/article1100051/>.

<sup>12</sup> Michelle Sheppard and Isabel Teotonio, "Bombing making material delivered in police sting," *Toronto Star*, June 4, 2006.

<sup>13</sup> Robert Fisk, "How Racism has Invaded Canada," *The Independent*, July 9, 2013, <https://www.independent.co.uk/voices/commentators/fisk/robert-fisk-how-racism-has-invaded-canada-8696865.html>.

The closed nature of the proceedings undoubtedly played a role in shaping public opinion and public understanding of the events surrounding the Toronto 18, regardless of the actual outcome of the trials.

One of the accused challenged the court-ordered publication ban saying that a fair trial was impossible because of the one-sided media coverage derived mainly from the press conference. This legal challenge to the publication ban was unsuccessful even after it was appealed to the Supreme Court.<sup>14</sup> The problem for the defence – one they could not ultimately overcome at the Supreme Court – was that they had to prove that the publication ban affected their rights to a fair trial before a court of law, not a court of public opinion. The ruling was thus legally sound but did little to assuage fears that the court of public opinion (and, perhaps, also the pool of potential jurors) had already been tainted.

Fifteen years later, the public record remained very much reliant on those initial press reports in the wake of the Toronto 18 arrests. A trove of critical data on the investigation, arrests, police documentation, and trials remains largely unexamined. This lacuna of detailed historical, contextual, evidentiary, and documentary analysis leaves a gaping hole in the Canadian – and we argue the international – understanding of homegrown terrorism and its criminal trials.

From a legal perspective, by the numbers alone, the Toronto 18 trials remain the most important test of Canada’s terrorism legislation: the Toronto 18 cases were the first “mega-trial” of terrorism accused in Canada and, indeed, among the very first prosecutions ever attempted under Canada’s then relatively new criminal terrorism offences. The Toronto 18 cases offer some of the first appeals, first decisions on various terrorism offences, first terrorism sentencing decisions, first convictions, and first parole and prisoner releases.<sup>15</sup> Indeed, even 15 years after the arrests, the Toronto 18 judgements accounted for over 20% of terrorism judgments ever rendered in Canada. They set precedents on a variety of topics that are followed to this day; their first-movers advantage in this regard set the stage for how a variety of offences, criminal defences, and tactics would be addressed in Canada. They also set the stage for subsequent conclusions by the Supreme Court that Canada’s *Anti-Terrorism Act*, enacted shortly after 9/11, was consistent with the *Canadian Charter of Rights and Freedoms*.

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<sup>14</sup> Toronto Star Newspapers Ltd. v. Canada, 2010 SCC 21.

<sup>15</sup> For greater detail on the importance of these trials, see Chapter 14 of this book by Michael Nesbitt.

Likewise, they set the template for how terrorism in Canada would be sentenced. Simply put, the Toronto 18 cases play an outsized role in Canada's legal understanding of terrorism offences, both in terms of sheer numbers and in terms of the all-important precedents that they set by virtue of coming first.

From a social-scientific standpoint, the Toronto 18 was, and remains, one of the "purest" cases of Canadian homegrown terrorism, emerging around the time when similar plots such as the Madrid Train Bombing and the 7/7 attacks were planned and successfully executed. As such, the Toronto 18 remains extremely important to contemporary terrorism scholars and offers enduring insights into how and why people engage in violent political activism – even as the global security environment continues to change.<sup>16</sup>

The goal of this book is to fill the evidentiary lacunae that still exists around the Toronto 18 and the (still missing) lessons learned from this series of events; in so doing, this book strives to provide fresh, thorough, and heretofore unheard narratives surrounding the investigation, trial, punishment, and eventual release of arguably the most infamous set of terrorist offenders in Canada. To achieve these goals, we required two things: access to the story told and not told by the initial flurry of press reporting on the Toronto 18 and a multi-disciplinary group of subject-matter experts to analyze these and related documents.

To speak to the first problem, the editors collected from publicly available sources and courthouses a database of almost ten gigabytes of trial decisions, pre-trial decisions where available, expert witness reports, sentencing reports, constitutional judgements, interim judgements, trial transcripts, parole decisions and other materials submitted at trial, police

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<sup>16</sup> In the early 2010s, and then significantly in the mid-to-late 2010s, scholarly attention shifted away from cases of homegrown terrorism to the next big threats, lone-actor terrorism, and then from so-called "Jihadi Islamist extremism" to the burgeoning threat of right-wing extremist terrorism. This, however, does not mean that nothing can be learned from a thorough scholarly examination of the Toronto 18; quite the contrary. This book is an attempt at highlighting the utility of understanding previous incarnations of terrorist violence in order to predict and understand the future security environment. While not completely analogous, there are similar issues of identity, perceptions of threat, and ideology present within Islamist homegrown terrorist groups and the larger radical milieu in which North American far-right extremist terrorists emerge; these similarities mean that, even if the threat environment continues to change, the lessons from the Toronto 18 must be understood.

documents, videos, primary source documents written by the Toronto 18, and thousands of press clippings, both Canadian and international. Access to this database was then provided to each contributing author to ensure a common starting point for their analyses.

Multi-disciplinarity and a diversity of perspectives then play a vital role in examining these documents, for no one ideology, perspective, field of study, or methodological approach is sufficient to unpack mass security events of the size and complexity of the Toronto 18 case. For precisely this reason, this book includes chapters by a range of authors with expertise in criminology, law, religion, security studies, and sociology; contributing authors also include both academics and those who have played a role in investigating and prosecuting terrorism in Canada. Each author then brings their unique insights – and the perspectives, methodological approaches, and advantages of their fields of expertise – to this common set of documents and publicly available information, allowing us to see from a variety of angles the formation, composition, investigation, arrest, trial, punishment, and release of the Toronto 18.

All contributors were asked to provide chapters in their fields and from their perspectives. This also means that there is no central thesis across the book, for authors were provided with shared research and a topic, not a common conclusion or even point to be made. Indeed, not having a central thesis is precisely the point: to showcase how different experts can look at the same case study in very different ways, using different methodologies and ideologies to approach the same series of events and draw disparate lessons learned. We hope that this process not only provides more robust insights into the Toronto 18 case but helps build a shared understanding between different fields and, in so doing, showcases how important it is to have a multiplicity of perspectives and approaches when tackling complex problems like terrorism. In this way, each chapter is also intended to be linked by common subject matter (the Toronto 18 and the shared documentation) but also to be read as stand-alone pieces for those interested in discrete fields or issues for discrete purposes.

The result is a truly multidisciplinary and often critical analysis surrounding the totality of the Toronto 18 trials, as well as the events and interactions leading up to them. In particular, this book offers a unique analytical inquiry into various disparate legal and social dimensions of trying terrorism cases in Canada, including the common tactical and legal dilemmas for defence lawyers, prosecutors, and judges. The authors who

have contributed to this book have used the Toronto 18 to address critical questions such as:

How do terrorist groups form and behave, and what are the processes of radicalization to violence?

How do terrorists finance their operations, and how can we use financial information to detect and disrupt them?

How does secret intelligence information factor into the public criminal process?

What can police and other national security agencies (i.e., CSIS) do (and what must they avoid) during a terrorism investigation?

What role does religion and, in particular, Islam play in the media and the trials, and are the results fair or discriminatory?

How does the criminal process respond to terrorism cases?

What role does the *Canadian Charter of Rights and Freedoms* play in terrorism trials?

What is the role of the jury in terrorism trials?

What is the appropriate approach to punishing those who are convicted of broadly defined terrorist crimes?

What happens to those convicted and, in particular, what happens upon their eventual release from prison?

What does the Toronto 18 look like from a social network perspective, and what are the social-structural insights that can be gained from this analysis?

How can we understand the behaviours of the Toronto 18 through the lens of common criminological theoretical perspectives?

How can we understand the Toronto 18's progression towards violent action using a contemporary ecological model of terrorist radicalization?

## SO, WHO EXACTLY WERE THESE “TORONTO 18,” AND WHAT WERE THEY CHARGED WITH?

The Toronto 18 label is, clearly, derived from those 18 individuals arrested in the aftermath of that 2006 operation. But, as Justice Dennis O'Connor noted in his report on Maher Arar, labels, especially in the terrorism context, “have a way of sticking” and, more than that, “when labels are inaccurate, serious unfairness to individuals can result.”<sup>17</sup>

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<sup>17</sup> Commission of Inquiry into the Activities of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Analysis and Recommendations*, Catalogue No CP32-88/1-2006E (Ottawa: Public Works and Government Services Canada, 2006), 19.



The Toronto 18 label was indeed probably inaccurate in that it implies a singular – and perhaps single-minded – group of 18 individuals with a common terrorist plot in mind. But the number 18 – and thus the moniker, the “Toronto 18” – is misleading because it implicates individuals against whom charges were dropped. It also fails to recognize others whose involvement was arguably equally as crucial as many “members” of the group. In other words, the label Toronto 18 is both overinclusive and underinclusive: it is overinclusive because authorities proceeded with charges against only 11 of the 18 individuals,<sup>18</sup> and it is underinclusive in that there were arguably more individuals implicated but not charged in the two plots and the two training camps<sup>19</sup> – a December 2005 plot conceived at the Washago Camp and a May 2006 plot at the Rockwood Conservation Area.<sup>20</sup>

Moreover, the term Toronto 18 itself implies a certain homogeneity of missions and dynamics within the group, one that is belied by the facts as they came to light during the trials. By the time the individuals were arrested, they had split into two relatively distinct groups: there was the Mississauga group led by Zakaria Amara and the Scarborough group led by Fahim Ahmad (the latter group planned the Rockwood training camp). The membership, ambitions, capacity, and, at least according to the carceral sentences received by the members of those groups, moral blameworthiness of the two groups differed.

Many of the accused knew each other through family connections or from high school, so the exact moment the original, inclusive group was

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<sup>18</sup> By April 2008, the press was reporting that “A winnowing process has now reduced the original ‘Toronto 18’ down to only 11 still facing criminal charges, most of them now in their early 20s.” See Colin Freeze, “Charges stayed against four terrorism suspects,” *Globe and Mail*, April 16, 2008. Some of the accused had attended the Washago camp only for a few days and played paintball.

<sup>19</sup> See Chapter 2 of this volume: David Hofmann identified approximately 34 unique individuals who were part of the Toronto 18’s communication network.

<sup>20</sup> Marie Oullet and Martin Bouchard have persuasively argued that the group dynamics were extremely complicated, and it is only by casting a wider net that the evolution of the so-called Toronto 18 can be properly understood. See Marie Ouellet and Martin Bouchard, “The 40 Members of the Toronto 18: Group Boundaries and the Analysis of Illicit Networks,” *Deviant Behaviour* 39, no. 11, (2018): 1468–482, <https://doi.org/10.1080/01639625.2018.1481678>.

formed is unclear, but it was probably sometime in 2005.<sup>21</sup> We know from the trials, for example, that Dirie and Mohamed made their cross-border gun run to purchase weapons in the United States on August 13, 2005.<sup>22</sup> Another accused, Jahmaal James, travelled to Pakistan on November 5, 2005.<sup>23</sup> He attempted to make contacts to obtain terrorist training but almost immediately fell ill and, by all accounts, spent the entire time sick. He called one of the leaders, Fahim Ahmad, in January 2006, saying, “I’m dying over here,” but he stayed away from the others in Toronto at Ahmad’s direction.<sup>24</sup>

The best known of all of the Toronto 18’s activities was the Washago Camp where training events were held between December 18 and 31, 2005.<sup>25</sup> Ahmad and Amara were the leaders of the inclusive Toronto 18 group, still together at this time, and they were the two individuals that would come to lead the two splinter cells. While at the Washago Camp, they also led the group drills, physical activity, and capture-the-flag style paintball. These activities were videotaped and later edited as a video for propaganda and training.<sup>26</sup>

Two contrasting narratives about the Washago Camp emerged at trial. One was of a group of ill-prepared young Muslim men playing paintball and engaging in winter camping during the 2005 Christmas break. They were misled until the end by the leaders – Ahmad and Amara, in particular – about the purpose of the camp. There were reports (later found to be false) that the only weapon ever introduced to the camp was brought by Mubin Shaikh, who had first been recruited by CSIS and, by this time, was acting for the RCMP. The competing narrative stressed that while at the Camp, the participants were shown al-Qaeda videos and excerpts from extremist texts and videos advocating violence; they fired 250-rounds of ammunition and ended their time at the camp with an infamous speech by Ahmad stating: “Rome has to be defeated. And we have to be the ones that do it, no holding back, whether it’s one man that survives, you have to do it. This

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<sup>21</sup> Michelle Shephard and Isabel Teotonio, “Grade 9 Buddies; High School Friends Became Increasingly Militant as the Years Passed: [Final Edition],” *The Spectator*, June 5, 2006. On file with authors.

<sup>22</sup> *R v. Dirie*, 2009 CanLII 58598 at para 11 (ON SC).

<sup>23</sup> Tobi Cohen, “Another Accused in so-Called Toronto 18 Case Pleads Guilty to Terrorist Offences,” *Canadian Press*, February 26, 2010. On file with authors.

<sup>24</sup> *R v. Ansari*, 2010 ONSC 5455 at para 10.

<sup>25</sup> *R v. N.Y.*, 2008 CanLII 51935 at paras 20–55.

<sup>26</sup> *Ansari*, ONSC.

is what the Covenant's all about, you have to do it. And God willing we will do it. God willing we will get victory."<sup>27</sup>

In any event, as noted above, by March 2006, the original group had split into two, one based in the eastern Toronto suburb of Mississauga and led by Zakaria Amara (the Mississauga Group) and the other based in the Toronto suburb of Scarborough and led by Fahim Ahmad (the Scarborough Group).

## The Scarborough Group

The Scarborough group's seven members included Fahim Ahmad, Steven Vikash Chand, Amin Mohamed Durrani, Jahmaal James, Nishanthan Yogakrishnan, Mohammed Ali Dirie, and Asad Ansari, all of whom were found guilty of various terrorism offences. Nishanthan Yogakrishnan was originally underage when arrested, and, therefore, his identity was protected. However, he turned 18 during the trials and eventually had his name made public. He is thus alternately referred to in this book either by his given name or as "N.Y." This group's plan was to attack Parliament Hill, though the endeavour was mostly far-fetched, lacked funding, and was poorly planned as compared to the Mississauga Group. As a result, at trial, the Scarborough group was considered the (relatively) less serious of the two plots.

Fahim Ahmad was the leader and ideological centre of the Scarborough group. He was the individual that offered the religious arguments that served as the internal justification for the group's efforts and actions. But Zakaria Amara lost confidence in Fahim Ahmad in part because he had failed to make good on his extravagant claims that he would obtain guns and funds for the broader Toronto 18 group. After the split, Ahmad relied heavily on the underaged members of the group (such as N.Y.), but they were caught shoplifting on his behalf at a Canadian Tire.<sup>28</sup> He repeatedly attempted – unsuccessfully – to procure money for the group, including meeting with a potential fraudster about mortgage fraud schemes.<sup>29</sup> Indeed, his fundraising was so inept that part of his income was one of the younger

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<sup>27</sup> *Ansari*, ONSC at para 36; "Cell leader said 'We're down with' al Qaeda: trial," *Canadian Press*, April 14, 2010, <https://toronto.ctvnews.ca/cell-leader-said-we-re-down-with-al-qaeda-trial-1.502088>.

<sup>28</sup> N.Y., CanLII.

<sup>29</sup> R v. N.Y., [2008] O.J. No. 3902.

member's \$20/week allowance.<sup>30</sup> Ahmad also sent an unedited video to groups overseas showing Amara's full face.<sup>31</sup> But, while his competencies as a leader were questionable, his ambitions were not. Ahmad was clearly the source of the most sensationalist of the threats associated with the Toronto 18, including plans to storm Parliament and behead then-Prime Minister Stephen Harper. For this reason, Ahmad's group is also sometimes known as the Toronto 18 "Parliament Hill" plot group.

### **The Mississauga Group**

The Mississauga splinter group consisted of only four people from the original Toronto 18: Zakaria Amara, Shareef Abdelhaleem, Saad Khalid, and Saad Gaya. They planned to blow up the Toronto Stock Exchange, a building that unbeknownst to them contained the Toronto offices of the Public Prosecution Service of Canada – which would subsequently lead the prosecution efforts against the Toronto 18 – as well as the Toronto CSIS office. It was, as a result, considered the more serious – and was the more advanced – of the two plots, a fact that was reflected by the life sentences for the leader (Amara) and recruiters (Amara and Abdelhaleem) of the group.

Both Amara and Abdelhaleem were recruiters for the original Toronto 18 and considered among the leaders of that broader group as well. However, Abdelhaleem was the only member of Amara's group who did not attend the original Washago Camp. He was also perhaps the most adept member, with news outlets noting that he was older, had an established career, and drove a BMW.<sup>32</sup> But when it came to the Mississauga group at trial, Amara was seen as the leader of the splinter group because the plans came from him, he had taught himself to construct remote detonators, and had ordered the ammonium fertilizer to build the bombs. Indeed, by February 2006, he had a working prototype of a bomb. On April 7, 2006, he disclosed to an undercover police agent that he had plans to bomb the Toronto Stock Exchange building, the CSIS building in downtown Toronto, as well as a separate military base.<sup>33</sup>

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<sup>30</sup> See Chapter 9 of this volume.

<sup>31</sup> R v. Ahmad, 2010 ONSC 5874 at para 57.

<sup>32</sup> Torstar Network, "Informant Testifies," *Mississauga News*, January 11, 2010. On file with authors.

<sup>33</sup> R v. Amara, 2010 ONSC 441; N.Y., O.J.

Amara was also much more conscious of avoiding detection than Ahmad and his group. In fact, he became (rightly) convinced that CSIS were onto Ahmad and phoned Ahmad to say that the Scarborough crew should “quit everything totally”<sup>34</sup> in an attempt to throw authorities off their scent. Amara had organized his group into two “cells” with himself at the head; in the result, Abdelhaleem was not aware of Khalid or Gaya. In contrast to Ahmad, Amara successfully raised thousands of dollars using loans and credit cards. With these funds, he and his group were able to rent a van and a warehouse, finance a “Student Farmer” cover, and pay for what he thought was three tonnes of fertilizer in cash.<sup>35</sup> Concerns emerged about how to track such a small-scale financial operation since Canada’s terrorist financing tracking organization (FINTRAC) was only set up to capture large-scale international transfers.<sup>36</sup> Amara was able to finance his operation using only consumer credit cards and student loans.

## The Demise of the Groups

Although Amara took express steps to avoid apprehension by the authorities, both CSIS and the RCMP had active, ongoing investigations into the Toronto 18. As Ahmad and Amara made their plans, they were infiltrated by Canadian counterterrorism operatives.

CSIS met with Fahim Ahmad, the leader of the Scarborough group, as early as February and March of 2005. Ahmad admitted at that time to his extremist website activity (ongoing since 2002) but said he was not currently pursuing Jihad since he was a father to a baby girl.<sup>37</sup> By November 17, 2005,<sup>38</sup> CSIS had provided an advisory letter to the RCMP stating that “[t]he Service recently learned that Ahmad is planning for a camping trip in the immediate future with unnamed associates.” At the same time, CSIS did not provide the RCMP with the camp’s location, and, at one point,

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<sup>34</sup> Amara, ONSC at para 18.

<sup>35</sup> Amara, ONSC at para 18.

<sup>36</sup> “Financial transactions that must be reported,” Financial Transaction and Reports Analysis Centre of Canada, last modified August 16, 2019, <http://www.fintrac-acanafe.gc.ca/reporting-declaration/rpt-eng.asp>.

<sup>37</sup> Isabel Teotonio, “Toronto 18: An exclusive account of how Canada’s first homegrown terror cell was created, who followed the trials more closely and continuously than any other journalist, monitoring 1,200 hours of court proceedings in a case involving 82,200 electronic intercepts and 700 officers,” Part 1 of 2, *Toronto Star*, July 3, 2010. On file with authors.

<sup>38</sup> Teotonio, “Toronto 18,” Part 1.

CSIS knew that the RCMP were following the wrong person and did not say anything.<sup>39</sup>

Mubin Shaikh, who first acted as a confidential human source for CSIS and later as a confidential police informant for the RCMP, had initially made contact with the Toronto group at the Taj Banquet Hall on November 27, 2005.<sup>40</sup> He subsequently attended the Washago Camp from December 18 to 31, 2005. Shaikh thought Ahmad was “no amateur, it was the kids who were amateurs.”<sup>41</sup>

A friend of Abdelhaleem, Shaher Elsohemy, had also been recruited as a human source by CSIS. Elsohemy was eventually introduced to Amara by Abdelhaleem and was taken into their confidence. In particular, on April 8, 2006, Amara expressed an interest in acquiring large quantities of ammonium nitrate<sup>42</sup> and revealed his plan to bomb three targets. This information was promptly passed on to the police by CSIS, and four days later, Elsohemy became a police informer. In the ensuing weeks, Elsohemy had discussions with Abdelhaleem and Amara about the bomb plot and provided a great deal of helpful information to the police. Because Elsohemy was a confidential informant, police worried that none of that information could be used as evidence at trial. The police, therefore, sought to have Elsohemy become a police agent and, on May 10, 2006, Elsohemy agreed to do so. The police then obtained authorization to intercept communications, and from that point on, Elsohemy’s conversations with Abdelhaleem and Amara about the bomb plot were intercepted and recorded. Ultimately, this infiltration by two individuals, as well as ongoing

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<sup>39</sup> R v. Ahmad, 2009 CanLII 84776 at para 43 (ON SC).

<sup>40</sup> N.Y., O.J. at para 8.

<sup>41</sup> Isabel Teotonio, “Toronto 18: An exclusive account of how Canada’s first homegrown terror cell was created, who followed the trials more closely and continuously than any other journalist, monitoring 1,200 hours of court proceedings in a case involving 82,200 electronic intercepts and 700 officers,” Part 2 of 2, *Toronto Star*, July 4, 2010. On file with authors.

<sup>42</sup> Ammonium nitrate is the main component of a fertilizer bomb, such as was used in the bombing of the federal building in Oklahoma City. Amara’s plan was to build three bombs, each containing one tonne of ammonium nitrate. In order to establish the explosive force of such a bomb, the INSET investigators had a similar bomb constructed and detonated under scientific conditions. The expert report established that a bomb made of one tonne of ammonium nitrate would cause death and serious bodily harm to persons in the vicinity of the explosion and cause serious damage to an office building.

surveillance and intelligence gathering, led to the demise of the Toronto 18 and provided the evidence for their incarceration.

## **The Arrests**

The arrests on June 2, 2006 were made by an Integrated National Security Enforcement Team (INSET) – a specialized, inter-departmental team made up of members of the RCMP, CSIS, the Canada Border Services Agency, and provincial and municipal police services. The case against the accused involved extensive electronic surveillance and, of course, testimony from the two informants. One (Mubin Shaikh) was paid almost \$300,000 for his cooperation and another (Elsohemy) was paid \$4 million and was placed in witness protection. Mubin Shaikh had previous contact with CSIS and was frequently interviewed in the press throughout the trial process. He played an important role in the Washago Camp, which had been subject to extensive police surveillance.<sup>43</sup> The second informant, who had a degree in agricultural science, played an important role in the investigation of the Amara group that led to the rental of a storage locker and the purchase of an inert substance held out to be fertilizer.<sup>44</sup> The use of informers has been central to most post-9/11 terrorism prosecutions in North America, but this investigative technique remains shrouded in mystery and controversy. The Toronto 18 case was typical in this regard, as two accused claimed that they had been unfairly entrapped by informers whom they alleged had engaged in illegal and improper conduct. As is also typical, the Courts rejected both of these attempts to claim an entrapment defence that, if successful, would have resulted in the accused going free.<sup>45</sup>

## **The Trials**

In the end, three separate trials of 11 accused were eventually held, with only one before a jury. The cases took four years to see through to completion. The trials were long and complicated: there were lengthy pre-trial waiting periods and several appeals, two of which reached the Supreme Court. The trials covered legal issues ranging from entrapment to press publication to the constitutionality of Canadian national security law. A timeline of the judicial proceedings is provided below.

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<sup>43</sup> Teotonio, “Toronto 18,” Part 2.

<sup>44</sup> Teotonio, “Toronto 18,” Part 2.

<sup>45</sup> *N.Y., O.J.; R v. Abdelhaleem*, [2010] O.J. No. 5693 [*Abdelhaleem* 2010].

<p>August 3, 2006 – Ibrahim Aboud, the 18th member, is arrested.<sup>47</sup></p>	<p>June 2, 2006 – 15 of the members of the Toronto 18 are arrested in a massive police operation.<sup>46</sup></p>
<p>April 15, 2008 – Prosecutors stay the charges against Abdul Qayyum Jamal, Ahmad Ghany, Ibrahim Aboud, and Yasin Abdi Mohamed.<sup>49</sup></p>	<p>September 24, 2007 – Crown prosecutors stop the preliminary hearing and proceed straight to trial, prompting concerns of political interference in the prosecution and fairness against the accused and related litigation.<sup>48</sup></p>
<p>September 25, 2008 – Nishanthan Yogakrishnan is the first member of the group found guilty of participating in the activity of a terrorist group in a judge-alone trial.<sup>51</sup></p>	<p>March 25, 2008 – The trial of Nishanthan Yogakrishnan begins, the first of the Toronto 18.<sup>50</sup></p>
	<p>January 26, 2009 – The Ontario Court of Appeal dismisses an application by several newspapers and some of the accused to strike down the Court’s publication ban in cases where there may be a jury, and the mandatory publication ban is upheld by the Supreme Court of Canada in 2010.<sup>52</sup></p>

<sup>46</sup> CBC News, “Toronto 18: Key events.”

<sup>47</sup> CBC News, “Toronto 18: Key events.”

<sup>48</sup> CBC News, “Toronto 18: Key events.”

<sup>49</sup> “Charges stayed against 4 more suspects in bomb plot trial,” *CBC News*, April 15, 2008, <https://www.cbc.ca/news/canada/toronto/charges-stayed-against-4-more-suspects-in-bomb-plot-trial-1.736912>.

<sup>50</sup> N.Y., O.J.

<sup>51</sup> N.Y., O.J.

<sup>52</sup> *Toronto Star Newspapers Ltd. v. Canada*, 2009 ONCA 59 aff’d in 2010 SCC 21.



May 22, 2009 – Nishanthan Yogakrishnan is sentenced to two years and six months in the first sentencing decision. <sup>53</sup>	
September 21, 2009 – Dirie pleads guilty. <sup>55</sup>	September 3, 2009 – Khalid pleads guilty and is sentenced to 14 years. <sup>54</sup>
October 2, 2009 – Dirie is sentenced to seven years. <sup>57</sup>	September 28, 2009 – Gaya pleads guilty. <sup>56</sup>
January 18, 2010 – Gaya is sentenced to 12 years and Amara is sentenced to life. <sup>59</sup>	October 8, 2009 – Amara, leader of the bomb plot, pleads guilty. <sup>58</sup>
February 26, 2010 – Abdelhaleem is found guilty in a judge-alone trial. <sup>61</sup>	January 20, 2010 – Durrani is sentenced to seven years and six months. <sup>60</sup>
	April 14, 2010 – The jury trial of Ahmad, Ansari, and Chand begins after all three plead not guilty. <sup>62</sup>

<sup>53</sup> See Appendix A: Cast of Characters.

<sup>54</sup> See Appendix A: Cast of Characters.

<sup>55</sup> See Appendix A: Cast of Characters.

<sup>56</sup> See Appendix A: Cast of Characters.

<sup>57</sup> *Dirie*, CanLII.

<sup>58</sup> See Appendix A: Cast of Characters.

<sup>59</sup> *Amara*, ONSC; R v. Gaya, 2010 ONSC 434.

<sup>60</sup> Public Prosecution Service of Canada, *Durrani Pleads Guilty to Terrorism Offence* (News Release) (Ottawa: PPSC, January 20, 2010), [https://www.ppsc-sppc.gc.ca/eng/nws-nvs/2010/20\\_01\\_10.html](https://www.ppsc-sppc.gc.ca/eng/nws-nvs/2010/20_01_10.html).

<sup>61</sup> *Abdelhaleem* 2010, O.J.

<sup>62</sup> See Appendix A: Cast of Characters.

**xviii MULTI-DISCIPLINARY PERSPECTIVES ON THE TORONTO 18 TERRORISM TRIALS**

May 10, 2010 - Ahmad changes his plea to guilty partway through the trial. <sup>63</sup>	June 23, 2010 - Chand and Ansari are the last two members of the group to be found guilty. <sup>64</sup>
October 25, 2010 - Ahmad is sentenced to 16 years in prison. <sup>65</sup>	November 26, 2010 - Chand is sentenced to ten years in prison. <sup>66</sup>
December 17, 2010 - The Ontario Court of Appeal releases four decisions on terrorism simultaneously, three of which were from the Toronto 18. Khalid and Gaya from the Toronto 18, and the accused in the fourth case, Khawaja, all had their sentences increased (to 20 years, 18 years, and life, respectively). Amara's life sentence was upheld. <sup>67</sup>	February 10, 2011 - The Supreme Court upholds section 38 of the <i>Canada Evidence Act</i> , which requires that issues about evidence withheld from the accused for national security reasons must be dealt with in a separate trial in the Federal Court. <sup>68</sup>
March 4, 2011 - Abdelhaleem is sentenced to life in prison, the last sentence handed down. <sup>69</sup>	August 19, 2015 - Ansari's appeal of his conviction is dismissed. <sup>70</sup>

<sup>63</sup> See Appendix A: Cast of Characters.

<sup>64</sup> See Appendix A: Cast of Characters.

<sup>65</sup> *Ahmad*, ONSC.

<sup>66</sup> *R v. Chand*, 2010 ONSC 6538.

<sup>67</sup> *R v. Khalid*, 2010 ONCA 861; *R v. Amara*, 2010 ONCA 858; *R v. Khawaja*, 2010 ONCA 862; *R v. Gaya*, 2010 ONCA 860.

<sup>68</sup> *R v. Ahmad*, 2011 SCC 6.

<sup>69</sup> *R v. Abdelhaleem*, 2011 ONSC 1428.

<sup>70</sup> *R v. Ansari*, 2015 ONCA 575.

May 26, 2017 – Fahim Ahmad is denied parole with just seven months left on his sentence.<sup>71</sup>

In Canada, there is no single crime of terrorism, nor is “terrorism” itself even defined. Rather, a series of discrete terrorism offences were developed in the wake of 9/11.<sup>72</sup> At a very general level, these offences each fall into one of two categories. The first category is group-based – that is, all offences under this category require some action that supports a terrorist group or its mission.<sup>73</sup> It is this category of offences with which all of the Toronto 18 members were charged and convicted. For example, one can see from the below tables that all of the members of the Scarborough group – and, indeed, almost all of the Toronto 18 members – were convicted of participating in the activity of a terrorist group under section 83.18 of the *Criminal Code*, which requires that an individual act “for the purpose of enhancing the ability of any terrorist group to facilitate or carry out a terrorist activity.”<sup>74</sup>

Both Ahmad and Chand in the Scarborough group, and Amara, Abdelhaleem, and Khalid in the Mississauga group, were also convicted of committing an offence for a terrorist group,<sup>75</sup> while Ahmad alone was convicted of instructing others to carry out an activity for a terrorist group.<sup>76</sup>

<sup>71</sup> Michelle Shephard, “Leader of Toronto 18 terror group denied release,” *Toronto Star*, May 26, 2017, <https://www.thestar.com/news/canada/2017/05/26/leader-of-toronto-18-terror-group-denied-early-release.html>.

<sup>72</sup> These offences are found between sections 83.02–83.04 and 83.18 and 83.23 (in Part II.1) of Canada’s *Criminal Code*. See *Criminal Code*, R.S.C. 1985, c. C-46.

<sup>73</sup> A terrorist group is defined in section 83.01 of the *Criminal Code* as one that is either listed as such as per the requirements of section 83.05, or one that “has as one of its purposes or activities facilitating or carrying out any terrorist activity.”

<sup>74</sup> See *Criminal Code*, s. 83.18(1).

<sup>75</sup> See *Criminal Code*, s. 83.2.

<sup>76</sup> See *Criminal Code*, s. 83.21.

Scarborough Group (Parliament Hill Plot)

Name of Accused	Criminal Code Charge(s) (offence section(s))	Outcome
Fahim Ahmad	83.18, 83.2, 83.21	Pled Guilty <sup>77</sup>
Steven Vikash Chand	83.18, 83.2	Found Guilty at Trial
Amin Mohamed Durrani	83.18	Pled Guilty
Jahmaal James	83.18	Pled Guilty
Nishanthan Yogakrishnan (N.Y.)	83.18	Found Guilty at Trial
Mohammed Ali Dirie	83.18	Pled Guilty
Asad Ansari	83.18	Found Guilty at Trial

Mississauga Group (Downtown Toronto Bomb Plot)

Name of Accused	Criminal Code Charge(s) (offence section(s))	Outcome
Zakaria Amara	83.18, 83.2	Pled Guilty
Shareef Abdelhaleem	83.18, 83.2	Found Guilty at Trial
Saad Khalid	83.2	Pled Guilty
Saad Gaya	83.18 (83.2 charge dropped)	Pled Guilty

The second general category of offences relies on the prosecution proving both that a “terrorist activity” was planned or committed<sup>78</sup> and that the individual was involved with that terrorist activity. A common example is the offence of facilitating a terrorist activity under section 83.19 of the *Criminal Code*. No member of the Toronto 18 was charged with any of the “terrorist activity” categories of offences, presumably because the Toronto 18 group was deemed a terrorist entity, and thus, the actions in support of the group by the members were properly caught by the group-based offences.

<sup>77</sup> Originally pled not guilty but changed his plea partway through the trial. See Isabel Teotonio, “Toronto 18 ringleader pleads guilty in terror trial,” *Toronto Star*, May 10, 2010, [https://www.thestar.com/news/crime/2010/05/10/toronto\\_18\\_ringleader\\_pl\\_eads\\_guilty\\_in\\_terror\\_trial.html](https://www.thestar.com/news/crime/2010/05/10/toronto_18_ringleader_pl_eads_guilty_in_terror_trial.html).

<sup>78</sup> “Terrorist activity” is defined in section 83.01 of the *Criminal Code*. It can refer either: (1) to a specified offence under a host of recognized terrorist treaties to which Canada is a party; or, (2) to an act committed for “a political, religious or ideological purpose, objective or cause” with the “intention of intimidating the public, or a segment of the public, with regard to its security... or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act” all with the intention of causing death, serious bodily harm, endangering life, causing a serious risk to public safety or health, and so on.

As can be seen in the above tables, all 11 members of the Toronto 18 who were prosecuted were found guilty of various (group-based) terrorism offences. They were all sentenced to various (escalating) terms of incarceration based on their level of leadership and perceived individual complicity in the plots.<sup>79</sup> The custodial sentences ranged from two years and six months (N.Y., a youth at the time of the training camp) to life in prison (in the cases of Amara and Abdelhaleem). Further charges against the remaining seven Toronto 18 members were stayed. As of early 2020, all but two of the convicted offenders had been released.<sup>80</sup>

In the end, the range of court judgements, sentencing decisions, constitutional challenges, and other court decisions form the largest block of cases shaping Canadian terrorism law so far. They have largely guided and been upheld by subsequent jurisprudence. They tackled issues that will almost certainly arise in any future terrorism prosecutions: the selection of jurors in cases where there are concerns about pre-trial publicity and other forms of racial or religious prejudice against the accused, the breadth of terrorism offences, the admissibility of prejudicial evidence (especially as it relates to the accused's alleged religious or political motives), limits on the information that is disclosed to the accused because of concerns of exposing CSIS's sources and methods, testimony by religious experts and psychologists, the role of the *Charter* in restraining the state's counter-terrorism activities, and the role of pro-active stings and entrapment in terrorism investigations. All of these issues are examined in this book.

This special issue looks back at where the individuals came from, including their social networks and radicalization. It examines the investigations by CSIS and police with special attention to the transition from secret intelligence investigations into more public prosecutions. The book also examines the pre-trial and trial processes that spanned from 2006 to 2010. Finally, it examines their sentencing and the eventual parole of most of the 11 of the 18 who were convicted. The special issue is divided into four main parts (see below), starting with a focus on the individuals and moving to the investigative, prosecution, and eventually punishment and release of the Toronto 18.

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<sup>79</sup> For a detailed breakdown of the duration of the custodial sentences that each member of the Toronto 18 received, see Chapter 14, "The Sentencing of the Toronto 18" (Michael Nesbitt); details of their parole can be found in Chapter 15, "Rehabilitation, Reintegration & Parole" (Reem Zaia).

<sup>80</sup> Those two being Abdelhaleem and Amara.

## PART ONE: SOCIOLOGICAL AND CRIMINOLOGICAL PERSPECTIVES ON THE TORONTO 18

The first part of the special issue contains five chapters that use sociological and criminological approaches to gain insight into various aspects of the Toronto 18. It provides theoretical and empirical context that explores the Toronto 18's social backgrounds, their interpersonal networks, how they radicalized towards violence, and how Canadian security services approach and deal with violent threats akin to the Toronto 18.

In Chapter 1, Lorne Dawson and Amar Amarasingam tap into the robust literature on homegrown terrorist radicalization to comparatively re-examine the Toronto 18 before applying Dawson's ecological model of terrorist radicalization<sup>81</sup> to the particular case of the Toronto 18. The authors not only contribute to the growing knowledge of how and why young Canadians like the Toronto 18 members radicalize towards violence, but they also provide tantalizing information that may help inform future radicalization research.

In Chapter 2, David Hofmann uses social network analysis to compare and contrast the social-structural characteristics of the Toronto 18 across four distinct operational periods to provide empirical insights into the interpersonal connections and composition of the group. This chapter provides the first glimpse into the utility of social network analysis by providing a nuanced understanding of the multiplex and intermeshed social relationships within terrorist groups. Similar approaches that use social network analysis may offer a myriad of different perspectives and conclusions for scholars and practitioners who are engaged in research and policies aimed at detecting and preventing acts of terrorist violence.

Chapter 3, written by Tiana Gaudette, Garth Davies, and Ryan Scrivens, examines the Toronto 18 through some of the most commonly used criminological theoretical perspectives, focusing on insights that can help explain and understand their behaviours through pre-existing criminological theoretic lenses.

Chapter 4 consists of an interview with Mubin Shaikh, the RCMP confidential police informant who was embedded within the Toronto 18, conducted by Amar Amarasingam. This discourse provides unique personal

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<sup>81</sup> Lorne L. Dawson, "Sketch of a Social Ecology Model for Explaining Homegrown Terrorist Radicalisation," *The International Centre for Counter-Terrorism: The Hague* 8, no.1 (2017), <http://dx.doi.org/10.19165/2017.1.01>.

and professional insights into Shaikh's experience and his perceptions about the radicalization and dangers presented by different members of the Toronto 18.

In Chapter 5, Stephanie Carvin outlines the general operations, activities, and approaches used by CSIS when tasked with detecting and investigating violent, al-Qaeda-inspired threats, like the Toronto 18. She notes that while the Toronto 18 case is seen as a success for CSIS, much has changed since 2010 and CSIS faces new challenges with its terrorism investigations.

## **PART TWO: THE INVESTIGATION AND CHARGING OF THE TORONTO 18**

The second part of the book contains Chapters 6 through 9. The first three chapters are written from the perspectives of one of the lead prosecutors in the Toronto 18 cases (Croft Michaelson), former CSIS officers (Derek Huzulak and Dave Murray), and the studious perspective of two academics looking in on the system with a review to legal and policy reform (Craig Forcese and Jay Pelletier). These authors focus on how an intelligence investigation such as this progressed to a criminal investigation that resulted in charges and, eventually, successful prosecution, as well as the difficulties of transitioning from secret intelligence investigations into more public criminal investigations, which has bedevilled Canadian terrorism investigations in the past. It was a factor in the bungled investigation of the 1985 Air India bombings that killed 331 people in what was, until 9/11, the world's deadliest act of aviation terrorism.<sup>82</sup> The Toronto 18 case was an important, and some might argue all-too-rare, incident of a successful transition from intelligence to evidence, though it also provides valuable lessons for the legal system and considerations for law-makers in terms of needed reform. All three call for reform, with Forcese and Pelletier stressing the need for legal reforms, Michaelson outlining concerns relating to the amount of disclosure and Canada's complex bifurcated court structure that was avoided in the Toronto 18 case, and Huzulak and Murray calling for moves away from the divided and parallel CSIS and police investigations that were used in the Toronto 18

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<sup>82</sup> Canada, *Commission of Inquiry into the Bombing of Air India Flight 182*, in *Air India Flight 182: A Canadian Tragedy*, vol. 3, Catalogue No. CP32-89/5-2010E (Ottawa: Supply and Services, 2010). Kent Roach was the research director for this inquiry.

investigation and, with some modifications, continue to this day. In the final chapter of part two, Jessica Davis offers a long-overdue examination of the financing of the Toronto 18 with a view to the lessons learned from Canada's (poor) record of investigating and prosecuting terrorist financing.

### **PART THREE: LEGAL ISSUES AT TRIAL**

The third part of the book consists of four chapters that examine the extensive pre-trial and trial processes that took place in the Toronto 18 cases.

In Chapter 10, Kent Roach examines how the jury was selected in one of three Toronto 18 cases that resulted in trials. He raises questions about whether jury trials really are beneficial for those charged with terrorism who may be subject to racial and/or religious prejudice. The jury trial in the Toronto 18 case was also influenced by the fact that one of the ringleaders, Fahim Ahmad, pled guilty in the middle of the trial but only after the jury had heard much of the evidence about his role and statements. After five days of deliberations, the jury convicted the remaining accused in that trial, Steven Chand and Asad Ansari.

In Chapter 11, Anver Emon and Aaqib Mahmood pick up on discussions of prejudice by pointing out the prejudicial effect that evidence about religion may have had in one of the jury trials and concerns about the admissibility of expert opinion evidence on religion by those who were not properly qualified at law to offer such evidence at trial.

In Chapter 12, Vincent Chiao examines the difficulties of making up a successful claim of entrapment in the terrorism context. Entrapment claims have been recognized in one subsequent terrorism case, but it stands as the only North American case where such a defence, that results in the accused walking free, has been successful. These three chapters suggest that legal and social determinations of guilt and innocence in terrorism cases may, when a closer and critical look is taken, often turn out to be more complex and ambiguous than is commonly realized.

Finally, in Chapter 13 Kent Roach suggests that while *Charter* applications slowed down and burdened the Toronto 18 prosecution, they did not provide a barrier to the successful prosecutions. Indeed, there were no guilty verdicts or stays of proceedings because of entrapment in any of the Toronto 18 cases. The only two *Charter* challenges where the accused enjoyed some initial successes were eventually overturned in the Supreme



Court of Canada – some of the first Supreme Court jurisprudence on the new terrorism provisions enacted after 9/11.<sup>83</sup> Roach suggests that courts today would, and should, take the claims made by Toronto 18 members that their rights were violated by the conditions of their pre-trial detention more seriously. He also outlines how bail decisions made after the accused is arrested will often be critical and warns that they may place pressure on those detained without bail to plead guilty, especially if they receive a significant reduction in their sentence as a result. Although broad terrorism offences, such as participating in a terrorist group, have been upheld under the *Charter* by the Supreme Court of Canada, he suggests that they can be problematic when applied to those at the periphery of terrorism plots.

## **PART FOUR: SENTENCING, PAROLE, REINTEGRATION, AND AN UNKNOWN FUTURE**

The last part of this special issue examines the process of coming to terms with the appropriate sentencing and punishment for the Toronto 18, as well as how Canada might go about reform and rehabilitation and reintegration of the Toronto 18 and, more broadly, how it should treat its citizens.

In Chapter 14, Michael Nesbitt traces the enduring importance of the Toronto 18 sentencing decisions. He also reveals how these decisions influenced a Canadian approach to sentencing terrorism that seems to stray from the fundamental principle utilized in the sentencing of other crimes by deemphasizing the individual (including youth), their prior good behaviour, and their efforts at reform and rehabilitation while overemphasizing the need to deter and denounce the “crime of terrorism” (in contrast to the specific terrorism offence committed and charged). In the end, he finds that long custodial terms for anyone convicted of terrorism have been the norm in Canada and, due to the judicial approach to sentencing, will likely continue to hold sway.

In Chapter 15, Reem Zaia describes how the continued diminution of rehabilitation and personal reform extends beyond the courtroom and into Canada’s prison and parole systems. This finding only serves to reinforce concerns about both how well justice is being served by this rather unique approach to terrorist crimes.

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<sup>83</sup> See *Toronto Star Newspapers Ltd*, SCC; *Ahmad*, SCC.

Putting the chapters together, one sees in the result a series of long prison terms based on fear of terrorism as a general phenomenon, coupled with the inability of the individuals that perpetrate the discrete terrorism offences to access needed interventions. For society, this means the risk of depriving an individual of their liberty for longer than might strictly be necessary where the offender was young, repentant, and largely uninvolved in the planning and, certainly, the execution of, a plot (a serious rights concern) while also eventually releasing terrorist offenders that have never received assistance in addressing their underlying grievances and ideologies (a serious safety concern). One is left to question how both rights and safety are best served by such a system.

In the final chapter of the special issue, Chapter 16, Audrey Macklin looks further down the road for convicted terrorists by recounting Canada's history of citizenship revocations. In so doing, she reminds us of the political climate during Stephen Harper's Prime Ministership in which the Toronto 18 were arrested, tried, and convicted, and attempts were made to deprive some of them of their Canadian citizenship. Macklin holds an important warning that even so-called "homegrown terrorists" are susceptible, socially and legally, to be expelled from the Canadian community – a lesson from the past that, given Canada's history, is sure to have value and salience in the future.

In the end, each of the four parts of the special issue identify and make valuable contributions to extremely difficult issues that continue to affect and perplex counter-terrorism investigations, trials, and punishment. They are:

- (a) The difficulties of knowing when radicalized people (including from the far right) will move to violence (Part I);
- (b) The difficulties of transitioning from secret evidence to public evidence (Part II);
- (c) The difficulties in ensuring fair trials in emotive terrorism trials (Part III); and
- (d) The dilemmas with respect to punishment and rehabilitation (Part IV).

The authors examine the case with the distance of the past decade since the last trials were completed and a decade and a half since the June 2, 2006 arrests first made headlines. While future historians will undoubtedly be able to place the Toronto 18 in a broader context, by drawing from a range of perspectives, this book hopes to provide some contemporaneous insight and answers to these and other questions for all those in Canada and abroad

that might be interested in national security and terrorism studies, religious studies, the psychological and sociological study of radicalization and ideology, journalism, law and criminology, and other related fields. Indeed, by building upon and going beyond a legal examination of the Toronto 18, this book provides insights and perspectives for academics interested in the social-scientific study of terrorism and political violence, as well as government and security agencies that are tasked with the detection and prevention of acts of terrorism on Canadian soil. Legal practitioners and scholars in the area of terrorism will also find unique and useful perspectives on the practicalities of this complex field, including critical insights that may help guide the courts away from some of their previous mistakes.