

*Anti-Terrorism Act, 2015: A History of Canadian security legislation*

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## Abstract

The 2014 attacks on Parliament Hill and the killing of Warrant Officer Patrice Vincent prompted the Conservative government, led by Prime Minister Stephen Harper, to table Bill C-51, *An Act To Enact The Security Of Canada Information Sharing Act And The Secure Air Travel Act, To Amend The Criminal Code, The Canadian Security Intelligence Act And The Immigration And Refugee Protection Act And To Make Related And Consequential Amendments To Other Acts* (2015). The legislation was highly controversial due to the amendments that granted sweeping powers to our national security agencies. Supporters argued the legislation was necessary to combat global terrorist groups, whereas detractors argued the proposed legislation put civil rights at serious risk of abuse. Once passed into law as the *Anti-Terrorism Act, 2015*, newly elected Prime Minister Justin Trudeau began the process of amending the law in keeping with his 2015 election promise. The Liberals launched a public consultation process that resulted in the tabling of new legislation: Bill C-59. This research project will analyze the history of the *Anti-Terrorism Act, 2015*, including its creation and criticisms. The overarching objective of the research project is to understand how Bill C-51, later the *Anti-Terrorism Act, 2015* came to fruition, and why the current Liberal government is attempting to replace it. National security legislation is important since our national security agencies operate according to the *Anti-Terrorism Act, 2015*, and understanding the implications of the current law, and the changes proposed in Bill C-59 affect all Canadians.

## Introduction

On 22 October 2014 Michael Zehaf-Bibeau drove his grey 1995 Toyota Corolla eastbound on Wellington Street and parked on the curb behind the National War Memorial. Running from his car, and carrying a Winchester Model 94 lever action rifle, Zehaf-Bibeau approached two Argyll and Sutherland Highlanders of Canada pulling sentry duty at the National War Memorial. Raising his rifle, he proceeded to fire three shots at Corporal Nathan Cirillo, fatally wounding the corporal before storming back to his car.<sup>1</sup> Zehaf-Bibeau proceeded to forcefully enter the Centre Block on Parliament Hill, where he was killed in an exchange of gunfire with security personnel. Two days earlier, Martin Rouleau-Couture rammed two Canadian Armed Forces members with his car, killing warrant officer Patrice Vincent and injuring the other soldier.<sup>2</sup>

The incidents shocked the nation and launched a hyper-politicized national debate that resulted in the highly controversial Bill C-51, *An Act To Enact The Security Of Canada Information Sharing Act And The Secure Air Travel Act, To Amend The Criminal Code, The Canadian Security Intelligence Act And The Immigration And Refugee Protection Act And To Make Related And Consequential Amendments To Other Acts* (2015). Bill C-51 was positioned by its supporters as a necessary set of legal amendments to allow our national security agencies to better combat terrorism. The rise of Islamic State (IS), and the global attacks the group inspired amongst its followers created the hyper-partisan environment that ultimately gave birth to C-51, and Canadians were largely supportive of the new legislation.<sup>3</sup> Detractors of the bill argued the

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<sup>1</sup> Royal Canadian Mounted Police, "Independent Investigation into the Death of Michael Zehaf-Bibeau October 22, 2014, Centre Block, Parliament Hill, Ottawa, Canada," (accessed 15 January 2018), 4, <http://www.rcmp-grc.gc.ca/en/independent-investigation-death-michael-zehaf-bibeau>

<sup>2</sup> Ian Austen, "Hit-and-Run That Killed Canadian Soldier Is Called Terrorist Attack," *The New York Times*, 21 October 2014, <https://www.nytimes.com/2014/10/22/world/americas/canadian-soldier-run-down-in-what-officials-call-act-of-terror-dies.html> (accessed 15 January 2018).

<sup>3</sup> Craig Forcese and Kent Roach, *False Security: The Radicalization of Canadian Anti-Terrorism* (Toronto: Irwin Law, Inc, 2015), 2.

amendments were both poorly written and too expansive, thereby making potential *Charter* violations both legal and commonplace. Bill C-51 was positioned by its critics as being a reactionary version of the USA PATRIOT Act that would sacrifice civil liberties for security. Opponents like Ed Broadbent, believe that C-51 threatened fundamental rights and freedoms.<sup>4</sup> The debates surrounding the bill continued until royal assent at which point Bill C-51 became the *Anti-Terrorism Act, 2015*

During the 2015 federal election, the Liberals, led by future Prime Minister Justin Trudeau, pledged to amend the “problematic elements of Bill C-51” should they be elected, and began working to introduce new legislation that would “better balance our collective security with our rights and freedoms.”<sup>5</sup> The Liberals subsequently tabled Bill C-59, designed to make promised amendments to the “problematic” *Anti-Terrorism Act, 2015*. There was skepticism that the Liberals would fulfill their election promise and seek to amend the *Anti-Terrorism Act, 2015*, since international jihadist terrorism required tougher security measures, and the Liberals did not want to appear “soft” on terrorism and national security.<sup>6</sup> Since the tabling of Bill C-59, which at the time of writing is at First Reading, there has been a flurry of articles and opinions discussing the proposed changes that C-59 would make to the *Anti-Terrorism Act, 2015*. The status of C-59 is ongoing, and time will determine the changes to the *Anti-Terrorism Act, 2015* that may happen if Bill C-59 is given royal assent.

Anti-terrorism legislation like the *Anti-Terrorism Act, 2015* and C-59 are fascinating since terrorism as a political phenomenon is ongoing and does not seem to show signs of abating. While

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<sup>4</sup> Broadbent Institute, “Repeal Bill C-51,” [http://www.broadbentinstitute.ca/repeal\\_c51](http://www.broadbentinstitute.ca/repeal_c51) (accessed 15 January 2018).

<sup>5</sup> Liberal Party of Canada, “Bill C-51,” <https://www.liberal.ca/realchange/bill-c-51/> (accessed 16 January 2018).

<sup>6</sup> Lawrence Martin, “Anti-terrorism law: Why the Liberals aren’t amending it,” *The Globe and Mail*, 2 August, 2016, <https://www.theglobeandmail.com/opinion/bill-c-51-why-the-liberals-arent-living-up-to-promises-to-amend-the-law/article31220198/> (accessed 17 January 2018).

it has been claimed the world is becoming less violent, and states have largely given up fighting one another, the plethora of intra-state conflicts, and the emergence and perpetuation of non-state actor violence poses a challenge for national governments in combating terrorism and intra-state violence. Given that non-state actors like Islamic State seemed poised to remain security threats to national governments, and since they use a variety of means to wage terrorism against their targets, anti-terrorism legislation and national security agencies will have to continually remain flexible and adaptable to combat groups like Islamic State.

This adaptability calls for legislation like the *Anti-Terrorism Act, 2015* and C-59 to reflect Canadian government intentions of combating IS and likeminded terrorist and extremist groups in the post 9/11 security environment. Canada benefits from being geographically isolated from the rest of the world, with a largely inhospitable northern region and the world's premier superpower on our southern border. However, events like the Air India bombing, Toronto 18 plot and Parliament Hill attacks suggest that Canada is vulnerable to terrorism. Whether its globalization or social media, the world is more connected, and Canada cannot rely on future conflicts being waged in distant lands, out of sight and mind.

This research project will analyze the history of the *Anti-Terrorism Act, 2015*, including its creation and criticisms. The overarching objective of the research project is to understand how Bill C-51, later the *Anti-Terrorism Act, 2015* came to fruition, and why the current Liberal government is attempting to replace it. The research paper is divided into three sections. The first section will start with a historical examination of Canadian national security operations, focused on the October Crisis and bombing of Air India Flight 182. The second section will examine Bill C-51 and the comments and criticisms of the legislation. The third section will examine the creation process of C-51 and the efforts to amend the Bill through public consultations and new

legislation. The fourth section will conclude and offer some thoughts on the current Bill C-59 as a product of the National Security Consultations and the *Anti-Terrorism Act, 2015* controversy.

One of the unique challenges of studying the *Anti-Terrorism Act, 2015* is the lack of historical hindsight and the fact that it may change completely with the tabling of Bill C-59. It has been three years since the *Anti-Terrorism Act, 2015* was passed into law, and there is not yet sufficient historical hindsight to analyze and predict *all* the lingering effects of its legislation. One might argue Bill C-51's legacy is both short and in the process of being minimized with the introduction of C-59. Secondly, since C-59 is being debated at First Reading, the version of the bill we reference may change completely and render our analysis obsolete. Regardless, it is important to understand why C-59 came to fruition. The direction and purpose of this major research project has been explained, and it is time to begin with the context of Bill C-51 and a brief history of two infamous national security incidents.

### **First Section**

While the events of September 11<sup>th</sup>, 2001 arguably influenced the recent Canadian approach to counter-terrorism, there have been specific instances before 9/11 that forced Canadian policymakers and the national security organizations to confront threats. The October Crisis of 1970 and the destruction of Air India Flight 182, better known as the Air India bombing were two such incidents.

The October Crisis of 1970 will be examined because the decision to curb civil liberties with emergency legislation can serve as a case study to the realities of a highly permissive national security environment. There are links between the events of 1970 and threat reduction actions made legal under the *Anti-Terrorism Act, 2015*. The Air India bombings will be examined because

the national security organizations bungled information-sharing, thereby contributing to the conditions that lead to the destruction of Flight 182. The first section of this major research proposal aims to demonstrate the legal realities of anti-terrorism and national investigation prior to the events of 9/11 and later, the Parliament Hill attack. The October Crisis and bombing of Air India Flight 182 will demonstrate the liberties and mistakes our national security agencies made in dealing with national security threats.

The October Crisis of 1970 is linked to the Quiet Revolution experienced by Quebecers. The transition of civic power in Quebec from the church to the state resulted in the secularization of the province, and a “nationalization” of the province’s health and education systems. In short, the Quiet Revolution of the 1960s ushered in both sweeping public policy changes and a wide variety of social movements.<sup>7</sup>

The Front de Libération du Québec (FLQ) was the protagonist of the October Crisis. Formed in 1963, the group called for a separate Quebec state, and a state that supports workers.<sup>8</sup> The manifestos and messages pushed by the FLQ resonated with the student population, and disgruntled students both bolstered the ranks of FLQ membership and held various demonstrations in favour of the group.<sup>9</sup>

The FLQ began their violent activities by throwing a Molotov cocktail at an English radio station in Montreal in 1963. From 1963 onwards to 1970, the FLQ fought a guerrilla campaign against the authorities, carrying out hundreds of bombings and various FLQ cells robbed banks to finance their operations.<sup>10</sup> The FLQ operations escalated on 5 October 1970 when an FLQ cell

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<sup>7</sup> Dominique Clément, “The October Crisis of 1970: Human Rights Abuses Under the *War Measures Act*,” *Journal of Canadian Studies* 42, No. 2 (Spring 2008): 162.

<sup>8</sup> *Ibid.*, 18.

<sup>9</sup> *Ibid.*, 19.

<sup>10</sup> *Ibid.*, 164.

abducted James Cross, a British consulate member, and when the provincial government refused to listen to the FLQ terms of release for Cross (including releasing jailed FLQ members, and safe passage out of the country), a second FLQ cell abducted Pierre Laporte, the provincial minister of Labour five days later.<sup>11</sup> After the abduction of Laporte, the provincial government, led by Henri Bourassa, decided not to give in to the FLQ demands for the release of “political prisoners”, but continued with hostage negotiations hoping to buy more time and allow for the peaceful release of Cross and Laporte.<sup>12</sup>

On 15 October 1970, thousands of Canadian Armed Forces (CAF) personnel were deployed to Montreal to patrol and aid the civil power in response to the FLQ kidnappings and civil unrest. The next day, Bourassa and Montreal Mayor Jean Drapeau sent a letter to Prime Minister Pierre Trudeau, calling the federal government to intervene. The federal government responded by imposing the *War Measures Act, 1914*.<sup>13</sup>

The *War Measures Act, 1914*, was a Parliamentary statute that authorized the Governor in Council, during times of “war, invasion or insurrection” to take emergency measures aimed at quelling civil unrest. Such measures included the “arrest, detention, exclusion and deportation” among other powers that allowed the federal government to swiftly act against real or perceived threats on behalf of the public for the security of the public.<sup>14</sup> When Prime Minister Trudeau received word from Bourassa and Drapeau that an imminent insurrection would occur without the

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<sup>11</sup> Dominique Clément, “The October Crisis of 1970: Human Rights Abuses Under the *War Measures Act*,” *Journal of Canadian Studies* 42, No. 2 (Spring 2008): 165.

<sup>12</sup> William Tetley, *The October Crisis 1970: an insider’s view* (Montreal: McGill-Queen’s University Press, 2007): 40.

<sup>13</sup> Dominique Clément, “The October Crisis of 1970: Human Rights Abuses Under the *War Measures Act*,” *Journal of Canadian Studies* 42, No. 2 (Spring 2008): 166.

<sup>14</sup> Canada, Parliament, *War Measures Act, 1914*, Statutes of Canada, 1914, ch.2, <http://learning.royalbcmuseum.bc.ca/wp-content/uploads/2015/06/War-Measures-Act.pdf> (accessed 4 February 2018).

intervention of the federal government, Trudeau implemented the *War Measures Act*, which authorized the arrest detention, and imprisonment of FLQ members and others with similar aims.<sup>15</sup> A day after the *War Measures Act, 1914* was put into effect, Pierre Laporte was found dead in the trunk of a car, having been murdered by his kidnappers.<sup>16</sup> The October Crisis ended with the release of James Cross on 3 December 1970, and the flight of his abductors to Cuba. The FLQ members who killed Laporte were jailed. The CAF personnel were withdrawn from public duty in January 1971, and the *War Measures Act, 1914* effects expired in April of 1971.<sup>17</sup>

What were the effects of the *War Measures Act, 1914* and how did Canada's national security apparatus act and react against the FLQ? To begin, during the October Crisis, the police arrested and detained suspected FLQ members and supports within hours of emergency legislation going into effect. In addition, arrested suspects were denied due process under the legislation, many suspects were denied legal council and communications, and guilt was determined by arrest, rather than due process in a court of law.<sup>18</sup> The *War Measures Act, 1914* also affected freedom of the press, and while legislation was active, student newspapers were heavily pressured into censoring their own content. The emergency legislation temporarily shelved civil and political rights for national security. Although the *War Measures Act, 1914* has only been used three times, its use during the October Crisis was unprecedented because the effects of the legislation, like arbitrary arrest, detention, and the limiting of the freedom of the press reversed fundamental

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<sup>15</sup> William Tetley, *The October Crisis 1970: an insider's view* (Montreal: McGill-Queen's University Press, 2007): 82.

<sup>16</sup> Dominique Clément, "The October Crisis of 1970: Human Rights Abuses Under the *War Measures Act*," *Journal of Canadian Studies* 42, No. 2 (Spring 2008): 166.

<sup>17</sup> *Ibid.*, 175.

<sup>18</sup> *Ibid.*, 167.

societal norms and freedoms enjoyed by Canadians. Both the legislation, and its use in peacetime Canada mark a significant departure from the normal conduct of state-society relations.

The Royal Canadian Mounted Police (RCMP) were responsible for both security intelligence and national security policing, and the FLQ guerrilla campaign from 1963 to 1970 brought the two organizations into conflict.<sup>19</sup> The RCMP waged a counterinsurgency war against FLQ cells, using a variety of tactics and dirty tricks to disrupt FLQ operations and personnel. The RCMP recruited a vast network of informers, and used active forms of disruption, notably burning down a barn to disrupt an alleged meeting between an FLQ cell and members of the Black Panthers.<sup>20</sup> Other tactics employed by the RCMP included break-ins, electronic surveillance, theft and espionage against a wide variety of political targets including left-wing groups, universities, trade unions, newspapers and the PQ.<sup>21</sup>

The conduct of the RCMP during its war with the FLQ triggered the appointment of a provincial and federal royal commission to investigate RCMP conduct and operations against the FLQ and other groups the service deemed a threat to national security.<sup>22</sup> The Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, otherwise known as the McDonald Commission, were three reports that investigated allegations made against the RCMP. The report alleges that “members of the R.C.M.P. or its sources had engaged in activities “not authorized or provided for by the law”, either in the sense that offences were committed, or in the case of members, that their conduct was “unacceptable.”<sup>23</sup> The McDonald Commission

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<sup>19</sup> Craig Forcese and Kent Roach, *False Security: The Radicalization of Canadian Anti-Terrorism* (Toronto: Irwin Law, Inc, 2015), 38.

<sup>20</sup> *Ibid.*, 39.

<sup>21</sup> *Ibid.*, 39.

<sup>22</sup> *Ibid.*, 176.

<sup>23</sup> Government of Canada, Commission of Inquiry concerning Certain Activities of the Royal Canadian Mounted Police (McDonald Commission), *Third Report: Certain R.C.M.P Activities and the Question of Governmental Knowledge*, Part IV, chapter 3, (Ottawa: Supply and Services Canada, 1981): 190.

ultimately found the RCMP guilty of “noble cause”, meaning that unacceptable service member conduct and illegal dirty tricks were considered necessary to preventing FLQ terrorism.<sup>24</sup> The report also recommended the responsibility to conduct security intelligence should be taken from the RCMP mandate and given to a new civilian intelligence agency, leading to the creation of the Canadian Security Intelligence Service (CSIS).<sup>25</sup>

The October Crisis serves to demonstrate the context the RCMP operated and combated domestic terrorism. Our historical analysis of the October Crisis demonstrated how national security policing was conducted with the *War Measures Act, 1914*, and when contrasted with our section on Bill C-51, the October Crisis to the present day will represent an evolution of national security legislation and policing. As the Security Intelligence Review Committee (SIRC) notes in its 2005 report *Reflections: twenty years of independent external review of security intelligence in Canada*, “Canada (and many other democracies to this day) did not have laws or a formalized framework governing domestic security intelligence.”<sup>26</sup> The document is frank in assessing the way national security operations used to be executed, by arguing that national security policing and legislation were out of sight, out of mind, thereby opening the potential for abuse. *Reflections* asserts that “Canada’s national security – how it was conducted, managed and maintained – was largely a matter left unspoken at nearly all levels of civic discourse. The inherent and obvious consequence was that an entire area of state power – considerable in its might and scope – was

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<sup>24</sup> Craig Forcese and Kent Roach, *False Security: The Radicalization of Canadian Anti-Terrorism* (Toronto: Irwin Law, Inc, 2015), 39.

<sup>25</sup> *Ibid.*, 40.

<sup>26</sup> Security Intelligence Review Committee, *Reflections: twenty years of independent external review of security intelligence in Canada* (Ottawa: Security Intelligence Review Committee, 2005): 7.

wide open and vulnerable to abuse.”<sup>27</sup> If we want to understand the *Anti-Terrorism Act, 2015* then we must understand how national security used to operate.

“On June 23, 1985, a bomb explosion killed the 329 passengers and crew of Air India Flight 182 in mid-flight. Fifty-nine minutes earlier, at Tokyo’s Narita Airport, two baggage handlers were killed by an explosion from a bomb while offloading luggage from a Canadian Pacific Airlines flight. Both bombs were planted in suitcases by the same group of Sikh terrorists. Three-hundred and thirty-one people were killed...This remains the largest mass murder in Canadian history and was the result of a cascading series of errors.”<sup>28</sup> The Air India bombing was a shocking terrorist attack that immediately threw CSIS, then newly created, immediately into action. CSIS and SIRC were created in 1984 after extensive amendments to the original *CSIS Act* tabled in 1983.<sup>29</sup> The creation of CSIS forced the RCMP to rethink its intelligence capacity: despite the will to gather security intelligence, the RCMP failed to understand “the nature and purpose of intelligence gathering”. As a consequence, the RCMP either duplicated intelligence gathering being done by CSIS or failed to report information better suited to be analyzed by CSIS.<sup>30</sup> Since the RCMP did not understand the nature of security intelligence, CSIS was often not properly briefed, and this failure led to information about the possibility of an Air India bombing improperly reported to CSIS by the RCMP, hence the 2010 report’s assertion the Air India Bombing was made possible by a series of errors.<sup>31</sup>

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<sup>27</sup> Security Intelligence Review Committee, *Reflections: twenty years of independent external review of security intelligence in Canada* (Ottawa: Security Intelligence Review Committee, 2005): 8.

<sup>28</sup> Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, *Air India Flight 182: A Canadian Tragedy*, Volume One, (Ottawa: Public Works and Government Services Canada, 2010): 21.

<sup>29</sup> Craig Forcese and Kent Roach, *False Security: The Radicalization of Canadian Anti-Terrorism* (Toronto: Irwin Law, Inc, 2015), 45.

<sup>30</sup> Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, *Air India Flight 182: A Canadian Tragedy*, Volume One, (Ottawa: Public Works and Government Services Canada, 2010): 23.

<sup>31</sup> *Ibid.*, 23.

The Commission of Inquiry into the bombing of Air India Flight 182 suggests that all national security agencies had at least some knowledge of Sikh extremism and possible threats against airlines, but the information known at the agency level varied. It is entirely possible that all relevant national security agencies downplayed the threat of Sikh extremism in their assessments, and that individuals within the organizations faced structural barriers that prevented more thorough investigative efforts.<sup>32</sup> As previously mentioned, information sharing blunders, and organizational frictions contributed to the outcome of the Air India disaster.

The October Crisis and Air India bombing of Flight 182 serve as historical examples of the difficulties our national security agencies face when assessing and confronting diverse types of threats. While Bill C-51 is essentially a post-9/11 document, it is not historically isolated from the October Crisis and Air India bombing. The dirty tricks and tactics executed by the RCMP, while not condoned, do appear in a new form within *Anti-Terrorism Act, 2015*: threat reduction. While the tactics employed by the RCMP were blatantly illegal, the *Anti-Terrorism Act, 2015* legislates CSIS to carry out disruption activities to reduce threats from manifesting. I argue the *Anti-Terrorism Act, 2015* takes certain inspiration from the RCMP operations, but legislates disruption powers with limits and conditions to allow CSIS to prevent and reduce threats, while avoiding the *Charter* violations. The *Anti-Terrorism Act, 2015* makes clear that disruption activities cannot injure, kill, subvert the law, or degrade the sexual integrity of any persons while carrying out disruption services. Undoubtedly, policymakers have learned from the past mistakes of the RCMP.

The Air India disaster demonstrated the debacle of the information-sharing framework exercised by the national security agencies. Arguably, the *Anti-Terrorism Act, 2015* seeks to

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<sup>32</sup> Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, *Air India Flight 182: A Canadian Tragedy*, Volume One, (Ottawa: Public Works and Government Services Canada, 2010): 83.

redress the ways in which our national security agencies can share information with all relevant actors. Additionally, the *Anti-Terrorism Act, 2015* builds on the Auditor General of Canada reports of 2003 and 2009 argue the post 9/11 era “have underlined the need for better intelligence and information sharing between departments and agencies in Canada.”<sup>33</sup> The *Anti-Terrorism Act, 2015* is a product of the post 9/11 era, but it is not historically isolated. The law does redress many of the legal pitfalls that our national security agencies operated in, though how effectively it accomplishes this task is debatable, as we will explore in the second section of our research paper. The second section will provide an analysis of the *Anti-Terrorism Act, 2015* and the support and criticisms it generated.

## **Second Section**

The Conservatives, led by Stephen Harper tabled Bill C-51, later the *Anti-Terrorism Act, 2015* which both introduces new laws and amends existing legislation to better serve the needs of the national security agencies in combatting global jihadist terrorism. We will wade into the controversy surrounding the *Anti-Terrorism Act, 2015* in this section, but first we must go through the *Anti-Terrorism Act, 2015* step by step so that criticisms make sense.

The first part of the *Anti-Terrorism Act, 2015* enacts the *Security of Canada Information Sharing Act* (SCISA) meant to “encourage and facilitate information sharing between Government of Canada institutions in order to protect Canada against activities that undermine the security of Canada”.<sup>34</sup> The *Anti-Terrorism Act, 2015* defines “activities that undermine the security of Canada” as “any activity, including any of the following activities, if it undermines the

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<sup>33</sup> Office of the Auditor General of Canada, *2009 March Status Report of the Auditor General of Canada*, Chapter 1, 2009, [http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_200903\\_01\\_e\\_32288.html#hd5a](http://www.oag-bvg.gc.ca/internet/English/parl_oag_200903_01_e_32288.html#hd5a) (accessed 18 March 2018).

<sup>34</sup> Canada, Parliament, *Bill C-51*, Statutes of Canada, 2015, Part 1, 18 June 2015, [http://laws-lois.justice.gc.ca/PDF/2015\\_20.pdf](http://laws-lois.justice.gc.ca/PDF/2015_20.pdf) (accessed 18 February 2018): 1.

sovereignty, security or territorial integrity of Canada or the lives or the security of the people of Canada: (a) interference with the capability of the Government of Canada in relation to intelligence, defence, border operations, public safety, the administration of justice, diplomatic or consular relations, or the economic or financial stability of Canada; (b) changing or unduly influencing a government in Canada by force or unlawful means; (c) espionage, sabotage or covert foreign influenced activities; (d) terrorism; (e) proliferation of nuclear, chemical, radiological or biological weapons; (f) interference with critical infrastructure; (g) interference with the global information infrastructure, as defined in section 273.61 of the *National Defence Act*; (h) an activity that causes serious harm to a person or their property because of that person's association with Canada; and (i) an activity that takes place in Canada and undermines the security of another state.”<sup>35</sup>

The massive definition essentially covers all threats related to the safety and security of Canada and its citizens. The definition is important because all other provisions of the *Anti-Terrorism Act, 2015* ground their rationale within this definition. The *Security of Canada Information Sharing Act* (SCISA) sets out five guiding principles that essentially legislate that shared information must be done responsibly between agencies, appropriate, subject to feedback and shared with agencies that have a jurisdiction in keeping Canada and its citizens safe from activities that undermine the security of Canada.<sup>36</sup> Disclosure of shared information must therefore “relevant to the recipient institution’s jurisdiction or responsibilities under an Act of Parliament or another lawful authority in respect of activities that undermine the security of Canada, including in respect of their detection, identification, analysis, prevention, investigation or disruption.”<sup>37</sup> To

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<sup>35</sup> Canada, Parliament, *Bill C-51*, Statutes of Canada, 2015, Part 1, 18 June 2015, [http://laws-lois.justice.gc.ca/PDF/2015\\_20.pdf](http://laws-lois.justice.gc.ca/PDF/2015_20.pdf) (accessed 18 February 2018): 3.

<sup>36</sup> *Ibid.*, 4.

<sup>37</sup> *Ibid.*, 5.

protect users of information sharing, the *Security of Canada Information Sharing Act* states “No civil proceedings lie against any person for their disclosure in good faith of information under this Act.”<sup>38</sup> The *Security of Canada Information Sharing Act* seems to make attempts to correct the historical errors of information sharing, particularly in respect to the experiences of CSIS and the RCMP as reported by the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 and the Auditor General of Canada reports. The broad definition of security threats also enlarges the extent to which information can be shared, since the *Security of Canada Information Sharing Act* suggests that all relevant agencies (relevant since the definition of security threat is so broad) have the discretion to share information as they see fit, in accordance with the definition of threat, and with respect to the guiding principles. The *Security of Canada Information Sharing Act* does amend a list of other Acts, like the *Income Tax Act*, since relevant agencies will have the discretion to share information that is relevant to their mandated work.

The *Secure Air Travel Act* (SATA) was enacted in the *Anti-Terrorism Act, 2015* to “enhance security relating to transportation and to prevent air travel for the purpose of engaging in acts of terrorism.”<sup>39</sup> Applying to everyone involved in air travel, the SATA is extended to “Every person who commits an act or omission outside Canada that if committed in Canada would be a contravention of a provision of this Act or its regulations is deemed to have committed the act or omission in Canada, and the person may be proceeded against and punished in the place in Canada where the person is found, as if the contravention had been committed in that place.”<sup>40</sup>

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<sup>38</sup> Canada, Parliament, *Bill C-51*, Statutes of Canada, 2015, Part 1, 18 June 2015, [http://laws-lois.justice.gc.ca/PDF/2015\\_20.pdf](http://laws-lois.justice.gc.ca/PDF/2015_20.pdf) (accessed 18 February 2018): 6.

<sup>39</sup> *Ibid.*, 11.

<sup>40</sup> *Ibid.*, 12.

The SATA compels air carriers that hold Canadian aviation documents to comply with the acts and regulations, thereby subjecting all air carriers, and also creating the legal obligation for air carriers to provide information about persons of interest should they be called upon by the national security agencies.<sup>41</sup> The Minister of Public Safety and Emergency Preparedness has the power to create a list of people (date of birth, name, and gender) of suspects if the Minister has “reasonable grounds to suspect” will “(a) engage or attempt to engage in an act that would threaten transportation security; or (b) travel by air for the purpose of committing an act or omission that (i) is an offence under section 83.18, 83.19 or 83.2 of the *Criminal Code* or an offence referred to in paragraph (c) of the definition “terrorism offence” in section 2 of that Act, or (ii) if it were committed in Canada, would constitute an offence referred to in subparagraph (i).”<sup>42</sup>

The Minister must review the list every 90 days to determine if suspects should remain on the list, and the Minister may amend the list by deleting suspect information, or changing the information of suspects on the list.<sup>43</sup> The air carriers have the responsibility, when directed by the Minister to take “specific, reasonable and necessary action” against suspects by either denying transportation, or screening before boarding, and the Minister can call assistance from the Minister of Transport, The Minister of Citizenship and Immigration, RCMP, CSIS, CBSA personnel and “any other person or entity prescribed by regulation.”<sup>44</sup>

The Minister of Public Safety and Emergency Preparedness has a wide range of options under SATA for combatting threats that undermine the security of Canada by employing a broad

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<sup>41</sup> Canada, Parliament, *Bill C-51*, Statutes of Canada, 2015, Part 1, 18 June 2015, [http://laws-lois.justice.gc.ca/PDF/2015\\_20.pdf](http://laws-lois.justice.gc.ca/PDF/2015_20.pdf) (accessed 18 February 2018): 12

<sup>42</sup> *Ibid.*, 13.

<sup>43</sup> *Ibid.*, 13.

<sup>44</sup> *Ibid.*, 14.

criterion for intervention and employing a wide range of partners. The Minister can also disclose information to the listed partners gathered through the exercise of the Minister’s powers, duties, and functions, making the SCISA an integral component of the exercise of ministerial powers under the SATA. The SATA, in short, provides the Minister of Public Safety and Emergency Preparedness to create a “no-fly-list” at his discretion, and makes legal the disruption of air travel in partnership with both air carries, government departments and the national security agencies. The SATA is a potent piece of legislation, and not without controversy, as we shall explore later.

Part 3 of the *Anti-Terrorism Act, 2015* makes amendments to the *Criminal Code* to expand the definitions related to prior terrorism-related activities. The *Anti-Terrorism Act, 2015* expands the types of activities for which an individual can be charged with a terrorism-related offence. The promotion of terrorism is captured in the following amendment: “Every person who, by communicating statements, knowingly advocates or promotes the commission of terrorism offences in general—other than an offence under this section—while knowing that any of those offences will be committed or being reckless as to whether any of those offences may be committed, as a result of such communication, is guilty of an indictable offence and is liable to imprisonment for a term of not more than five years.”<sup>45</sup>

The promotion of terrorism includes the possession of terrorist propaganda, by which the *Anti-Terrorism Act, 2015* states: “A judge who is satisfied by information on oath that there are reasonable grounds to believe that any publication, copies of which are kept for sale or distribution in premises within the court’s jurisdiction, is terrorist propaganda may issue a warrant authorizing

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<sup>45</sup> Canada, Parliament, *Bill C-51*, Statutes of Canada, 2015, Part 1, 18 June 2015, [http://laws-lois.justice.gc.ca/PDF/2015\\_20.pdf](http://laws-lois.justice.gc.ca/PDF/2015_20.pdf) (accessed 18 February 2018): 26.

seizure of the copies.”<sup>46</sup> If the materials possessed by the suspect are deemed to be terrorist propaganda, then all materials can be seized for destruction. What is terrorist propaganda? According to the *Anti-Terrorism Act, 2015* terrorist propaganda means “any writing, sign, visible representation or audio recording that advocates or promotes the commission of terrorism offences in general—other than an offence under subsection 83.221(1)—or counsels the commission of a terrorism offence.”<sup>47</sup> The broad definition of terrorist propaganda grants national security agencies the leeway to investigate and all types of propaganda, though the vagueness with which the amendment is written brings into question the threshold for material considered terrorist propaganda.

The amendments to the *Criminal Code* include arrest without a warrant and recognizance with conditions as options should the peace officer suspect on reasonable grounds that a terrorist activity may be committed. If the peace officer believes “on reasonable grounds that a terrorist activity may be carried out; and (b) suspects on reasonable grounds that the imposition of a recognizance with conditions on a person, or the arrest of a person, is likely to prevent the carrying out of the terrorist activity”, then preventive measures can be legally taken by the national security agencies, in this case, a recognizance with conditions that would impose conditions on a suspect with the aim being to pre-emptively prevent behaviour that could lead to the committing of terrorism offences.<sup>48</sup> To further equip police with the tools to prevent terrorism before it materializes, the *Criminal Code* states “a peace officer may arrest a person without a warrant and cause the person to be detained in custody, in order to bring them before a provincial court

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<sup>46</sup> Canada, Parliament, *Bill C-51*, Statutes of Canada, 2015, Part 1, 18 June 2015, [http://laws-lois.justice.gc.ca/PDF/2015\\_20.pdf](http://laws-lois.justice.gc.ca/PDF/2015_20.pdf) (accessed 18 February 2018): 26.

<sup>47</sup> *Ibid.*, 27.

<sup>48</sup> *Ibid.*, 29.

judge.”<sup>49</sup> If “the peace officer suspects on reasonable grounds that the detention of the person in custody is likely to prevent a terrorist activity,” then the action can be lawfully taken to prevent suspected terrorism offences.<sup>50</sup>

The Surety to Keep the Peace, known as a peace bond may be invoked if “A person who fears on reasonable grounds that another person may commit a terrorism offence” and “the judge may order that the defendant enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for a period of not more than 12 months.”<sup>51</sup> The ability to impress arrests without a warrant, recognizances and peace bonds allow the police to intervene on the grounds of reasonable suspicion, but were met with massive criticism, since warrantless arrests buck all previous precedence. The *Criminal Code* allows for the courts to extend or modify the conditions of the recognizance with conditions or peace bond, and if court proceedings against the accused happen, the judge can legally bar the public from the court of law and allow any witnesses to testify behind cover to shield their identities from the public.<sup>52</sup> The recognizance with conditions also makes into law the ability to limit the physical mobility of the defendant via the conditions placed on their passport or travel documentation.<sup>53</sup> Part 3 of the *Anti-Terrorism Act, 2015* radically amends the *Criminal Code* to allow our national security agencies and courts to act preventively on the grounds of reasonable suspicion, which calls into question the lower burden of proof needed to act, since the definitions we have presented are so broad as to make their interpretation readily

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<sup>49</sup> Canada, Parliament, *Bill C-51*, Statutes of Canada, 2015, Part 1, 18 June 2015, [http://laws-lois.justice.gc.ca/PDF/2015\\_20.pdf](http://laws-lois.justice.gc.ca/PDF/2015_20.pdf) (accessed 18 February 2018): 29.

<sup>50</sup> *Ibid.*, 30.

<sup>51</sup> *Ibid.*, 35.

<sup>52</sup> *Ibid.*, 33.

<sup>53</sup> *Ibid.*, 37.

justifiable to a wide range of scenarios, thereby affecting the burden of proof the courts are accustomed to. The criticisms of Part 3 are extensive, and we shall examine them.

Part 4 of the *Anti-Terrorism Act, 2015* amends the *Canadian Security Intelligence Service Act* to ensure that CSIS reports on its activities, describe the measures taken to disrupt threats that undermine the security of Canada, report on the number of warrants granted and refused, and the actions proposed that resulted in a refusal or grant of a warrant.<sup>54</sup> Part 4 allows CSIS to engage in threat reduction if “there are reasonable grounds to believe that a particular activity constitutes a threat to the security of Canada, the Service may take measures, within or outside Canada, to reduce the threat.”<sup>55</sup> The amendment fundamentally changes the nature of the CSIS mandate, since they had been a domestic security intelligence agency before the *Anti-Terrorism Act, 2015*. The actions allowed under threat reduction are prohibited “if those measures will contravene a right or freedom guaranteed by the *Canadian Charter of Rights and Freedoms* or will be contrary to other Canadian law, unless the Service is authorized to take them by a warrant issued under section 21.1.”<sup>56</sup>

CSIS cannot injure, kill, subvert the law, or degrade the sexual integrity of any persons while carrying out disruption services, but the ability to reduce threats through disruptive activities is an evolution in the CSIS mandate, since the RCMP have historically carried out physical operations leaving CSIS to carry out security intelligence collection. CSIS must still operate using warrants, as detailed in section 21.1, but the application of a successful warrant allows CSIS to carry out physical disruption operations inside or outside Canada, provided they do not

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<sup>54</sup> Canada, Parliament, *Bill C-51*, Statutes of Canada, 2015, Part 1, 18 June 2015, [http://laws-lois.justice.gc.ca/PDF/2015\\_20.pdf](http://laws-lois.justice.gc.ca/PDF/2015_20.pdf) (accessed 18 February 2018): 48.

<sup>55</sup> *Ibid.*, 49.

<sup>56</sup> *Ibid.*, 49.

injure, kill, subvert the law, or degrade the sexual integrity of any persons while carrying out disruption activities.<sup>57</sup> The warrant itself, once issued, must be proven to still have reason for being and entitled persons “having obtained the Minister’s approval, to apply for such a warrant and who believes on reasonable grounds that the warrant continues to be required to enable the Service to take the measures specified in it to reduce a threat to the security of Canada, the judge may renew the warrant if the judge is satisfied by evidence on oath.”<sup>58</sup>

Part 4 of the *Anti-Terrorism Act, 2015* does legislate oversight by making the SIRC review “review at least one aspect of the Service’s performance intaking measures to reduce threats to the security of Canada.” Additionally, the yearly SIRC report must include the number of warrants issued and refused, to determine the operational tempo of CSIS disruption activities.<sup>59</sup> Part 4 of the *Anti-Terrorism Act, 2015* expands the mandate of CSIS from security intelligence collection to direct action operations. While the direct actions are not equivalent to those operations carried out by the RCMP or CAF, they are significant for CSIS since they require a distinct set of capabilities than originally mandated in 1984.

Part 5 of the *Anti-Terrorism Act, 2015* amends the *Immigration and Refugee Act* to allow for the issuing of a security certificate, which is a method of removing a non-citizen from Canada on the grounds “of security, violating human or international rights, serious criminality or organized criminality.”<sup>60</sup> The Minister of Public Safety and Emergency Preparedness has the ability to determine if a suspect presents a risk to Canada or Canadians, and although a judge must determine the reasonableness of the Minister’s assessment, can “ without it being necessary for

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<sup>57</sup> Canada, Parliament, *Bill C-51*, Statutes of Canada, 2015, Part 1, 18 June 2015, [http://laws-lois.justice.gc.ca/PDF/2015\\_20.pdf](http://laws-lois.justice.gc.ca/PDF/2015_20.pdf) (accessed 18 February 2018): 51.

<sup>58</sup> *Ibid.*, 52.

<sup>59</sup> *Ibid.*, 55.

<sup>60</sup> *Ibid.*, 25.

the judge to certify that a serious question of general importance is involved, appeal, at any stage of the proceeding, any decision made in the proceeding requiring the disclosure of information or other evidence if, in the Minister's opinion, the disclosure would be injurious to national security or endanger the safety of any person."<sup>61</sup> The Minister can ask a judge for review, yet can also choose to withhold said information for review if there is risk the disclosure of information will harm national security.

The pursuit of a security certificate essentially creates a secret case against a defendant, further complicated by the fact the judicial review process for a security certificate is administrative, and the defendant is informed of the case via a summary that varies in detail depending on the nature of the security intelligence used to pursue a security certificate.<sup>62</sup> Although not quite a kangaroo court, the security certificate process raises significant questions regarding due process. However, "the judge shall not base a decision on information that the Minister is exempted from providing to the special advocate".<sup>63</sup> The special advocate for the defendant is given confidential information regarding the case against the defendant but cannot communicate with the defendant. Therefore, the amendments create a murky precedent whereas the non-citizen defendant does not fully know the case details, nor can their own advocate provide information.<sup>64</sup> The power of the Minister to apply for judicial review and basically request non-disclosure of information highlights the difficulties of using security intelligence as evidence in a court of law. Part 5 does allow the Minister to keep information withheld, at the expense of the non-Canadian defendant.

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<sup>61</sup> Canada, Parliament, *Bill C-51*, Statutes of Canada, 2015, Part 1, 18 June 2015, [http://laws-lois.justice.gc.ca/PDF/2015\\_20.pdf](http://laws-lois.justice.gc.ca/PDF/2015_20.pdf) (accessed 18 February 2018): 56.

<sup>62</sup> *Ibid.*, 26.

<sup>63</sup> *Ibid.*, 57.

<sup>64</sup> *Ibid.*, 26.

While we have not explored every single detail of the *Anti-Terrorism Act, 2015*, this section has described the major amendments of *Anti-Terrorism Act, 2015* which change existing laws and give the national security agencies a toolbox of discretionary powers. The *Anti-Terrorism Act, 2015* does provide broad definitions in the various parts to make it easier for our national security agencies to pursue operations in the defence of the security of Canada, but the broadness of the legislation is not without criticisms. We have reviewed the major parts of the *Anti-Terrorism Act, 2015* and will now examine the criticism of the legislation.

The Liberal Party of Canada was immediately criticized the *Anti-Terrorism Act, 2015*, as did the New Democratic Party, and a wide range of civil society actors, academics, journalists and businesspeople opposed to the *Anti-Terrorism Act, 2015*. The Centre for Israel and Jewish Affairs (CIJA), speaking to the House of Commons Standing Committee on Public Safety and National Security supported the seizure and destruction of terrorist propaganda under the new law, as they believe it is justifiable in a free society, and because terrorist propaganda is often anti-Semitic in nature. The CIJA also agreed with the criminalization of terrorist advocacy and promotion, noting that terrorist groups benefitted from previous laws, and the newly broadened definition now criminalized acts that may have been in a legal grey zone.<sup>65</sup> However, the CIJA believes that since the CSIS mandate is expanded to include more robust operations, like disruption operations at home and abroad, the SIRC mandate and budget should be expanded to maintain the ability to effectively provide public oversight for increasingly complex CSIS activities.<sup>66</sup> The end result of a greatly expanded SIRC would be superior oversight, and a more accountable CSIS. The CIJA also criticized the degree to which personal information could be shared between government

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<sup>65</sup> Centre for Israel and Jewish Affairs, “The Centre for Israel and Jewish Affairs (CIJA) Testimony on Bill C-51,” 26 March 2015, <http://cija.ca/cija-testimony-bill-c-51/> (accessed 19 February 2018).

<sup>66</sup> Ibid.

agencies. For the CIJA, information sharing should be limited, and the *Privacy Act* should be amended to provide more accountability.<sup>67</sup>

The Canadian Civil Liberties Association (CCLA) outlined their issues with Bill C-51 part of the National Security Consultations. Firstly, the CCLA argued the criminalization of advocacy and promotion of terrorism propaganda is too broad and vague, and those elements therefore unconstitutionally limit free speech. Secondly, they argue that terrorism offences are not defined in the amended *Criminal Code*, and they cannot reasonably support such ambiguity. “The use of a vague and undefined term to describe a new category of criminal speech suggests that the provision is intended to apply broadly.”<sup>68</sup>

The CCLA took exception with the newly broadened CSIS mandate, noting that although they do not believe CSIS will violate *Charter* rights intentionally, the ability to violate a *Charter* right pursuant of a warrant sets a dangerous precedent and threatens to turn CSIS into a police agency rather than a security intelligence agency. The fear that CSIS will act like the RCMP, using direct action and disruptive measures, only checked by internal power checks is cause for alarm, and the inability of SIRC to provide true oversight given its limited mandate and budget suggests that CSIS can operate in a legal grey area without supervision or scrutiny.<sup>69</sup> The CCLA is also concerned the new warrant system is too secretive, and compromises the judicial branch from an arbiter of sober second thought to being complicit in the issuing of secret warrants for disruption activities.<sup>70</sup> They believe the relationship between the judiciary will therefore change for the worse,

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<sup>67</sup> Canadian Civil Liberties Association, “Tackling the Government Green Paper on National Security: Part 1,” 19 September 2016, <https://ccla.org/tackling-government-green-paper-national-security-part-1/> (accessed 19 February 2018).

<sup>68</sup> Ibid.

<sup>69</sup> Canadian Civil Liberties Association, “Tackling the Government Green Paper on National Security: Part 2,” 16 October 2016, <https://ccla.org/tackling-the-government-green-paper-on-national-security-part-2/> (accessed 19 February 2018).

<sup>70</sup> Ibid.

given the secretive nature of the warrant and the inability of defendants to challenge any warrants sought against them.

The SCISA allows for additional information sharing privileges, but the CCLA believes that since the scope of information sharing has been significantly expanded, there will be too much personal info at risk, and the governmental actors that do have new information sharing powers under the SCISA have no effective oversight governing the use of information shared across departments and agencies.<sup>71</sup> The CCLA suggests the Air India tragedy may repeat itself if SCISA allows for improper information sharing. However, if the bombing of Air India Flight 182 was made possible due to a lack of effective information sharing between the RCMP and CSIS, then the CCLA criticisms suggest that too much information shared may lead to improper use.<sup>72</sup> The broadness of the SCISA may lead to instances in which information is shared improperly, but the lack of oversight, most notably the Privacy Commissioner of Canada not reviewing activities under SCISA means that our national security agencies and relevant government departments will not know when they have improperly shared information, leading to confusion.<sup>73</sup> The CCLA does take exception with the amended and expanded definitions in Bill C-51, and much of their criticisms revolve on the possibilities of misuse given the definitions accounting for a wider range of scenarios.

The final bulk of the CCLA criticisms focus on the changes made to the *Immigrant and Refugee Protection Act* and the role of the special advocate in defending non-Canadians against security certificates. The special advocate does have access to top-secret information, but their

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<sup>71</sup> Canadian Civil Liberties Association, “Tackling the Government Green Paper on National Security: Part 3,” 26 October 2016, <https://ccla.org/tackling-government-green-paper-national-security-part-3/> (accessed 19 February 2018).

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

inability to communicate with the defendant or know all the information being used against the defendant impedes the special advocate from understanding the full case and defending the non-Canadian appropriately. The CCLA argues this asymmetry of information unfairly handicaps the defence.<sup>74</sup> The asymmetry of information extends to the evaluation of the security certificate. When a security certificate is presented to the court, and the judge determines the reasonableness of the certificate, and the rationale to the special advocate, the special advocate must then test the case and defend their client, though the defendant is kept unaware of all the information of the case against their position.<sup>75</sup> The CCLA is therefore concerned the nature of the security certificate opens up the possibility of deportation on the grounds of national security without a fair trial.<sup>76</sup> While they do not suggest the use of security certificates will turn the judicial branch into a kangaroo court meant to serve the needs of the security agencies, they are worried that due process will be severely eroded, and justified using the language of national security.

The CCLA are not alone in criticizing the SCISA, which many believe is an incredible violation of privacy. Writing in the *National Post* Lisa M. Austin of the University of Toronto and Benjamin J. Goold of the University of British Columbia argue that SCISA does not provide national security agencies with the ability to target personal data for limited surveillance. Rather, “SCISA permits any government institution to pass information to any of the 17 listed recipient institutions where that information is “relevant” to the national security responsibilities of the recipient.”<sup>77</sup> The authors continue with their criticisms by adding the “low test of relevance to the

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<sup>74</sup> Canadian Civil Liberties Association, “Tackling the Government Green Paper on National Security: Part 4,” 6 December 2016, <https://ccla.org/tackling-government-green-paper-national-security-part-4/> (accessed 19 February 2018).

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

<sup>77</sup> Lisa M. Austin and Benjamin J. Goold, “How C-51 undermines privacy,” *National Post*, 30 March 2015, <http://nationalpost.com/opinion/how-c-51-undermines-privacy> (accessed 15 March 2018).

recipient's responsibilities, coupled with unrestricted disclosure and a broad definition of national security that goes far beyond terrorism, potentially sweeps up a vast amount of information about people who are not suspected of anything."<sup>78</sup> The SCISA does significantly expand the scope with which national security agencies and all relevant national, and possibly international partners as permitted to share and disclose the information of Canadians. The wording of SCISA is very permissive, and the limits of information sharing are not clear, since SCISA is written in such a way as to enable maximum information sharing during national security operations. Austin and Goold are not unique in worrying about SCISA, and it should be noted that SCISA was and remains incredibly controversial for these reasons.

Craig Forcese of the University of Ottawa and Kent Roach of the University of Toronto have been active in criticizing the *Anti-Terrorism Act, 2015*. In addition to authoring *False Security: The Radicalization of Canadian Anti-Terrorism* (2015), the duo has been vocal in media publications, and maintains an updated website providing their thoughts on Bill C-59 at First Reading.<sup>79</sup> The two professors argue that despite their tentative support for preventive actions like the peace bond, no-fly-list under SATA and the ability of our national security agencies to act on the reasonable suspicion that something may occur, Professors Forcese and Roach worry about the seven days of detention allowed under warrantless arrests, since there is ample opportunity for abuse during that time period.<sup>80</sup> The issue of false positive arrests is a concern, and they argue that being put on government lists, like the no-fly-list under SATA will make citizens suspected of shady activities especially vulnerable to warrantless arrest and detention should the national

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<sup>78</sup> Lisa M. Austin and Benjamin J. Goold, "How C-51 undermines privacy," *National Post*, 30 March 2015, <http://nationalpost.com/opinion/how-c-51-undermines-privacy> (accessed 15 March 2018).

<sup>79</sup> See <http://antiterrorlaw.ca/>

<sup>80</sup> Craig Forcese and Kent Roach, "Bill C-51: the Good, the Bad...and the Ugly Truth," *The Walrus*, 13 February 2015, <https://thewalrus.ca/bill-c-51-the-good-the-bad-and-the-truly-ugly/> (accessed 19 February 2018).

security agencies pursue cases against them. The newly expanding information sharing regime under SCISA is ill-defined since it grounds its rationale in “activities that undermine the security of Canada” and may lead to the criminalization of formerly legal protest.<sup>81</sup>

Showing similarities with the CCLA and CIJA criticisms, the professors worry about the criminalization of free speech in Part 3 of the *Anti-Terrorism Act, 2015* which amends the *Criminal Code* to make illegal the advocacy and promotion of terrorism, and the dissemination of terrorist propaganda.<sup>82</sup> They argue the new amendments may criminalize radical or extreme views that stop short of advocating or inciting real violence, and may drive extremist viewpoints underground where they will fester and potentially cause more harm. Not only will the changes allow for the censorship of terrorist propaganda, but the new CSIS mandate to undertake domestic and international disruption activities blur the distinctions between the CSIS and RCMP mandates. Furthermore, the pursuit of a warrant to authorize CSIS disruption activities flips the role of the warrant upside down from formerly preventing *Charter* violations to authorizing violations should the disruption activity call for such actions.<sup>83</sup> Professors Forcese and Roach take exception with the role of the judiciary relationship in the *Anti-Terrorism Act, 2015* and argue the courts will limit *Charter* rights when granting judicial warrants, and the proceedings may remain secret, since it is unlikely the judiciary will make public its decisions regarding the issuing of warrants if national security is threatened by public disclosure.<sup>84</sup> They conclude that there are some useful provisions in the *Anti-Terrorism Act, 2015* but the overall lack of oversight and accountability, plus the expanded powers of CSIS make it threatening to civil liberties.<sup>85</sup> Both Forcese and Roach have

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<sup>81</sup> Craig Forcese and Kent Roach, “Bill C-51: the Good, the Bad...and the Ugly Truth,” *The Walrus*, 13 February 2015, <https://thewalrus.ca/bill-c-51-the-good-the-bad-and-the-truly-ugly/> (accessed 19 February 2018).

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

extensively written and critiqued the *Anti-Terrorism Act, 2015*, and the issues they highlight in the article are further expanded in *The Radicalization of Canadian Anti-Terrorism (2015)* and their current work regarding Bill C-59.

The opposition to the *Anti-Terrorism Act, 2015* was not limited to civil liberty associations and academia. An open letter sent to then-Prime Minister Stephen Harper, Daryl Kramp, Chair of the Standing Committee on Public Safety and National Security, and James Moore, the Minister of Industry from 148 business leaders expressed concern with the *Anti-Terrorism Act, 2015* and its potential impact on Canadian businesses.<sup>86</sup> The letter claims the new legislation will compromise international trust in Canada's technology sector, thereby handicapping Canadian business.<sup>87</sup> The business signatories are concerned primarily with censorship in the *Anti-Terrorism Act, 2015*, warning the "Canadian Security and Intelligence Service (CSIS) to take unjustified actions against our businesses, including the takedown of websites. As it stands, C-51 criminalizes language in excessively broad terms that may place the authors of innocent tweets and the operators of online platforms such as Facebook, and Twitter, along with Canada's Hootsuite and Slack, at risk of criminal sanction for activities carried out on their sites."<sup>88</sup> Material that falls under the new *Criminal Code* definitions of terrorist propaganda, or the advocacy and promotion of terrorist materials would most likely affect platform hosts and other online businesses at risk due to their user content.

The second concern is that Communications Security Establishment (CSE) will have an offensive mandate within Canada, and they will use their powers to sabotage businesses under the

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<sup>86</sup> Kill Bill C-51, "Open Letter from Canadian Businesses Against Bill C-51," OpenMedia, 21 April 2015, <https://kille51.ca/Business> (accessed 19 February 2018).

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

pretext of the expanded definition of security threat found in the *Criminal Code*. Additionally, Canadian business leaders were concerned that CSIS and CSE will engage in espionage and disruption activities that will affect their business partners, and ruin investor confidence.<sup>89</sup> The argument is unique since it makes a business case against the *Anti-Terrorism Act, 2015* rather than relying on arguments exclusively pertaining to the potential for civil rights and liberties abuses under the *Anti-Terrorism Act, 2015*.

Prominent news outlets have criticized the *Anti-Terrorism Act, 2015*, which is not surprising given both the focus of the *Anti-Terrorism Act, 2015* and the significant controversy it generated. *The Globe and Mail* published an editorial titled “Parliament must reject Harper’s secret policeman bill” which argued that Prime Minister Harper used fear politics and Islamic State as a convenient boogeyman to table Bill C-51.<sup>90</sup> Citing the changes to the CSIS mandate, and warning that the intelligence agency has become a secret police in practice, the editorial states “Most importantly, Parliament must not allow Mr. Harper to turn CSIS, an intelligence agency, into a secret police force. Intelligence-gathering was deliberately separated from police work 30 years ago, after the RCMP’s repeated breaches of the law and civil rights. A wise decision was made to keep police out of the spy business, and spies out of policing.”<sup>91</sup>

*The Globe and Mail*, in accusing the Harper government of fear mongering to drum up support, warns of Canada becoming a police state if Bill C-51 should successfully pass into law. While the editorial is sensationalist, it does share common concerns with the other critics we have

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<sup>89</sup> Kill Bill C-51, “Open Letter from Canadian Businesses Against Bill C-51,” OpenMedia, 21 April 2015, <https://kille51.ca/Business> (accessed 19 February 2018).

<sup>90</sup> Globe Editorial, “Parliament must reject Harper’s secret policeman bill,” *The Globe and Mail*, 1 February 2015, <https://www.theglobeandmail.com/globe-debate/editorials/parliament-must-reject-harpers-secret-policeman-bill/article22729037/> (accessed 19 February 2018).

<sup>91</sup> Ibid.

seen. Whether it is academia, business leaders or reporters, the passing of the *Anti-Terrorism Act, 2015* into law created a firestorm of controversy because the amendments in the *Anti-Terrorism Act, 2015* leave themselves open to substantial interpretation. The deliberate broadening of definitions in the *Criminal Code* and the amendments to the *CSIS Act*, among others, gave our national security agencies extensive freedoms to conduct their operations, but attracted a parallel series of concerns regarding the new legal powers and tools given to the same national security agencies and government partners. We have analyzed a small portion of the criticisms levelled at the *Anti-Terrorism Act, 2015*, but the sources represent a cross section of the actors who publicly condemned Bill C-51. While the Liberals, led by future Prime Minister Justin Trudeau promised to amend the problematic elements of Bill C-51, other actors voiced their support for the bill, and found the amendments both appropriate and necessary given the threat of global jihadist violence. We will explore the other side of the debate.

Barry Cooper of the *Canadian Defence and Foreign Affairs Institute*, writing in the *National Post*, argued that common sense and a level head are needed when evaluating Bill C-51, and states that given the serious threat of Islamic State, the amendments proposed in Bill C-51 are sensible and warranted.<sup>92</sup> Not mincing words, Cooper claims the criticisms of Bill C-51 are done “usually by lawyers, by political opponents of the government, or by lawyers who are political opponents of the government. Sometimes one wonders if the critics have even read the text.”<sup>93</sup> Cooper refutes the notion that a newly expanded mandate for CSIS will lead to some sort of police state. As he points out, the majority of CSIS activities will be secret, and that is fundamental to

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<sup>92</sup> Barry Cooper, “Bill C-51 is rightly aimed at violent Islamic jihadi terrorists,” *National Post*, 4 March 2015, <http://nationalpost.com/opinion/barry-cooper-bill-c-51-is-rightly-aimed-at-violent-islamic-jihadi-terrorists> (accessed 19 February 2018).

<sup>93</sup> Ibid.

their work.<sup>94</sup> The argument Cooper presents is twofold: the Islamic State poses a unique threat that warrants the creation of new legislation, and the fundamental nature of CSIS has not changed with the expanded mandate, since they have always been a secretive organization. In stark contrast to the critics we have seen, Cooper refutes the claims of a “distinguished law professor at the University of Toronto” by arguing threats that “undermine the security of Canada” is not vague, but clearly defined in the bill. Cooper refutes generally the claim that Bill C-51 is vague and too broad to be effective, putting him at odds with many critics.

Scott Newark, writing for the *MacDonald-Laurier Institute* takes a similar line of argumentation as Cooper by stating that Islamist ideology is a unique threat that justifies a bill like Bill C-51. For Newark, Bill C-51 may not be the ideal bill, but its founding rationale seriously considers the growing reality of terrorist attacks in the Western world, inspired by radical Islamist ideology.<sup>95</sup> Newark, in defence of the preventive powers given to the national security agencies, reminds readers that counterterrorism is measured by the successful prevention of incidents, rather than prosecution, and the elements of Bill C-51 that allow for disruption operations to prevent, so long as there is reasonable suspicion of an act being committed, is entirely consistent with the logic of counterterrorism.<sup>96</sup> Newark analysis all five parts of the eventual *Anti-Terrorism Act, 2015*, and starts with SCISA, arguing that information sharing is limited to all relevant institutions, thereby

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<sup>94</sup> Barry Cooper, “Bill C-51 is rightly aimed at violent Islamic jihadi terrorists,” *National Post*, 4 March 2015, <http://nationalpost.com/opinion/barry-cooper-bill-c-51-is-rightly-aimed-at-violent-islamic-jihadi-terrorists> (accessed 19 February 2018).

<sup>95</sup> Scott Newark, “C-51: An Analysis Without the Hype or Hysteria,” *MacDonald-Laurier Institute*, March 2015, <https://www.macdonaldlaurier.ca/files/pdf/MLICommentaryNewark03-15WebReadyV4.pdf> (accessed 19 February 2018): 2.

<sup>96</sup> *Ibid.*, 2.

placing a limit on information sharing, and refuting the common criticism that information shared under SCISA is inherently problematic due to a lack of oversight.<sup>97</sup>

Newark does not have an issue with the SATA “no-fly-list” since the practice is common among other countries but argues that physical pictures are omitted from information captured on a “no-fly-list”, thereby depriving air carriers and national security agencies a crucial piece of information.<sup>98</sup> The amendments to the Criminal Code that allow for the criminalization of terrorist advocacy, promotion, and propaganda, according to Newark, are not overly broad, and in fact, require a high burden of proof that guards against the potential misuse and free speech implications.<sup>99</sup> The changes to the *Criminal Code* were criticized as being overly broad and threatening to extreme views (guarded by free speech) whereas Newark takes the opposite approach by suggesting the amendments are worded in such a way they produce accurate interpretations of terrorist advocacy, promotion, and propaganda.

The expansion of the CSIS mandate to include domestic and foreign disruption activities does not concern Newark to the same extent that other critics harped on the new CSIS powers. He is content that SIRC retains the oversight permissions to effectively hold CSIS to account. To prove his point, he argues the obligation of CSIS to pursue a warrant and provide an after-action report on its activities bolster the existing SIRC oversight privileges.<sup>100</sup> He ends his analysis with the subject of security certificates. Although the ability of the Minister to withhold information from the special advocate is worrisome for judicial proceedings, Newark contends the passage is

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<sup>97</sup> Scott Newark, “C-51: An Analysis Without the Hype or Hysteria,” *MacDonald-Laurier Institute*, March 2015, <https://www.macdonaldlaurier.ca/files/pdf/MLICommentaryNewark03-15WebReadyV4.pdf> (accessed 19 February 2018): 3.

<sup>98</sup> *Ibid.*, 4.

<sup>99</sup> *Ibid.*, 5.

<sup>100</sup> *Ibid.*, 5.

relatively uncontroversial since the security certificates have failed to remove non-Canadians from Canada.<sup>101</sup> Newark ends his analysis with an interesting piece of advice: “While the terrorist threat must not be exaggerated, neither must the potential privacy or liberty intrusions be overstated or based on speculative assumptions of misconduct.”<sup>102</sup>

Christian Leuprecht, a defence scholar at the Royal Military College, argued in an contributed letter to *The Globe and Mail*, that Bill C-51 will not turn Canada into a police state, but confronts a reality that globalization has made Canada vulnerable to the same threats as other Western countries.<sup>103</sup> Canadian defence policymakers have always assumed Canada, with an inhospitable region to the north, oceans to the east and west, and the world powerful country on earth to her southern border, would remain a “fireproof house”. Leuprecht states that globalization, and the interconnectedness felt by all countries means that Canada cannot rely on its physical borders keeping it isolated from the world’s problems. According to Leuprecht, Bill C-51 introduces legislation our allies have long ago embraced.<sup>104</sup> The main issue he identifies with the *Anti-Terrorism Act, 2015* is the limited oversight afforded to SIRC. He says SIRC should be able to review the “intelligence to evidence” process to ensure that CSIS activities do not violate *Charter* rights.<sup>105</sup> To counter the delay in releasing the SIRC public reports, he suggests the members of the Official Opposition be privy to the SIRC reports before they are released, thereby providing oversight and accountability through Official Opposition scrutiny.<sup>106</sup>

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<sup>101</sup> Scott Newark, “C-51: An Analysis Without the Hype or Hysteria,” *MacDonald-Laurier Institute*, March 2015, <https://www.macdonaldlaurier.ca/files/pdf/MLJCommentaryNewark03-15WebReadyV4.pdf> (accessed 19 February 2018): 6.

<sup>102</sup> *Ibid.*, 6.

<sup>103</sup> Christian Leuprecht, “Done right, C-51 can balance freedom and security,” *The Globe and Mail*, 16 March 2015, <https://www.theglobeandmail.com/globe-debate/done-right-c-51-can-balance-freedom-and-security/article23445265/> (accessed 19 February 2018).

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.*

The past three accounts were prefaced as support for Bill C-51, later known as the *Anti-Terrorism Act, 2015* but that is slightly misleading as all three accounts did offer suggestions to amend and improve Bill C-51. However, common to all three accounts was the acceptance of the rationale for Bill C-51, that being to combat global jihadist terrorism. The economic globalization of the planet has led to a parallel globalization of conflict, and Canada cannot rely on conflicts staying geographically isolated, nor protected because of our geography. The foreign policy decisions of our government pose real consequences for Canadians, since our actions overseas, like the CAF participation in Operation IMPACT, will provoke a retaliation from our enemies that cannot be countered by geographical isolation alone. In addition, common to all three accounts was the refutation of a slippery slope that would lead Canada to becoming a police state. Whereas the severe critics hypothesized that abuses under the *Anti-Terrorism Act, 2015* would be frequent and secret, the supporters took a more level-headed approach, and argued that the possibility of an action legal under *Anti-Terrorism Act, 2015* did not guarantee the increased probability of an abuse from occurring. They did not suggest that more powers under *Anti-Terrorism Act, 2015* guaranteed a proportional amount of new abuses by the national security agencies. Given the history of the RCMP and CSIS before the 9/11 era, it is dismissive and irresponsible to write off the critics of the *Anti-Terrorism Act, 2015*, but to assume malpractice by our national security agencies is to be wilfully ignorant of the lessons learned by the national security agencies. What both critics and supporters can agree on is the lack of rigorous oversight. As we have alluded to earlier, the tabling of Bill C-59 does offer amendments to improve oversight, in direct response to the *Anti-Terrorism Act, 2015* controversy and public consultations. The *Anti-Terrorism Act, 2015* remains law for the time being, and will continue to generate controversy until it is amended successfully, if Bill C-59 will be given royal assent. Now that we have examined the *Anti-Terrorism Act, 2015*, our third

section will analyze the events that created the law, and the efforts by the Liberal Party of Canada to amend the *Anti-Terrorism Act, 2015* with public consultations and the tabling of new legislation: Bill C-59.

### **Third Section**

The attacks on September 11<sup>th</sup>, 2001 shocked the world and put the United States on a collision course with the Middle East. The events of 9/11 led to the dismantling of the Saddam Hussein's Iraq, and the destruction of the Taliban government in Afghanistan. The Global War on Terror (GWOT), as the campaigns in Iraq and Afghanistan became known by, expanded to include the United States and coalition of allies who sought to fight groups like Al-Qaeda, and later the Islamic State (IS). Canada, as a perpetual ally of the United States, became immediately involved with the GWOT through our participation in the Afghan campaign. The deployment of Joint Task Force 2 (JTF-2) operators to Afghanistan in late 2001 (unknown to the public at the time) followed by regular force troops in early 2002 started a twelve-year military commitment in Afghanistan.<sup>107</sup> More recently, and with clear linkages to the 2014 attacks, the federal government committed military forces to Operation IMPACT (2014-) as part of a larger coalition fighting IS in Iraq and Syria.<sup>108</sup> As a result of Canadian involvement in the US-led GWOT, the Islamic State urged its followers to consider Canada as a target, and to wage war against both Canadians and the citizens

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<sup>107</sup> Colonel Bernd Horn and Major Tony Balasevicius eds., *Casting Light On The Shadows: Canadian Perspectives on Special Operations Forces* (Toronto: Dundurn Group and Canadian Defence Academy, 2007), 180.

<sup>108</sup> National Defence and Canadian Armed Forces, "2015-2016 Departmental Performance Report," <http://www.forces.gc.ca/en/about-reports-pubs-departmental-performance/2016-index.page> (accessed February 28, 2017): 31.

of other coalition partners.<sup>109</sup> The attack on Parliament Hill in 2014 and the murder of Warrant Officer Patrice Vincent were both carried out by followers of the Islamic State.<sup>110</sup>

The 2014 attacks immediately drew links between Canada's overseas involvement and the threat of domestic terrorism. Although the Islamic State did not have the military capacity to wage a conventional war against Canadians on Canadian soil, its online presence and following gave it the ability to inspire attacks by dedicated followers. Islamic State was different than other terrorist groups, employing a sophisticated mix of propaganda through various social media platforms. The extensive use of social media combined with professional videos and broadcasts showing extreme violence allowed their message to reach both a broad audience and inspire followers with slick editing.<sup>111</sup> Michael Zehaf-Bibeau and Martin Rouleau-Couture were two such inspired followers, and their attacks drove the creation of Bill C-51. While both attacks did not kill many citizens, or destroy buildings, the killing of a Canadian soldier and the storming of Parliament Hill were hugely symbolic and created an immediate public response. Professors Forcese and Roach are correct in asserting the immediate reaction and debates surrounding the tabling of Bill C-51 by the Conservative government, led by Prime Minister Stephen Harper, was hyper partisan.<sup>112</sup> While the debate regarding the tabling of Bill C-51 was partly a "wedge issue" used by the Conservatives in election season to portray their political opponents as soft on terrorism, and to capitalize on the popularity of the bill's introduction, the introduction of Bill C-51 was timely, since many

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<sup>109</sup> Irene Ogrodnik, "New ISIS audio recording urges attacks on Canada, other countries," *Global News*, 22 September 2014, <https://globalnews.ca/news/1575601/france-is-has-threatened-coalition-civilians/> (accessed 14 February 2018).

<sup>110</sup> The Mackenzie Institute, "Just for the Record: The Upcoming ISIS Attack on Canada," *The Mackenzie Institute*, 28 March 2016, <http://mackenzieinstitute.com/just-for-the-record-the-upcoming-isis-attack-on-canada/> (accessed 14 February 2018).

<sup>111</sup> Craig Forcese and Kent Roach, *False Security: The Radicalization of Canadian Anti-Terrorism* (Toronto: Irwin Law, Inc, 2015), 97.

<sup>112</sup> *Ibid.*, 2.

Canadians were fearful in the wake of the 2014 attacks, and felt the Islamic State had the capacity to inspire further terrorist attacks.<sup>113</sup>

The attack was immediately portrayed as a terrorist attack by Prime Minister Stephen Harper. Speaking immediately after the 2014 attack on Parliament Hill, and unlike police, who were reluctant to publicly reveal their opinion yet, Harper affirmed that “In the days to come, we will learn more about the terrorist and any accomplices he may have had, but this week’s events are a grim reminder that Canada is not immune to the types of terrorist attacks we have seen elsewhere around the world.”<sup>114</sup> The immediate remarks from Harper set the tone for the direction of the national security debate in the wake of the 2014 attacks. At the time, Harper and the Conservatives were adamant the attacks were terrorist attacks by the book and motivated by radical Islamism. In response, Harper used the attacks as evidence that our national security agencies, facing the threat of global Islamic terrorism in the post-9/11 period, should have the tools to combat global jihadist terrorism. “This will lead us to strengthen our resolve and redouble our efforts and those of our national security agencies to take all necessary steps to identify and counter threats and keep Canada safe here at home, just as it will lead us to strengthen our resolve and redouble our efforts to work with our allies around the world and fight against the terrorist organizations who brutalize those in other countries with a hope.”<sup>115</sup> The RCMP issued a statement two days later confirming

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<sup>113</sup> Andrew Coyne, “Debate over anti-terrorism bill a perfect microcosm of Canadian politics,” *National Post*, 23 February 2015, <http://nationalpost.com/opinion/andrew-coyne-debate-over-anti-terrorism-bill-a-perfect-microcosm-of-canadian-politics> (accessed 14 February 2018).

<sup>114</sup> Steven Chase, “Prime Minister labels shootings as “terrorist” acts,” *The Globe and Mail*, 22 October 2014, <https://www.theglobeandmail.com/news/national/in-national-address-prime-minister-labels-shootings-as-terrorist-acts/article21252133/#dashboard/follows/> (accessed 16 February 2018).

<sup>115</sup> *Ibid.*

they had details suggesting the 2014 Parliament Hill shooting had been a deliberate terrorist attack, primarily motivated by ideology.<sup>116</sup>

The 2014 attack on Parliament Hill and the killing of Warrant Officer Patrice Vincent set the stage for a showdown between the Conservatives, who maintained that new legislation was needed to combat the threat of global terrorism, the Liberals and New Democratic Party (NDP) members, who argued that new legislation threatened to compromise civil and political rights for security concerns. When the Harper government introduced Bill C-51 30 January 2015, the prime minister painted a stark picture of the threat of Islamic terrorism and was blunt in asserting that C-51 specifically targeted ideologically-driven terrorism. “Jihadist terrorism is not a future possibility, it is a present reality... Violent jihadism is not just a danger somewhere else. It seeks to harm us here in Canada, in our cities, and in our neighbourhoods through horrific acts like deliberately driving a car at a defenceless man or shooting a soldier in the back as he stands on guard at a War Memorial. Canadians are targeted by these terrorists for no other reason than that we are Canadians. They want to harm us because they hate our society and the values it represents.”<sup>117</sup> While the debate in Parliament following the tabling of Bill C-51 advocated and opposed C-51 for a variety of reasons, the framing of C-51 as the best and most urgent way to combat global jihadist terrorism by Prime Minister Harper made it very clear that jihadist terrorism is unique in its global reach and level of depraved violence, and therefore, the need to enact tougher legislation is both righteous and self-evident.

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<sup>116</sup> Tonda McCharles, ‘RCMP calls Parliament shooting a “terrorist attack”, driven by ideology,’ Toronto Star, 26 October 2018, [https://www.thestar.com/news/canada/2014/10/26/ottawa\\_terrorist\\_attack\\_driven\\_by\\_ideology\\_rcmp.html](https://www.thestar.com/news/canada/2014/10/26/ottawa_terrorist_attack_driven_by_ideology_rcmp.html) (accessed 16 February 2018).

<sup>117</sup> Daniel Leblanc and Chris Hannay, “Privacy, security and terrorism: Everything you need to know about B C-51,” The Globe and Mail, 10 March 2015, <https://www.theglobeandmail.com/news/politics/privacy-security-and-terrorism-everything-you-need-to-know-about-bill-c-51/article23383976/> (accessed 16 February 2018).

Not unsurprisingly, the tone of the Harper government struck a nerve with the Liberals and NDP members. On 4 February 2015, Justin Trudeau, leader of the Liberal Party of Canada and future Prime Minister, delivered remarks on the new legislation. While he was supported some of the provisions of C-51, most notably the increased use of no-fly lists and preventive arrests, he remained worried about the lack of rigorous oversight and review. Speaking about the need for collective security, Trudeau urged better oversight to prevent our security agencies from abusing any newly expanded powers under C-51.<sup>118</sup> He was equally concerned with review, noting that “The breadth of the changes to Canada’s counter-terrorism framework found in Bill C-51 should not be understated. It was prudent and wise to institute a mandatory, legislative review of new laws in the wake of 9/11, and the Liberal Party feels strongly that such matters are equally necessary today.”<sup>119</sup> The Liberal Party did vote for the passage of Bill C-51, however, as noted in Trudeau’s remarks on 4 February 2015, “There are gaps in this bill, including on oversight and mandatory reviews. And we in the Liberal Party will offer amendments to address these gaps.”<sup>120</sup> In the same remarks, Trudeau seemed to pre-empt any suggestions the Liberal party was soft on counter-terrorism and national security by concluding “Liberals are committed to keeping Canada safe, while protecting the values that make us Canadian.”<sup>121</sup> The NDP took the Liberal position further and promised to repeal the entire Bill. The 2016 NDP policy position document promises “Ending racial profiling and cancelling measures such as the Anti-Terrorism Act, which arbitrarily restrict the freedoms of Canadian citizens.”<sup>122</sup>

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<sup>118</sup> Justin Trudeau, “Remarks by Liberal Party of Canada Leader Justin Trudeau on Bill C-51,” Liberal Party of Canada, 4 February 2015, <https://www.liberal.ca/remarks-by-justin-trudeau-on-bill-c-51/> (accessed 16 February 2018).

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

<sup>122</sup> New Democratic Party, “Policy of the New Democratic Party of Canada,” April 2016, [http://xfer.ndp.ca/2017/Documents/2016\\_POLICY-EN.pdf](http://xfer.ndp.ca/2017/Documents/2016_POLICY-EN.pdf) (accessed 17 February 2018): 13.

Despite opposition from the Liberals and NDP, the Conservatives managed to pass Bill C-51 into law, thereby becoming the *Anti-Terrorism Act, 2015*. The Liberals, led by Trudeau, voted in favour of the bill, but promised to implement amendments should they be elected. When asked about the position, Trudeau said “We took a position based on what is in the best interests of Canadians. And ultimately this is a line of work in which you have to know that if you’re making decisions and taking positions that are reasonable and that flow from your values and your fundamental principles, then people will make informed choices.”<sup>123</sup> When asked further on the position of his electoral opponents and their positions regarding the bill Trudeau did not mince words: “Mr. Harper is playing up fear of terrorists. Mr. Mulcair is playing up fear for Islamic communities, for environmentalists, for First Nations. But they’re both playing politics of fear.”<sup>124</sup> The NDP position on C-51 has remained the same, and as of 2018, the party continues to insist that “Bill C-51 weakens the fundamental freedoms of every Canadian and threatens our open society with an atmosphere of fear...The Liberals promised to put an end to the politics of fear and division. It’s time for them to take action to repeal Harper’s Bill and protect our personal liberties.”<sup>125</sup>

Ultimately, the creation of Bill C-51, and its passage into law as the *Anti-Terrorism Act, 2015* was both a partisan effort by the Conservative Party to prove to Canadians they were the only party with the clout to tackle issues of national security, and a legitimate effort to strengthen national security laws. The Conservatives effectively introduced Bill C-51 as their solution to violent extremism and made efforts to give our national security agencies new sweeping powers,

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<sup>123</sup> Mark Kennedy, “Trudeau defends Liberal vote on Bill C-51 as the “right” move for Canadians,” *The Ottawa Citizen*, 17 June 2015, <http://ottawacitizen.com/news/politics/trudeau-defends-liberal-vote-on-bill-c-51-as-the-right-move-for-canadians> (accessed 17 February 2018).

<sup>124</sup> *Ibid.*

<sup>125</sup> New Democratic Party, “Repeal Harper’s Bill C-51,” 2018, <http://www.ndp.ca/repeal-harpers-bill-c-51> (accessed 17 February 2018).

and portray the Liberals and NDP as “soft” on national security issues as the 2015 federal election approached. It would be disingenuous to suggest the Conservatives introduced Bill C-51 solely to score political points, but the timing of the 2014 attacks and the 2015 federal election did allow Stephen Harper and his party members to capitalize on the hyper-partisan environment and portray the Liberals and NDP as unfit to tackle issues of national security with “tough” legislation.

The optics of the security versus rights debate, made it evident there was both a need for new security legislation to mitigate future terrorist attacks, and to seriously reconsider and challenge many of the assumptions built into the *Anti-Terrorism Act, 2015*. The electoral victory of Justin Trudeau in November 2015 had direct implications for the *Anti-Terrorism Act, 2015*, since the Liberals had promised serious amendments to the legislation if elected. The Liberal Party of Canada 2015 election platform does mention the need for amendments to the *Anti-Terrorism Act, 2015*, but the mention both omits the law by name, and includes only a reference to the supposed need for better oversight of our national security agencies. The election platform says “At present, Parliament does not have oversight of our national security agencies, making Canada the sole nation among our Five Eyes allies whose elected officials cannot scrutinize security operations. This leaves the public uninformed and unrepresented on critical issues. We will create an all-party committee to monitor and oversee the operations of every government department and agency with national security responsibilities.”<sup>126</sup>

The new Liberal government set out to gauge public interest and input, partly to remain consistent with their election message of accountability, transparency, and began a consultation process to involve the public with new security amendments, and to create engagement and

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<sup>126</sup> Liberal Party of Canada, “Real Change: A New Plan for a Strong Middle Class,” 2015, <https://www.liberal.ca/wp-content/uploads/2015/10/New-plan-for-a-strong-middle-class.pdf> (accessed 17 February 2018).

discussion. The Consultation on National Security was launched between 8 September 2016 and 15 December 2016 to consult “Canadians on key elements of Canada’s national security laws and policies to ensure they reflect the rights, values and freedoms of Canadians.”<sup>127</sup> The consultations involved all interested Canadians and featured a wide range of participants, from academia, government, law enforcement and private citizens. Since the Trudeau government marketed itself as fundamentally different from the Harper government in terms of public engagement and openness, the country-wide consultations were both an early demonstration of the government’s commitment to do business differently, and to create dialogue so that new legislation would theoretically reflect the views of Canadians. More specifically, “This public consultation will help inform future changes to national security tools, including those introduced in the *Anti-Terrorism Act, 2015* (former Bill C-51), to ensure that Canada’s national security framework is effective in keeping Canadians safe, while also safeguarding our values in a free and democratic society.”<sup>128</sup>

The consultations were preceded by two documents meant to provide both context and discussion material so that Canadians engage with the public consultations. The first document, *Our Security, Our Rights: National Security Green Paper, 2016, Background Document* provides an overview of the security framework, and the various functions of the security agencies, including but not limited to threat reduction, prevention, investigation, intelligence and evidence.<sup>129</sup> As the name suggests, the *Background Document* informed all participants about the status and role of our national security agencies, and the legal framework in which they operate.

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<sup>127</sup> Public Safety Canada, “Consultation on National Security,” 6 June 2017, <https://www.canada.ca/en/services/defence/nationalsecurity/consultation-national-security.html> (accessed 17 February 2018).

<sup>128</sup> Ibid.

<sup>129</sup> Public Safety Canada, “Our Security, Our Rights: National Security Green Paper, 2016, Background Document,” 31 January 2018 (modified), <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-scrt-grn-ppr-2016-bckgrndr/index-en.aspx> (accessed 17 February 2018)

The document goes to great lengths to explain the government’s position on values, and the ways in which Canada’s national security agencies operate. The document sets the stage for debate, but is not meant to generate debate. There are also sections which address the actions of our allies so that participants may reflect on existing work and judge for themselves Canada’s national security situation relative to other allied nations.

The second document *Our Security, Our Rights: National Security Green Paper, 2016*, was the discussion paper, designed to generate debate amongst Canadians regarding issues of national security. Significantly shorter than the background document, the *Our Security, Our Rights: National Security Green Paper, 2016* asks key national security questions, provides some facts, and asks its reader what they believe is the best course of action. We will analyze the contents of *Our Security, Our Rights: National Security Green Paper, 2016* to understand the types of questions the federal government sought to answer through consultation to fulfill their election promise of offering amendments to the *Anti-Terrorism Act, 2015*.

The *National Security Green Paper, 2016* lays out a series of discussion scenarios grounded in the new realities of the *Anti-Terrorism Act, 2015*, and asks readers to consider the law as it exists, and propose changes.

“In a world of uncertainty, risk and rapid change, do we have the tools necessary to keep people safe – and are we using all our tools in ways that safeguard our values?”<sup>130</sup> This introductory question strikes at the heart of the debate surrounding the *Anti-Terrorism Act, 2015* and is the *raison d’être* of the *National Security Green Paper, 2016* documents. *The National Security Green*

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<sup>130</sup> Public Safety Canada, “Our Security, Our Rights: National Security Green Paper, 2016,” 31 January 2018 (modified), <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-scrpt-grn-ppr-2016-bckgrndr/index-en.aspx> (accessed 17 February 2018): 5.

*Paper, 2016* first tackles accountability and oversight. The *National Security Green Paper, 2016* states that certain security agencies can collect intelligence and enforce the law, therefore there is a need for a system of accountability to ensure the security agencies exercise their powers in a way that does not violate *Charter* rights.<sup>131</sup> Secondly, the discussion paper lays out the ministerial responsibilities of the Minister of Public Safety and Emergency Preparedness, and the Minister of National Defence. Finally, the section presents judicial review, the existing review agencies that deal with the RCMP, CSIS and CSE, past commissions of inquiry (explored in the first section), agents of Parliament, like the Privacy Commissioner, and lastly Parliament itself, which has the power to hold ministers to account.<sup>132</sup>

The first section deals with accountability, oversight, and raises important questions about the functions of each governmental agent relative to their responsibilities. The three independent review agencies, The Civilian Review and Complaints Commission (CRCC), the Security Intelligence Review Committee (SIRC) remained intact under the *Anti-Terrorism Act, 2015*, but the Liberal government, acting on their election promises of better oversight, have created the National Security and Intelligence Committee of Parliamentarians (NSICOP) to oversee CSIS, CSE, and the RCMP.<sup>133</sup> While the final product remains to be seen, the public consultations undoubtedly fed the decision to change the oversight mechanism.

Prevention is raised in the *National Security Green Paper, 2016* and focuses on the prevention of radicalization to violence. The discussion paper states that while it is not illegal to hold radical ideas, there must be more done to prevent radicalized people from escalating their

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<sup>131</sup> Public Safety Canada, “Our Security, Our Rights: National Security Green Paper, 2016,” 31 January 2018 (modified), <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-scrtr-grn-ppr-2016-bckgrndr/index-en.aspx> (accessed 17 February 2018): 7.

<sup>132</sup> *Ibid.*, 8.

<sup>133</sup> Phil Gurski, “Why Parliament needs a dose of intelligence,” *The Ottawa Citizen*, 28 November 2017, print.

behaviour to violence. Defining radicalization to violence as “the process whereby a person or group of people adopts a belief or ideological position that moves them towards extremism, violence and, ultimately, to terrorist activity” the *National Security Green Paper, 2016* asks what more can be done.<sup>134</sup> Prevention in the context of the *National Security Green Paper, 2016* focuses on preventive activities like youth engagement and community involvement. This is wholly different from the preventive measures legalized by the *Anti-Terrorism Act, 2015*, most notably peace bonds. The *National Security Green Paper, 2016* is asking which types of “softer” intervention and prevention can be used in lieu of the powers granted under the *Anti-Terrorism Act, 2015*.

Threat reduction and disruption were controversial when Bill C-51 was tabled, since the wording of disruption was vague. The *National Security Green Paper, 2016* explains that prior to Bill C-51 and the *Anti-Terrorism Act, 2015*, CSIS could collect intelligence and advise other agencies, but leaving those other agencies to physically act on the intelligence should they choose so. The new legislation empowers CSIS to carry out direct action under threat disruption to reduce threats in Canada, though threat reduction expressed through direct action must be both reasonable and proportional to the threat.<sup>135</sup> The act of disruption does not necessarily require a warrant, but the action itself dictates the need for a warrant, thereby implying that not all disruption activities are equal in terms of impact, or level of applied force.<sup>136</sup> As Professors Forcese and Roach argue, what “disruption” actually entails is murky and undefined, leading to fears that CSIS may, under new legislation engage in disruption activities that are completely alien from their history and

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<sup>134</sup> Public Safety Canada, “Our Security, Our Rights: National Security Green Paper, 2016,” 31 January 2018 (modified), <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-scrtr-grn-ppr-2016-bckgrndr/index-en.aspx> (accessed 17 February 2018): 10.

<sup>135</sup> *Ibid.*, 11.

<sup>136</sup> *Ibid.*, 11.

mandated expertise.<sup>137</sup> The *National Security Green Paper, 2016* does not suggest that disruption activities are nefarious, but it does ask its readers what they consider to be timely and appropriate action when CSIS deals with a threat. The tone of the *National Security Green Paper, 2016* is neutral itself but does remind readers that any disruption actions that affect *Charter* rights may be subject to a warrant, thereby allowing the judiciary to apply scrutiny to ongoing operations to ensure *Charter* rights are not suffering abuse.

Recalling our analysis of the Air India Flight 182 tragedy, one of the main points of friction between the RCMP and newly created CSIS was the lack of clear information sharing. The RCMP and CSIS did not effectively leverage each others' skills, and the lack of cooperation, and a fundamental misunderstanding of the security intelligence on the part of the RCMP contributed to a spiralling chain of events that made the Air India tragedy possible. The *National Security Green Paper, 2016* described the information sharing framework as it existed, and introduces the *Security of Canada Information Sharing Act* (SCISA) which provides national security agencies with authority to disclose information that can be used for national security operations.<sup>138</sup> SCISA was designed to alleviate the confusion and ambiguity surrounding the legal obligations of intelligence sharing, and the discussion papers asks readers what they think of the current information sharing framework, and whether or not it allows agencies to more efficiently and effectively carry out their respective mandated operations.

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<sup>137</sup> Colin Freeze, "Profs say anti-terror CSIS 'disruption' campaigns not properly outlined," *The Globe and Mail*, 13 February 2018, <https://www.theglobeandmail.com/news/politics/professors-say-csis-disruption-campaigns-not-properly-spelled-out/article22980465/> (accessed 17 February 2018).

<sup>138</sup> Public Safety Canada, "Our Security, Our Rights: National Security Green Paper, 2016," 31 January 2018 (modified), <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-scrpt-grn-ppr-2016-bckgrndr/index-en.aspx> (accessed 17 February 2018): 12.

One of the major concerns in the post-9/11 era is the destruction and weaponization of airliners. The destruction of Air India Flight 182, and the use of airliners during the September 11<sup>th</sup>, attacks demonstrate that attacking airliners and using them as weapons is a force multiplier, and terrorists can inflict mass collateral damage and casualties. Air travel also facilitates the movement of foreign fighters, and Islamic State was particularly effective in inspiring followers who became foreign fighters. Therefore, the safety and security of air travel and airports is paramount. The *National Security Green Paper, 2016* explains the *Secure Air Travel Act (SATA)*, using the Passenger Protect Program (PPP) can “identify individuals who pose a threat to transportation security or are seeking to travel to commit certain terrorism offences.”<sup>139</sup> The individuals identified as potential flight risks are put on the ‘SATA’ list and subject to a wide variety of screening steps, and the discussion paper is honest in admitting that name mistakes have led to people being put on the SATA list accidentally. In addition, the SATA list is reviewed every 90 days to evaluate whether individuals on the list remain threats. Surprisingly, this section of the *National Security Green Paper, 2016* is short and brief, suggesting to readers that SATA is not as controversial as other aspects of the *Anti-Terrorism Act, 2015*, and does not warrant an extensive debate, unlike threat reduction and disruption activities.

The *Anti-Terrorism Act, 2015*, does make extensive amendments to the *Criminal Code*, with intent to making it easier to prevent terrorist activities and more difficult to promote terrorism produce terrorist propaganda. The controversial terrorism peace bond is included in such amendments, and although we will discuss it thoroughly in the third section, the peace bond generally allows our national security agencies to prevent and pre-empt an individual suspected of

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<sup>139</sup> Public Safety Canada, “Our Security, Our Rights: National Security Green Paper, 2016,” 31 January 2018 (modified), <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-scrnt-grn-ppr-2016-bckgrndr/index-en.aspx> (accessed 17 February 2018): 13.

having the intent to commit a criminal offence. Additionally, those subject to a peace bond do not necessarily have to be charged with an offence before the peace bond is granted.<sup>140</sup> The expansion of the *Criminal Code* to include a lower threshold for terrorist related offences is not without controversy, since the *National Security Green Paper, 2016* outlines the new legalities of preventive measures without charge or a warrant.

The *Anti-Terrorism Act, 2015* also allows for witnesses to conceal their identity, and the range of charges has been expanded for those who seek to intimidate witnesses.<sup>141</sup> The *Criminal Code* remains the avenue by which Canada can list terrorist entities to formalize their status vis a vis government policy.<sup>142</sup> Does listing a group criminalize support for said group? The *National Security Green Paper, 2016* does not ask the question and states the way a group becomes blacklisted. The question of terrorist financing is also raised, though the *National Security Green Paper, 2016* does not provide extensive detail. Instead, it states that certain agencies and departments work with banks to identify terrorist financing and money laundering.<sup>143</sup> How do the new powers under SCISA affect the relationship between commercial banks and national security agencies? What information are the banks obligated to provide on their customers, assuming they are obligated at all? These are the questions the *National Security Green Paper, 2016* begs of its readers.

The last sections of the *National Security Green Paper, 2016* discusses investigative challenges in the digital world, including the collection of intelligence security, and evidence and

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<sup>140</sup> Public Safety Canada, “Our Security, Our Rights: National Security Green Paper, 2016,” 31 January 2018 (modified), <https://www.publicsafety.gc.ca/cnt/rsracs/pblctns/ntnl-scrt-grn-ppr-2016-bckgrndr/index-en.aspx> (accessed 17 February 2018): 15.

<sup>141</sup> *Ibid.*, 15.

<sup>142</sup> *Ibid.*, 16.

<sup>143</sup> *Ibid.*, 17.

intelligence. The balance struck by our national security agencies in policing the digital realm while respecting the rights and freedoms enshrined in our *Charter* is particularly difficult, and the last section deals with the challenges of digital security, including but not limited to securing basic subscriber information, communications intercept, data encryption, and data retention.<sup>144</sup> The four listed challenges do affect intelligence collection since data encryption and retention present barriers for CSIS and CSE when investigating, and communications intercept refers to the inability of communications providers, like internet service providers, to intercept communications and provide information for the security agencies, resulting in “key intelligence and evidence to be missed.”<sup>145</sup>

Lastly, there is the issue of using sensitive information in court. Should intelligence be used as evidence? The *National Security Green Paper, 2016* states a federal judge must make the decision as to whether sensitive intelligence can be appropriately used in a court of law, and if so, determining whether the disclosure of intelligence will damage the public interest.<sup>146</sup> The lack of information, or unclassified versions of security intelligence may be used, but the strength of legal cases will be subject to the amount of information that can be presented in court, thus raising questions about how security intelligence can be used in a court of law.

The *National Security Green Paper, 2016* provides context and debate for many of the clauses and amendments found in the *Anti-Terrorism Act, 2015*, but it does introduce several new concepts not explicitly found in the *Anti-Terrorism Act, 2015*. Firstly, the document introduces questions regarding current oversight and accountability mechanisms, which was a major point of

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<sup>144</sup> Public Safety Canada, “Our Security, Our Rights: National Security Green Paper, 2016,” 31 January 2018 (modified), <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-scrtr-grn-ppr-2016-bckgrndr/index-en.aspx> (accessed 17 February 2018): 19.

<sup>145</sup> *Ibid.*, 19.

<sup>146</sup> *Ibid.*, 20.

criticism of the *Anti-Terrorism Act, 2015*.<sup>147</sup> Secondly, the concept of terrorist financing and digital investigation and asks the public what should be done.<sup>148</sup> The digital realm terrorism and crime is given attention in the document and is framed to make the public debate the merits of the *Anti-Terrorism Act, 2015* in combating terrorism and crime in the digital realm. The document also presents the world of signals intelligence, and the use of intelligence as evidence.<sup>149</sup> Again, the document asks what the government should do regarding signals intelligence and intelligence as evidence, since the former is not explicitly mentioned in *Anti-Terrorism Act, 2015*, and the latter may factor into Part 5 of the *Anti-Terrorism Act, 2015*. The *National Security Green Paper, 2016* offered new national security issues not explicitly addressed in the *Anti-Terrorism Act, 2015*, but important to the consultation process.

The *National Security Green Paper, 2016* effectively presents the national security environment in Canada, including the limits and challenges our national security agencies deal with, and asks discussion questions that foster debate and public engagement. It is not without its flaws. The *National Security Green Paper, 2016* presents a good overview of the legal framework but does so in general terms. The discussion paper also limits its use of definitions, which is crucial since the *Anti-Terrorism Act, 2015*, like all legislation, is filled with important definitions and distinctions that provide the context and basis for any debate. The discussion paper is general by nature, but the lack of expansive use of definitions as they appear in *Anti-Terrorism Act, 2015* decrease the effectiveness of the *National Security Green Paper, 2016* to foster detail-specific public consultation and debate. Considering the controversy surrounding the tabling of Bill C-51

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<sup>147</sup> Public Safety Canada, “Our Security, Our Rights: National Security Green Paper, 2016,” 31 January 2018 (modified), <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-scrtr-grn-ppr-2016-bckgrndr/index-en.aspx> (accessed 17 February 2018): 7.

<sup>148</sup> *Ibid.*, 18.

<sup>149</sup> *Ibid.*, 20.

and the *Anti-Terrorism Act, 2015* becoming law, the *National Security Green Paper, 2016* was a prudent decision by the Liberal government, thereby fulfilling their election promises regarding accountability and public engagement. The public relations optics of providing the opportunity for public consultation to provide feedback on eventual amendments for the *Anti-Terrorism Act, 2015* cannot be understated. The public consultations led to the tabling of Bill C-59, which is currently being debated in Parliament, and represents the latest continuation in the evolution of Canadian national security legislation.

### **Conclusion**

It is difficult to conclude this major research project because the *Anti-Terrorism Act, 2015* remains in law, and the bill to amend the law is being debated in Parliament. Whether Bill C-59 is passed through Parliament and given royal assent remains to be seen, but the lessons learned from the *Anti-Terrorism Act, 2015* are reflected in the new legislation. While this major research project remains focused on the history and analysis of *Anti-Terrorism Act, 2015*, it is worth noting some of the proposed changes in Bill C-59. The new bill, composed of nine parts, amends the CSIS and CSE mandates, the SATA, SCISA, *Criminal Code*, *Youth Criminal Justice Act*, and established the *Intelligence Commissioner Act*, and *National Security and Intelligence Review Agency Act*.<sup>150</sup> Scott Newark, writing for *iPolitics*, says the new bill does offer amendments to oversight, largely in response to critiqued lack of oversight in *Anti-Terrorism Act, 2015* by creating the Office of the Intelligence Commissioner and National Security and Intelligence Review Agency.<sup>151</sup> The CSE mandate is amended by Bill C-59 to include offensive actions, similarly to the way the *Anti-*

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<sup>150</sup> Canada, Parliament, *Bill C-59*, Minister of Public Safety and Emergency Preparedness, 20 June 2017, <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-59/first-reading> (accessed 19 February 2018): iv.

<sup>151</sup> Scott Newark, "The Liberals' new national security bill gets a lot of things right," *iPolitics*, 19 October 2017, <https://ipolitics.ca/2017/10/19/the-liberals-new-national-security-bill-gets-a-lot-of-things-right/> (accessed 19 February 2018).

*Terrorism Act, 2015* expanded the CSIS mandate to conduct domestic and foreign operations, and information sharing as it precludes to SATA is given stricter guidelines.<sup>152</sup> The new legislation proposes many changes, notably, Bill C-59 enacts the *Communications Security Establishment Act*, and authorizes CSE, through an expanded mandate, to collect and analyze foreign intelligence, including intelligence located outside of Canada.<sup>153</sup> Additionally, CSE can execute defence operations to protect federal government cyber information and infrastructure, and to carry out active operations to “degrade, disrupt, influence, respond to or interfere with the capabilities, intentions or activities of a foreign individual, state, organization or terrorist group as they relate to international affairs, defence or security.”<sup>154</sup> It can be assumed the *National Security Green Paper, 2016* influence the government decision to enable our national security agencies to more robustly operate in cyberspace. The issue of accountability is also addressed in Bill C-59, with the establishment of the *Intelligence Commissioner Act*, and *National Security and Intelligence Review Agency Act*. The former will be the review the basis for the authorization of actions under the CSIS and CSE acts, and the latter will review the activities of both agencies, and all other related national security agencies.<sup>155</sup> These are significant changes made to amend the controversial aspects of the *Anti-Terrorism Act, 2015*, and can be linked to the public consultations that preceded Bill C-59.

Without divulging the whole bill, it is fair to conclude that Bill C-59 offers many amendments to *Anti-Terrorism Act, 2015*. The National Security Consultations triggered largely

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<sup>152</sup> Scott Newark, “The Liberals’ new national security bill gets a lot of things right,” *iPolitics*, 19 October 2017, <https://ipolitics.ca/2017/10/19/the-liberals-new-national-security-bill-gets-a-lot-of-things-right/> (accessed 19 February 2018).

<sup>153</sup> Canada, Parliament, *Bill C-59*, Minister of Public Safety and Emergency Preparedness, 20 June 2017, <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-59/first-reading> (accessed 19 February 2018): 60.

<sup>154</sup> *Ibid.*, 61.

<sup>155</sup> *Ibid.*, 60.

by the electoral promise to repeal the problematic elements of *Anti-Terrorism Act, 2015* have led to the tabling of this new bill. While we can expect new amendments to *Anti-Terrorism Act, 2015* either through Bill C-59 or some other means (since *Anti-Terrorism Act, 2015* has proven too controversial to simply ignore without amendments), the shape and scope remains to be seen. For the time being, *Anti-Terrorism Act, 2015* remains law, and national security operations continue to be executed within this legal framework.

The history of national security in Canada is complex, and both the October Crisis of 1970, and the destruction of Air India Flight 182 demonstrate that our national security agencies either operated in a legal grey zone, like the RCMP actions against FLQ cells, or failed to understand the roles of their mandates, as we have seen with the series of errors that led to the destruction of Air India Flight 182. We can say with certainty the 9/11 era and GWOT shocked the Canadian government into realizing the globalization of conflict would inevitably dissolve the geographical isolation and assumed safety that previous governments relied on to shield Canada from conflict. The decision to participate in Operation IMPACT, and the retaliatory Islamic State-inspired attacks on Canadian soldiers and Parliament Hill led to the highly partisan tabling and passing of Bill C-51, later the *Anti-Terrorism Act, 2015* into law. With the federal election victory of Justin Trudeau in 2015, the highly controversial *Anti-Terrorism Act, 2015* found itself on the path to extensive amendments via the National Security Consultations and tabling of Bill C-59. It is now in the hands of time to determine what happens to Bill C-59 and the implications of any proposed amendments on the legal framework and operations of our national security agencies and departments.



## Bibliography

### Legislation:

Canada, Parliament, *Bill C-51*. Statutes of Canada, 2015, Part 1, 18 June 2015, [http://laws-lois.justice.gc.ca/PDF/2015\\_20.pdf](http://laws-lois.justice.gc.ca/PDF/2015_20.pdf) (accessed 18 February 2018).

Canada, Parliament, *Bill C-59*. Minister of Public Safety and Emergency Preparedness, 20 June 2017, <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-59/first-reading> (accessed 19 February 2018).

Canada, Parliament, *War Measures Act, 1914*. Statutes of Canada, 1914, ch.2, <http://learning.royalbcmuseum.bc.ca/wp-content/uploads/2015/06/War-Measures-Act.pdf> (accessed 4 February 2018).

### Government Reports:

Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182. *Air India Flight 182: A Canadian Tragedy*. Volume One. Ottawa: Public Works and Government Services Canada, 2010.

Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182. *Air India Flight 182: A Canadian Tragedy*. Volume Three. Ottawa: Public Works and Government Services Canada, 2010.

Government of Canada, Commission of Inquiry concerning Certain Activities of the Royal Canadian Mounted Police (McDonald Commission). *Third Report: Certain R.C.M.P. Activities and the Question of Governmental Knowledge*. Part IV, chapter 3. Ottawa: Supply and Services Canada, 1981.

National Defence and Canadian Armed Forces. “2015-2016 Departmental Performance Report.”

<http://www.forces.gc.ca/en/about-reports-pubs-departmental-performance/2016-index.page> (accessed February 28, 2017).

Office of the Auditor General of Canada. *2009 March Status Report of the Auditor General of*

*Canada*, Chapter 1. 2009, [http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_200903\\_01\\_e\\_32288.html#hd5a](http://www.oag-bvg.gc.ca/internet/English/parl_oag_200903_01_e_32288.html#hd5a) (accessed 18 March 2018).

Public Safety Canada. “Consultation on National Security.” 6 June 2017,

<https://www.canada.ca/en/services/defence/nationalsecurity/consultation-national-security.html> (accessed 17 February 2018).

Public Safety Canada. “Our Security, Our Rights: National Security Green Paper, 2016,

Background Document.” 31 January 2018 (modified),  
<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-scrt-grn-ppr-2016-bckgrndr/index-en.aspx>  
(accessed 17 February 2018).

Royal Canadian Mounted Police. “Independent Investigation into the Death of Michael Zehaf-

Bibeau October 22, 2014, Centre Block, Parliament Hill, Ottawa, Canada.”  
<http://www.rcmp-grc.gc.ca/en/independent-investigation-death-michael-zehaf-bibeau> (accessed  
[15 February 2018](#))

Security Intelligence Review Committee. *Reflections: twenty years of independent external*

*review of security intelligence in Canada*. Ottawa: Security Intelligence Review  
Committee, 2005.

**Publication:**

Austen, Ian. “Hit-and-Run That Killed Canadian Soldier Is Called Terrorist Attack.” *The New York Times*, 21 October 2014,

<https://www.nytimes.com/2014/10/22/world/americas/canadian-soldier-run-down-in-what-officials-call-act-of-terror-dies.html> (accessed 15 January 2018).

Austin, Lisa M. and Benjamin J. Goold. “How C-51 undermines privacy.” *National Post*, 30 March 2015, <http://nationalpost.com/opinion/how-c-51-undermines-privacy> (accessed 15 March 2018).

Broadbent Institute. “Repeal Bill C-51.” [http://www.broadbentinstitute.ca/repeal\\_c51](http://www.broadbentinstitute.ca/repeal_c51) (accessed 15 January 2018).

Canadian Civil Liberties Association. “Tackling the Government Green Paper on National Security: Part 1.” 19 September 2016, <https://ccla.org/tackling-government-green-paper-national-security-part-1/> (accessed 19 February 2018).

Canadian Civil Liberties Association. “Tackling the Government Green Paper on National Security: Part 2.” 16 October 2016, <https://ccla.org/tackling-the-government-green-paper-on-national-security-part-2/> (accessed 19 February 2018).

Canadian Civil Liberties Association. “Tackling the Government Green Paper on National Security: Part 3.” 26 October 2016, <https://ccla.org/tackling-government-green-paper-national-security-part-3/> (accessed 19 February 2018).

Canadian Civil Liberties Association. “Tackling the Government Green Paper on National Security: Part 4.” 6 December 2016, <https://ccla.org/tackling-government-green-paper-national-security-part-4/> (accessed 19 February 2018).

Chase, Steven. "Prime Minister labels shootings as "terrorist" acts." *The Globe and Mail*, 22 October 2014, <https://www.theglobeandmail.com/news/national/in-national-address-prime-minister-labels-shootings-as-terrorist-acts/article21252133/#dashboard/follows/> (accessed 16 February 2018).

Clément, Dominique. "The October Crisis of 1970: Human Rights Abuses Under the *War Measures Act*." *Journal of Canadian Studies* 42, No. 2 (Spring 2008).

Colonel Horn, Bernd and Major Tony Balasevicius eds. *Casting Light On The Shadows: Canadian Perspectives on Special Operations Forces*. Toronto: Dundurn Group and Canadian Defence Academy, 2007.

Cooper, Barry. "Bill C-51 is rightly aimed at violent Islamic jihadi terrorists." 4 March 2015, <http://nationalpost.com/opinion/barry-cooper-bill-c-51-is-rightly-aimed-at-violent-islamic-jihadi-terrorists> (accessed 19 February 2018).

Coyne, Andrew. "Debate over anti-terrorism bill a perfect microcosm of Canadian politics." National Post, 23 February 2015, <http://nationalpost.com/opinion/andrew-coyne-debate-over-anti-terrorism-bill-a-perfect-microcosm-of-canadian-politics> (accessed 14 February 2018).

Centre for Israel and Jewish Affairs. "The Centre for Israel and Jewish Affairs (CIJA) Testimony on Bill C-51." 26 March 2015, <http://cija.ca/cija-testimony-bill-c-51/> (accessed 19 February 2018).

Forcese, Craig and Kent Roach. *False Security: The Radicalization of Canadian Anti-Terrorism*. Toronto: Irwin Law, Inc, 2015.

Freeze, Colin. "Profs say anti-terror CSIS 'disruption' campaigns not properly outlined." *The Globe and Mail*, 13 February 2018,

<https://www.theglobeandmail.com/news/politics/professors-say-csis-disruption-campaigns-not-properly-spelled-out/article22980465/> (accessed 17 February 2018).

Globe Editorial, “Parliament must reject Harper’s secret policeman bill.” *The Globe and Mail*, 1 February 2015, <https://www.theglobeandmail.com/globe-debate/editorials/parliament-must-reject-harpers-secret-policeman-bill/article22729037/> (accessed 19 February 2018).

Gurski, Phil. “Why Parliament needs a dose of intelligence.” *The Ottawa Citizen*, 28 November 2017, print.

Kennedy, Mark. “Trudeau defends Liberal vote on Bill C-51 as the “right” move for Canadians.” *The Ottawa Citizen*, 17 June 2015, <http://ottawacitizen.com/news/politics/trudeau-defends-liberal-vote-on-bill-c-51-as-the-right-move-for-canadians> (accessed 17 February 2018).

Kill Bill C-51, “Open Letter from Canadian Businesses Against Bill C-51.” OpenMedia, 21 April 2015, <https://killc51.ca/Business> (accessed 19 February 2018).

Leuprecht, Christian. “Done right, C-51 can balance freedom and security.” *The Globe and Mail*, 16 March 2015, <https://www.theglobeandmail.com/globe-debate/done-right-c-51-can-balance-freedom-and-security/article23445265/> (accessed 19 February 2018).

Leblanc, Daniel and Chris Hannay. “Privacy, security and terrorism: Everything you need to know about B C-51.” *The Globe and Mail*, 10 March 2015, <https://www.theglobeandmail.com/news/politics/privacy-security-and-terrorism-everything-you-need-to-know-about-bill-c-51/article23383976/> (accessed 16 February 2018).

Liberal Party of Canada, “Bill C-51.” <https://www.liberal.ca/realchange/bill-c-51/> (accessed 16 January 2018).

Liberal Party of Canada, “Real Change: A New Plan for a Strong Middle Class.” 2015,

<https://www.liberal.ca/wp-content/uploads/2015/10/New-plan-for-a-strong-middle-class.pdf> (accessed 17 February 2018).

Martin, Lawrence. “Anti-terrorism law: Why the Liberals aren’t amending it.” *The Globe and*

*Mail*, 2 August, 2016, <https://www.theglobeandmail.com/opinion/bill-c-51-why-the-liberals-arent-living-up-to-promises-to-amend-the-law/article31220198/> (accessed 17 January 2018).

McCharles, Tonda. ‘RCMP calls Parliament shooting a “terrorist attack”, driven by ideology.’”

*Toronto Star*, 26 October 2018,

New Democratic Party, “Repeal Harper’s Bill C-51.” 2018, <http://www.ndp.ca/repeal-harpers-bill-c-51> (accessed 17 February 2018).

New Democratic Party. “Policy of the New Democratic Party of Canada.” April 2016,

[http://xfer.ndp.ca/2017/Documents/2016\\_POLICY-EN.pdf](http://xfer.ndp.ca/2017/Documents/2016_POLICY-EN.pdf) (accessed 17 February 2018):

13.

Newark, Scott. “C-51: An Analysis Without the Hype or Hysteria.” *MacDonald-Laurier*

*Institute*, March 2015,

<https://www.macdonaldlaurier.ca/files/pdf/MLICommentaryNewark03-15WebReadyV4.pdf>

(accessed 19 February 2018): 2.

Newark, Scott. “The Liberals’ new national security bill gets a lot of things right.” *iPolitics*, 19

October 2017, <https://ipolitics.ca/2017/10/19/the-liberals-new-national-security-bill-gets-a-lot-of-things-right/> (accessed 19 February 2018).

Ogrodnik, Irene. "New ISIS audio recording urges attacks on Canada, other countries." *Global News*, 22 September 2014, <https://globalnews.ca/news/1575601/france-is-has-threatened-coalition-civilians/> (accessed 14 February 2018).

Tetley, William. *The October Crisis 1970: an insider's view*. Montreal: McGill-Queen's University Press, 2007.

The Mackenzie Institute, "Just for the Record: The Upcoming ISIS Attack on Canada." *The Mackenzie Institute*, 28 March 2016, <http://mackenzieinstitute.com/just-for-the-record-the-upcoming-isis-attack-on-canada/> (accessed 14 February 2018).

Trudeau, Justin. "Remarks by Liberal Party of Canada Leader Justin Trudeau on Bill C-51." Liberal Party of Canada, 4 February 2015, <https://www.liberal.ca/remarks-by-justin-trudeau-on-bill-c-51/> (accessed 16 February 2018).