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## Editorial

### *The Anti-Terrorism Act, 2015*

Despite growing opposition since its introduction, Bill C-51 containing the omnibus *Anti-Terrorism Act*, S.C. 2015, c. 20 is now law.

The October 2014 terrorist attacks revealed security weaknesses, but the new law does little to address them. The most relevant changes are provisions which make it easier to make preventive arrests under s. 83.3 of the *Criminal Code* and to obtain peace bonds under s. 810.011 of the Code. Preventive arrests now can last seven days and will be available if a terrorist activity “may” as opposed to “will” be carried up and if peace bonds condition are “likely” as opposed to “necessary” to prevent it. A new peace bond is triggered by reasonable fears that a person “may” as opposed to “will” commit a terrorism offence.

We know that prosecutors denied a peace bond request by the police with respect to the first attacker in Quebec, but that is all we know. Peace bonds have been obtained in cases of suspected terrorism since that time in Quebec, P.E.I. and Manitoba under the pre- Bill C-51 law. Either old or new peace bonds are, however, at best a temporary and imperfect solution.

Prosecution is necessary for determined terrorists and Bill C-51 does nothing to advance the Air India Commission’s reform agenda designed to make prosecutions more viable in Canada. Indeed by allowing CSIS to take measures, including those that violate laws and Charter rights, Bill C-51 may encourage CSIS to go it alone with respect to would be or returned foreign terrorist fighters despite Parliament’s prescient enactment of new offences in 2013 to deal with this threat.

Bill C-51 adds a new terrorism offence of advocating or promoting terrorism offences in general as s. 83.221 of the *Criminal Code*. This offence may be used to charge vocal extremists, but it will also give them a platform for their twisted ideas. It will also attract Charter challenge because it contains no defences and requires only knowledge and recklessness as opposed to willfulness or a terrorist purpose.

The new offence is a response to ISIS videos where Canadians called for

attacks on Canada, but it disregards that counseling or threatening terrorism offences are already criminal.

Canadians should ask hard questions about why a terrorist in October 2014 was able to enter the Parliament buildings and why another could have his passport revoked to prevent travel to Syria, but not be prosecuted. These questions went largely unasked and unanswered in Canada in part because Parliamentarians do not have access to secret information.

The Canadian government has remained largely silent about its security failures. This can be contrasted with the Australian government which published a detailed 75 page report detailing all governmental dealings with a terrorist in a similar terrorist incident in Sydney in December 2014 that left two people dead.

Bill C-51 does not contain a comprehensive or balanced plan for combating terrorism. It contains a staggeringly broad and permissive information sharing act, but one that does not follow the Air India Commission's recommendations that the Canadian Security Intelligence Service (CSIS) should be required to share intelligence about terrorism. Indeed it now contains an exemption for all protest and dissent raising the question of whether this exempts information sharing about terrorism which is a form of protest. It will not be applied in this way, but we may never know because of Canada's inadequate review structure as affirmed by the Arar Commission in its 2006 report.

Other parts of the act invite unnecessary Charter challenges. Canada's use of special advocates in security certificates has been largely successful and not marred by complaints by special advocates that they cannot do their job. This will change under amendments in Bill C-51 that limit their access to secret information in the few security certificate cases that drag on. This will invite Charter challenges and perhaps a revisiting of the Supreme Court's decision in *Harkat, Re*, 2014 SCC 37, 2014 CarswellNat 1464, 2014 CarswellNat 1463 (S.C.C.) that the regime is constitutional.

There is no reference to special advocates even though secret evidence will be used to defend no-fly listing under Bill C-51 and passport revocations under the budget bill. There is no enhanced oversight for how the government will employ its growing arsenal of anti-terrorism tools, again ignoring another recommendation of the Air India Commission.

The most radical change is giving CSIS a new mandate to take measures to reduce threats to the security of Canada. Since its creation in 1984 in the wake of RCMP illegalities after the October Crisis, CSIS has been limited to collecting intelligence. This will now change and CSIS will be able to take measures to reduce security threats.

The law is vague on what these measures will be. If they infringe laws or Charter rights, a Federal Court judge must issue a warrant. They must not impose bodily harm or obstruct justice. Other than that, anything is

possible. CSIS now has new and undefined powers of disruption. Alas this may encourage CSIS not to share intelligence with the police and take matters into its own hands.

The new CSIS powers could result in a series of suspects who are subject to surveillance and disruption, but without being charged or able to defend themselves in a criminal trial. Police use of disruption in the forms of peace bonds also suffer some of the same shortcomings. They are not a fair way to determine whether a person is actually a terrorist. They are too strong when applied to a person who really is not a terrorist and too weak if a person is intent on engaging in terrorist violence.

False positives will increase with C-51's emphasis on making it easier for the police and CSIS to engage with disruptions. Relations with Muslim communities may become even more fraught. Canada, unlike the UK, lacks a multi-disciplinary program against violent extremism. The RCMP's program has been delayed and marred by its last minute withdrawal from a United Against Terrorism Project. There are no visible programs against prison radicalization and Muslim Imams have resigned from prison postings in the wake of the government's plan to fire them or privatize their positions.

What happened in October 2014 were serious security failures that provided an opportunity to shore up Canada's anti-terrorism apparatus. The government responded without gathering the evidence about what went wrong or listening to the evidence and policy prescriptions presented by the Arar and Air India Commissions. There was no attempt to work with Muslims communities and critics of the bill were denigrated.

Canadians — including both the victims of terrorism and security abuses — deserved better.

K.R.