

Canadian "anti-terrorism" law attacks democratic rights

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Canada's Liberal government is rushing to enact an "anti-terrorism" bill that breaks with key tenets of British-Canadian jurisprudence—tenets historically-developed in the struggle against arbitrary and unfettered executive power.

Bill C-36 establishes a new order of "terrorist" crimes for which the state will have special investigative and prosecutorial powers. These include preventive detention—i.e. the right to incarcerate people on the mere suspicion they may be about to commit a crime; a new police power to compel testimony from anyone they believe has information pertinent to a terrorism investigation; closed trials; and a right of the prosecution, with a judge's approval, to deny an accused and his counsel full knowledge of the evidence against him.

The definition of terrorism around which the legislation is constructed is so broad that it could be used to prosecute trade unionists involved in an illegal strike or those engaged in civil disobedience.

Bill C-36 also greatly increases police powers of surveillance, while dramatically increasing the government's prerogative to suppress information about its activities.

One measure of Bill C-36's sweep is the number of existing laws it would amend. The more than 150-page bill would modify 22 existing laws, including the *Criminal Code*, *Canadian Human Rights Act*, *Access to Information Act*, *Privacy Act*, *Personal Information Protection and Electronic Documents Act*, *Canadian Security Intelligence Act*, and *National Defence Act*.

Bill C-36 has been severely criticized by civil rights groups, associations of lawyers, and the Canadian Arab Federation and other immigrant and ethnic organizations. According to the Quebec Bar Association, "certain of Bill C-36's clauses would lead to violations of the rights recognized by the [Canadian] Charter of Rights and Freedoms. "It would be a mistake," it adds, "to believe that this law will not eventually be used against Canadians and Canadians who are not terrorists."

The corporate media, meanwhile, has offered only muted criticism. This is in keeping with the role it has played since September 11 in whipping up a climate of hysteria and promoting Canada's fulsome and open-ended commitment to the US world "anti-terrorism war." As for the parliamentary opposition, it exists only in name—at least when it comes to defending democratic rights. Only the social-democratic New Democratic Party voted against Bill C-36 on second reading. In so far as there has been a debate in parliament, it has revolved around whether some of the

legislation's most grievous attacks on civil liberties, such as the police power of preventive arrest, should be subject to a three- or five-year sunset clause. To date, Prime Minister Jean Chrétien and Justice Minister Anne McLellan have rejected all such suggestions, arguing that no one can guarantee terrorism will have been eradicated in such a time-frame and that a sunset clause would discourage the police from pursuing anti-terrorism investigations.

Until now the concept "terrorist act" has been used in Canadian law only in the Immigration Act. (Immigration officials have the right to expel, or deny entry to, non-Canadians suspected of involvement in a terrorist act.) One reason is that Justice Department officials found it impossible to come up with a definition of terrorism that they were confident could withstand a court challenge and didn't catch all manner of unrelated acts of dissidence within its ambit. Another is that the Criminal Code already contains severe legal penalties for anyone who commits the offences usually associated with terrorism—assassinations, bombings, plane hijackings, etc.

Now, however, the Chrétien Liberal government has established under a catch-all rubric of "terrorist act" a new order of expressly political crimes to which the normal limits on state power will no longer apply. Those convicted of the more severe of the terrorist acts face an automatic 25-year jail sentence.

Bill C-36 begins by listing some 35 offences, taken from ten international agreements and protocols, liable to be defined as terrorist acts. Then, in a second section it further defines as a terrorist act "an act or omission, in or outside Canada, that is committed ... for a political, religious or ideological purpose" and that is aimed at causing **any of** the following: death or injury; "substantial property damage" if the probable result is to place people's safety at risk; or "serious interference with or serious disruption of an essential service, facility or system, whether public or private ..."

The last clause is particularly ominous, since it and another sub-clause that mentions threats to Canadians' "economic security" could be used to smear work stoppages, blockades and other acts of civil disobedience as "terrorism," and thus threaten participants with massive legal sanctions.

The government's definition of a terrorist act does go on to specifically exclude legal strikes and protests, but only if they don't aim to seriously disrupt an essential service. Moreover, by explicitly excluding "legal" strikes, that is those that conform with

the battery of repressive labor laws, from its ambit, Bill C-36 implicitly classifies strikes mounted in defiance of such laws and that disrupt public services or the country's economy "terrorist acts."

Bill C-36 includes in its definition of a terrorist act plotting or threatening to commit such an act or inciting people to commit one. Explains University of Toronto Law Professor Kent Roach, "The overboard definition of terrorist activities is then incorporated in new offences such as ... participating in the activities of or harbouring those who commit terrorist activities. These broad offenses, which target activities well in advance of actual terrorism, are in turn expanded by the incorporation of inchoate liability such as conspiracies, attempts, counselling or threats, into the definition of terrorist activities. The overall effect is to lengthen the long reach of the criminal law in a manner that is complex, unclear and unrestrained."

Significantly, both politicians who favor and oppose Bill C-36's definition of a terrorist act have said that had it then been in force, the "anti-globalization" protesters who sought to disrupt the Quebec City Summit of the Americas and the Ontario Coalition Against Poverty protestors who sought to paralyze Toronto's financial district last October 16 could have been prosecuted under its provisions.

Till now it has been accepted as a judicial principle that the greater the potential penalties facing an accused, the greater the burden of proof the state must satisfy and the more important a defendant's right to a public trial.

Bill C-36 inverts these principles. With the sanction of the presiding judge—or if need be a higher court—the prosecution will be able in the name of national security to withhold from the accused and the public essential parts of the prosecution's case, such as how the evidence was obtained, the names of prosecution witnesses and even the specifics of what the accused is said to have done.

Police will have the power to detain persons for up to 72 hours without charge on the mere "suspicion" that they might be about to commit a terrorist act. Till now courts have always held that people cannot be arrested—let alone detained without charge—on mere suspicion. Arrests without a warrant can only be made if police have reasonable cause to believe someone has just committed a crime or is about to commit a crime.

Police will also have the power to take photos and fingerprints of those subject to preventive arrest. Hitherto, police have only been allowed to open an identification file on someone if and when charges are laid.

In collaboration with Crown prosecutors, security forces will gain the power to compel testimony, under threat of imprisonment, in an investigative hearing held in secret and presided over by a judge. Even if Bill C-36 specifies that evidence collected through such a hearing cannot be used against the individual from whom the testimony has been compelled, such a procedure represents a major attack on the long-established right of silence.

Bill C-36 also gives the solicitor-general sweeping powers to order all those involved in an anti-terrorism investigation not to divulge any information about it and in perpetuity.

To obtain authorization for electronic surveillance in terrorism

investigations, the police will no longer have to swear before a judge that all other methods of collecting evidence have failed and that it would otherwise be impracticable to continue the investigation.

The law authorizes the establishment of a government blacklist of terrorist organizations. This measure has two purposes: to permit the state to seize all such organizations' assets and to facilitate the use of the legal sanctions in Bill C-36 against their members and supporters.

Only after an organization has been entered on the blacklist will it be able to challenge the designation before a Federal Court judge. At these hearings, the government will be able to demand in the name of national security, national defence or international relations that much of the evidence on which its decision was based be withheld from the complaining organization. Also, the government will have the right to use evidence that would not be admissible in a regular court hearing.

Bill C-36 creates a legal obligation for banks, all other financial institutions, and indeed all Canadians, at home or abroad, to secretly denounce to the state anyone they suspect of engaging in terrorist activities. Failure to do so makes one liable to a ten-year prison term.

The preamble of Bill C-36 declares that amendments will be made to the *National Defence Act* "to clarify the powers of the Communications Security Establishment [CSE] to combat terrorism"—this is a euphemism for expanding the CSE's powers to spy on Canadians. The top secret CSE was established during the Cold War to intercept international telecommunication signals. Until now it has been legally prevented from intercepting communications amongst Canadians within Canada. Now, on authorization from the overseeing minister, it will have the right to intercept all communications made by "terrorism" suspects by telephone, electronic mail or any other part of the "world infrastructure" of telecommunications. A particular target of this change is the Internet. Since the Seattle "anti-globalization" protest, security forces in Canada, as elsewhere, have repeatedly complained about their lack of legal authority to spy on Internet communications. Bill C-36, particularly in light of its definition of a terrorist act, goes a long way to meeting their concerns.

Thirty years ago, Jean Chrétien was a minister in the Trudeau Liberal government, when it invoked the War Measures Act on the basis of a bogus claim that two *Front de Libération du Québec* kidnappings constituted an "apprehended insurrection." Bill C-36 does not give the government the War Measures Act's arbitrary powers to suspend basic civil liberties. But the changes it makes would be permanent, establish ominous legal precedents, and arm the state with vast arbitrary powers to label as "terrorism" and suppress any serious challenge to the established political and social order.



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