

Canada adopts “anti-terrorism” law that tramples basic rights

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Canada’s Conservative government has rammed legislation through parliament that, in the name of fighting terrorism, tramples on fundamental democratic juridical principles—including habeas corpus, the right of silence, and the right to challenge one’s accusers.

The Combating Terrorism Act revives two measures included in the Anti-Terrorism Act of December 2001 that lapsed in 2007 under a “sunset clause”—preventive detention and investigative hearings. The new law also increases the penalties for persons who refuse to cooperate with investigative hearings and makes it a crime to travel abroad or try to leave Canada to engage in terrorism.

The Canada Security and Intelligence Service (CSIS) and Canada’s national police force, the Royal Canadian Mounted Police (RCMP), have long been pressing for the revival of preventive detention and investigative hearings, as have Stephen Harper and his Conservatives.

The House of Commons had been scheduled to debate the Conservatives’ Combating Terrorism Act later this year. But on Friday April 19—the same day that US authorities placed Boston under a state of siege on the pretext of hunting for a teenage terrorist—the government announced that final debate on the legislation would begin the following Monday. Then on Monday the 22nd, in what was manifestly a politically-orchestrated spectacle designed to provide a compelling backdrop for quick passage of the government’s anti-terrorism legislation, the RCMP announced the arrest of two reputed Al Qaeda-directed terrorists. It subsequently emerged that the police had been tailing the two for at least 8 months and that there had never been any imminent threat of a terrorist attack. (See: “Canadian government unveils “terror plot” as it adopts draconian new law”)

Rushed through parliament by Jean Chretien’s Liberal government in the wake of the September 11, 2001 attacks, the Anti-Terrorism Act created a new category of

politically or ideologically motivated crimes, subject to harsher penalties, and empowered police to set aside centuries’ old civil liberties.

Critics of the legislation warned that it is based on a very broad definition of “terrorism”—a definition so sweeping that the state could apply it to acts of dissent and civil disobedience or political strikes.

However, prior to its passage, the criticism of the Liberals’ Anti-Terrorism Act of 2001 largely centered on its authorization of preventive detention—that is, arrest without charge—and investigative hearings. Conceding that these two new powers constituted a break with longstanding democratic practice, the government ultimately agreed to make them subject to a “sunset provision” under which they would expire after five years unless parliament expressly voted to extend them.

It is these powers—powers which according to the government were never used during the five years they formed part of the state’s arsenal—that the Conservatives have now revived. “We are giving law enforcement the tools that they need, that they’ve asked for,” said Candice Bergen, the parliamentary secretary to the Public Safety Minister, in the way of an explanation for the Conservatives’ Combating Terrorism Act.

Preventive detention gives the police the power to arrest and hold individuals without charge for up to three days if they believe they are implicated in or have knowledge of an impending terrorist act. If at the conclusion of the three days, police still have no evidence to lay charges, they can go before a judge and ask for the imposition of “recognizance with conditions.” These conditions, which could remain in effect for a year, are virtually open-ended. They could include everything from severe restrictions on an individual’s freedom of movement and communication to a requirement that they regularly report to the police and apprise them of their activities.

Persons subject to preventive detention have no

opportunity to confront their accusers or challenge the evidence against them. If they violate the conditions imposed on them, they can be jailed for a year.

While preventive detention runs roughshod over habeas corpus, investigative hearings trash the right to silence.

Under the Conservatives' Combating Terrorism Act, as previously under the Liberals' Anti-Terrorism Act, police and the Crown can ask a court to convene an "investigative hearing" so as to compel persons they believe have information about a past or planned terrorist act to answer their questions. An individual summoned before an investigative hearing cannot contest the reasons for their being summoned. If they refuse to appear, or if they refuse to answer any question put to them, they can be imprisoned for up to a year.

In a revealing exchange last November, Donald Piragoff, the senior assistant deputy minister in the department of justice, said, in response to a question from a New Democrat MP, that a person who had refused to answer questions at an investigative hearing, then been jailed for a year, could be summoned to appear again on his release and re-imprisoned if he still refused to "cooperate." "Essentially," concluded the NDP's Randall Garrison, "they could be maintained in jail indefinitely ... without being convicted of anything."

Some establishment voices have spoken out against the Combating Terrorism Act, but Canada's elite overwhelmingly supports the trampling of basic protections against arbitrary state power. The *Globe and Mail*, the traditional voice of Bay Street and the country's most influential daily, strongly supported the legislation as did most of the country's newspapers. The Liberals, the other traditional governing party, joined with the Conservatives in voting it into law. The official opposition NDP voted against, but made clear it did so reluctantly. A plaintive Mike Sullivan, a Toronto NDP MP, declared, "Every step of the way, we have suggested that we could support the bill if some of the freedoms that were being taken away by the government would be put back or protected in another way." For his part, the aforementioned Garrison complained that the government has made cuts to Border Services and other parts of the national security apparatus. "So," declared Sullivan, "if we're really going to attack terrorism, let's have that proper balance between the resources we need and the existing laws."

In a letter to the House of Commons Public Safety and National Security Committee opposing the legislation, the Canadian Bar Association's Criminal Justice Section

underlined that its key provisions represent "a departure from established legal rules." It warned that while this is now justified by the law's supporters as an exception to deal with the "terrorism," it could soon become the norm: "If these sections become an accepted part of the normal fabric of criminal law, the original exceptional justification for the provisions may well be forgotten. The general explanation that they make law enforcement more effective could easily be used to justify extending them beyond their present limits."

In a November 28, 2012 statement, the Canadian Civil Liberties Association warned in even more trenchant terms that the legislation "normalize[s] exceptional powers inconsistent with established democratic principles and [that] threaten hard-won civil liberties."

"[I]ndividuals," said the CCLA statement, "could be forced to testify in a court of law, arrested, detained or made subject to bail conditions—all without charges being laid. Individuals have no right to know, and no opportunity to challenge, the basis on which they are being subjected to preventive arrest or required to attend investigative hearings."

These comments, while a simple reaffirmation of democratic principles, are very much the exception.

Pursuing an unpopular and socially regressive agenda of never-ending austerity, imperialist war and the criminalizing of workers' struggles, Canada's ruling class is ever more indifferent and hostile to basic democratic rights.



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