Canada's Bill C-51: A sweeping assault on democratic rights and legal principles—Part 2

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More than 600 pages long, the Conservative government' s new "anti-terror" legislation, Bill C-51, would give the Canadian state and its national-security apparatus vast new powers. Here, the WSWS concludes a two-part exposure of how Bill C-51 attacks key democratic and constitutionally protected rights. The first part can be found here.

Advocating or promoting terrorism

Another Bill C-51 measure that will grant the state significant new arbitrary powers is the new Criminal Code offense of "advocating or promoting" terrorism "in general." Persons convicted under this provision will be liable to prison terms of up to five years.

As Ruby and Hasan have pointed out in the analysis of Bill C-51 they made for the Canadian Center for Policy Alternatives, the term "in general" is "deliberately opaque and unknowable."

It will criminalize and is expressly intended to criminalize speech not directly related to any terrorism offense, past or future.

Canada's Criminal Code already contains 14 terrorism-related offenses. These include the direct commission, preparation or planning of a terrorist act, the financing of terrorist activity, travelling abroad to join a terrorist group, and inciting a specific terrorist act.

So sweeping is the proposed new speech-crime, even some of the government's staunchest supporters such as the big business *Globe and Mail* have expressed alarm. In one of a series of editorials criticizing Bill C-51, the *Globe* warned that the new "advocating or promoting" terrorism offense could be used to prosecute a Canadian who expresses sympathy with the Palestinian group Hamas, which the Conservative government has declared a terrorist organization.

The scope of the new offense is made all the more chilling by the removal of the requirement of any criminal intent and by the fact that it covers all speech, whether in the public or private domain.

As Ruby and Hasan have pointed out, someone could be convicted under this offense "despite completely innocent purposes, such as attempting to provoke democratic debate or proposing a solution to an intractable international conflict. The speaker's purpose does not matter; they are liable if they are reckless as to the risk that a listener '*may*' thereafter commit an unspecified terrorism offence" (emphasis added).

Canadian law does ban "hate speech." But in that case the state must prove criminal intent, and statements made in private are excluded.

If Bill C-51 becomes law, the state is arrogating the power to potentially charge and convict persons for statements not tied to any past or potential act or terrorism and made in private but recorded by state surveillance or incited by a state informant.

Ruby and Hasan draw attention to the fact that, as with criminal law in general, those who play a role in aiding someone who runs afoul of Bill C-51's new "advocating or promoting" terrorism offense could also be charged. "Criminal culpability would extend beyond the speaker of the impugned words.... Not only the columnist, but also their editors, publishers and research assistants become criminals."

This could enable the government to target publications that raise criticisms of its foreign or domestic policy simply by identifying a single article, news report or statement as something that "advocates" or "promotes" terrorism. The very threat of such a prosecution will be used ruthlessly as a method to intimidate political opposition. A foretaste of this has been provided by the Conservatives' repeated smears that the NDP is being sympathetic to terrorist organizations like ISIS merely because it has raised some tactical differences with the government over its policy in the current Mideast War.

"Even," write Ruby and Hasan, "if the government exercises restraint in laying charges and arresting people," under Bill C-51 provisions outlawing advocating or promoting terrorism in general, the result will be an "inevitable chill on speech." "Students," for example, "will think twice before posting an article on Facebook questioning military action against insurgents overseas. Journalists will be wary of questioning government decisions to add groups to Canada's list of terrorist entities."

Terrorist propaganda

Another section of Bill C-51 that is aimed at silencing political dissent gives the government the authority to remove material from the Internet or other forms of circulation under the guise of confiscating "terrorist propaganda." As Forcese and Roach note, what is to be defined as terrorist propaganda is extremely unclear, given the presence of 14 separate terrorism offenses in the criminal code, and the vague reference to terrorism offenses "in general." To obtain clearance to delete or confiscate material, it would only be necessary to prove beyond the balance of probabilities that the material was "terrorist propaganda" not beyond a reasonable doubt.

Forcese and Roach go on to identify another alarming change to customs regulations that would permit Canadian border officers to seize without a warrant material deemed to be "terrorist propaganda"

when carrying out standard inspections on individuals entering the country. There is no review mechanism being put in place to examine the kinds of items considered "terrorist propaganda" by border guards.

Preventive arrest and detention

Bill C-51 also substantially increases the state's powers of preventive arrest—i.e., to hold a person without charge, first introduced in the 2001 Anti-Terrorism Act

The period for which terrorist suspects can be detained without charge is to be lengthened to seven days from 72 hours, and a lower level of evidence will apply. Whereas in the past there had to be reasonable grounds to believe that a terrorist act "will be carried out," and that the detention was "necessary" to avert such an outcome, now police will be able to take persons into preventive arrest if they believe a terrorist attack "may be carried out" and that detention is "likely to prevent the carrying out of the terrorist activity."

As Ruby and Hasan explain, "'Will', when coupled with 'reasonable grounds to believe,' denotes evidence-based probability, whereas 'may' denotes mere possibility." Likewise, the substitution of "likely" for "necessary" removes the requirement that the authorities believe that only by detaining an individual can they prevent an attack from going ahead.

Bill C-51 will also empower law enforcement officers to take preventive arrest measures without a warrant in exceptional circumstances.

Another power, National Security Certificates (NSCs), under which the authorities can indefinitely detain a non-citizen whom the government has declared a national security threat, is being strengthened. The existing security certificate legislation has been heavily criticized by civil liberty groups because the state need not divulge any of its evidence to the NSC detainee. A court-appointed special advocate selected to represent the detainee is permitted to see the evidence related to the case, but is prohibited from discussing it with his client.

Under Bill C-51, the government will be permitted to withhold all evidence that it deems not immediately relevant from these special advocates and from any court reviewing an outstanding NSC. This is in spite of a Supreme Court ruling that explicitly criticized CSIS and the government from withholding critical information in previous security certificate proceedings.

Immigration lawyer Lorne Waldman, who has experience with security certificate cases, explained to the CBC what this would mean:"That [change] gives CSIS the power to decide what part of the file is going to be disclosed, and what part of the file is not going to be disclosed." This further entrenches a system in which individuals who have never been convicted or even charged with any crime can be locked away on the basis of the say-so of the government and intelligence agencies.

Information sharing or the gutting of a right to privacy

CSIS, the RCMP and Canada's other national security agencies will have almost unrestricted access to information held on individuals by all government departments and agencies. Bill C-51 creates the framework for free information sharing on "activities that undermine the security of Canada." This all-embracing category, which also underpins CSIS's new disruption powers, is unprecedented in Canadian law. As Forcese and Roach write, "It comes very close to a carte blanche, authorizing a 'total information awareness' approach and a unitary view of governmental information holding and sharing. In that respect, we consider it a radical departure from conventional understandings of privacy."

As they go on to note, this development is even more worrying given the record of the Canadian ruling elite in sharing information with foreign states to have terrorist suspects detained, held without charge, and tortured abroad. The case of Maher Arar, who was arrested on the basis of information supplied by Canada's national security agencies and then held and tortured in a Syrian jail for more than a year, prompted an official inquiry that concluded that restrictions should be placed on the government's ability to share information so as to avoid the repetition of such an incident. But with Bill C-51, all such qualms are being dispensed with.

Restricting freedom of movement

The ability of the state to place limits on the movements of individuals who have not been charged or convicted of any crime is also to be strengthened.

The so-called peace bond system, whereby terrorist suspects could have conditions imposed upon their behavior, is to be expanded. The evidentiary basis required to implement such an order is to be lowered as in other areas of the new law, making it easier for travel bans or other repressive conditions to be imposed.

In addition, the government will also be able to place suspect individuals on a no-fly list, which will prevent them from boarding any aircraft. This measure can be taken without recourse to the courts and is extremely difficult to reverse. According to Forcese and Roach, a minister's decision to place someone on the list could only be overturned if that person was able to prove that the decision was unreasonable, not simply incorrect.