Canada's Bill C-51: A sweeping assault on democratic rights and legal principles—Part 1

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Bill C-51, Canada's ostensible new anti-terror legislation, contains provisions that attack a vast array of key democratic and constitutionally protected rights.

More than 600 pages long, it would amend numerous existing laws to give the state and its national-security apparatus vast new powers. Under a new "disruption power," Canada's premier intelligence agency, the Canadian Security Intelligence Service, or CSIS, is to be empowered to carry out a vast array of illegal acts, with any person or group deemed a threat or potential threat to "national security" a possible target. Other measures would expand the state's power to make "preventive arrests"—i.e., hold persons without charge; create a nebulous new category of prohibited political speech; and effectively remove all limits on the state's sharing of personal information in security investigations. And there is more, much more.

The legislation's scope gives the lie to the claim of Stephen Harper and his Conservative government that the bill is an anti-terrorism law. Combating terrorism is merely the pretext to justify the adoption of repressive measures directed against the entire population and especially the threat of mass working class opposition to the Canadian elite's agenda of imperialist war and austerity.

Bill C-51 builds on the already expansive anti-terrorism provisions of the 2001 Anti-Terrorism Act. Rushed through parliament in the immediate aftermath of the 9/11 attacks by the Chretien Liberal government, the 2001 Anti-Terrorism Act created a new category of political crimes—based on a definition of terrorism so broad that it could be invoked against a political general strike or mass social unrest—subject to special rules and harsher sentences. The 2011 law overturned long-standing democratic juridical principles, allowing the state in "exceptional" circumstances to make "preventive" arrests and set aside the right of silence.

The Conservatives are seeking to railroad Bill C-51 into law, restricting debate at every stage of the parliamentary process. Though the trade union-based New Democratic Party (NDP) has made a point of declaring its opposition to the law, it has failed to expose its fundamental anti-democratic character. The NDP, as epitomized by party leader Thomas Mulcair's announcement that an NDP government would amend not rescind the Harper government's legislation, accepts its *bona fides* as an anti-terrorism measure, and has made the lack of parliamentary oversight of the intelligence agencies virtually the exclusive focus of its opposition to Bill C-51.

Even this has proven too much for Stephen Harper and his Conservatives. They have denounced the NDP's comments as "extremist" and "conspiracy theories," and the Liberals have echoed the Conservative line, with party leader Justin Trudeau attacking the NDP for "not once in its history" supporting "strengthening anti-terror measures in this country."

The extent of the assault on democratic rights and legal norms that Bill C-51 represents is thus largely being concealed from the public.

Several legal experts have produced detailed analyses of the bill's content that do contain valuable explanations of how its provisions threaten core democratic rights. Though they are by no means opponents of the Canadian state or even the further expansion of its coercive powers, Craig Forcese and Kent Roach, law professors, respectively, at the University of Ottawa and University of Toronto, have published a series of briefing papers criticizing various aspects of Bill C-51. The Canadian Centre for Policy Alternatives (CCPA), a liberal-social democratic think tank, has released its own overview of the anti-terrorism bill, authored by well-known civil rights lawyer Clayton Ruby and criminal and constitutional lawyer Nader Hasan.

CSIS's new "disruption" power

The expansion of the Canadian Security and Intelligence Service's (CSIS) powers is one of Bill C-51's most ominous features. In addition to its already vast mandate to spy on reputed opponents of the Canadian government and state, CSIS is now to be empowered to disrupt "threats to the security of Canada" and to violate both the Canadian constitution's Charter of Rights and Freedom and the Criminal Code in so doing.

CSIS's new "disruption" power applies, as do many of the new or enhanced powers, in Bill C-51 to a new, unprecedentedly expansive definition of "national security," of which terrorism is only a small subset. It includes threats to Canada's economic stability" or critical infrastructure and "territorial sovereignty," as well as espionage or anything that could endanger Canada's diplomatic interests or challenge its constitutional order.

Bill C-51 provides for only three limitations on the illegal actions CSIS can carry out: they must not kill someone or cause them bodily harm, intentionally or due to criminal negligence; their "disruptions" must not willfully pervert the course of justice; and they must not violate someone's "sexual integrity."

Other than that, CSIS is being given carte blanche to do what it

likes. “Disrupting” groups and individuals could include seizing or confiscating documents or property, tampering with bank accounts, pressuring employers to discipline or fire individuals, conducting vandalism or urging venues to cancel meetings or public events. It opens virtually unlimited possibilities for CSIS to carry out dirty tricks operations and provocations aimed at dividing and bringing public discredit on government opponents.

In an effort to downplay the risks in handing over such powers to CSIS, the government has sought to claim that they would never be deployed against *“lawful”* dissent or advocacy and artistic expression. But as the *World Socialist Web Site* has already noted in previous articles, the state has increasingly sought to criminalize political opposition through anti-worker laws, court injunctions and police repression. The volley of laws illegalizing strikes, the police attack on the 2010 G-20 protests, and the police violence and legislation (Bill 78) employed against the 2012 Quebec student strike all demonstrate just how narrow is the scope of “lawful dissent” in Canada.

Under Bill C-51, CSIS would be empowered to use its “disruption” power against workers who strike in defiance of an anti-strike law or court injunction, environmental groups blocking highways or protesting against pipeline construction, student sit-ins, and other forms of civil disobedience. Moreover, CSIS would be free to disrupt those it believed “may” potentially engage in such “unlawful” activity at a future time.

In justifying its illegalization of Canada Post, railway, and other strikes, the Conservative government has repeatedly denounced them as threats to Canada’s “economic stability.” This same formulation is now included in Bill C-51’s expansive definition of threats to the country’s “national” security, underscoring that this legislation has been drafted very much with a view to preparing the state’s response to working class opposition.

Bill C-51 offers virtually no mechanism to monitor, let alone restrain CSIS’s use of its “disruption” powers. The requirement that CSIS obtain a warrant from a judge—that is from a government appointee sworn to the defence of the Canadian capitalist state—in a secret proceeding is more an open door than a hurdle.

Under Bill C-51, the judiciary is instructed to grant CSIS “disruption” warrants if there are reasonable grounds to believe that CSIS will be able “to reduce a threat to the security of Canada” and the measures it proposes are reasonable and commensurate with the threat.

In their review of Bill C-51 for CCPA, Ruby and Hasan correctly warn that such a determination is entirely subjective. Unlike a request for a search warrant, it cannot be determined on the basis of an objective review of evidence: “It amounts to asking judges to look into a crystal ball to determine if Canada will be safer in the future if a CSIS officer takes some measure.” Ultimately, warn Ruby and Hasan, the most likely outcome is that the intelligence agencies will be permitted to act as they see fit given that they are deemed to be the security “experts.”

Furthermore, the decision of whether to even apply for a warrant is left up to CSIS itself, meaning that they will be determining if a proposed action breaks the law. As is well known, Canada’s intelligence agencies, with the government’s support, have repeatedly sought to arrogate new powers—as in the Communication Security Establishment’s assertion that it has the right to systematically spy on the metadata of Canadians’ electronic communications.

Should CSIS deem it necessary to get judicial authorization, the system being proposed by the government for obtaining a warrant would take place behind closed doors, without the individual or group being targeted having an opportunity to defend themselves. As Forcese and Roach observe in their second background paper on Bill C-51, “all these weighty legal deliberations will be done in secret, with only the judge and the government side represented. The person affected by the illegal activity will not be there, in fact they will likely never know who visited the misfortune on them. They cannot defend their rights. No civil rights group will be able to weigh in.”

And the decisions once reached will, by law, remain secret on national security grounds, with at most in exceptional circumstances vetted summaries issued years after the fact. As Forcese and Roach go on to warn, “We risk a secret jurisprudence on when CSIS can act beyond the law.”

As these authors observe, these vast powers are being handed to an organization that has repeatedly displayed “a failure to be candid” in court proceedings. Indeed, CSIS lied to the courts over a period of several years in hearings where warrant applications were made to enable CSIS to collaborate with the Communication Security Establishment (CSE) and its partners within the US-led “Five Eyes” to intercept the electronic communications of Canadian terrorism suspects who had traveled abroad.

So “incredibly expansive” are the disruption powers CSIS would be granted under Bill C-51 and so minimal the restraints on the illegal activities they could engage in, Ruby and Hasan contend that Canada’s secret police could “legally” engage in torture, “including water boarding, inflicting pain, torture or causing psychological harm to an individual.”

The second and concluding part of this article will be published on March 7, 2015.