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Editorial

Repealing C-51's Problematic Aspects is Not Enough

The new Liberal government has promised to reform the “problematic” aspects of Bill C-51 and to create a Parliamentary committee with access to secret information. This is a good start, but much more work needs to be done.

A first order of business should be to place more emphasis on countering violent extremism and the appeal of the Islamic State in Syria (ISIS) to some young Muslims. As Craig Forcese and I argue in chapter 13 of our new book *False Security: The Radicalization of Canadian Anti-Terrorism* (Toronto: Irwin Law, 2015), this will require the federal government to work closely with the provinces who have jurisdiction over education, child welfare and health care.

Quebec has started down this important path, but has been diverted by the divisive issues of facial covering and by providing provisions that overlap with federal peace bond and hate speech provisions. Bill 59 An Act to enact the Act to prevent and combat hate speech and speech inciting violence 1st Sess. 41st Le. (Adopted in principle 19 November 2015).

The Harper government's last minute withdrawal from a *United Against Terrorism* document that the RCMP had prepared with the National Council of Canadian Muslims and a Winnipeg Muslim organization is symptomatic of the dysfunctions created by the former government's aggressive approach. Such practices may have been counter-productive especially to the extent that they prevent co-operation with Canadian Muslim communities in working to counter ISIS's appeal.

United Against Terrorism remains a relevant document. It employs the Qu'ran to demonstrate how ISIS and al Qaeda pervert Islam. Governments are not well positioned to deliver this essentially theological message. The new federal government needs to work with Muslim communities to deliver the message that the Islamic State is unIslamic. The quick repeal of citizenship stripping legislation and the Bill C-51 offence for advocating or

promoting “terrorism offences in general” would be a good start in rebuilding relations with Muslim communities.

The UK government has also been active and required schools, health care authorities, prisons and even universities to develop plans to prevent people from becoming involved in terrorism.

A big problem with the UK approach, one that Canada may also be susceptible to, is that it often blurs the critical distinction between countering extremism and countering violence. The available sociology evidence suggests that extremist ideology — including views that sees the West as opposed to Islam — are not closely correlated with violence. To be sure, continued research is required but the available evidence suggests that the focus should be on exposing and countering violence and encouraging peaceful outlets for extremist and radical grievances and aspirations.

Even if focused on violence, the comprehensive UK approach cannot easily be transplanted to Canada if only because doctors, teachers and many correctional officials work for the provinces.

The new government may find it more difficult than imagined to repeal large parts of Bill C-51. CSIS may already have started to use its new powers. It will also be difficult to repeal the new police informer-type privilege for CSIS’s confidential human sources provided in Bill C-44 even though such a privilege could result in most CSIS human sources having a veto over whether they can be identified in any subsequent criminal prosecution.

But even if such repeals are possible, they would not be sufficient. A new government should provide a platform to work with the provinces in providing multi-disciplinary programs to counter violent extremism. It should also amend the CSIS Act (again) to ensure that the Security Intelligence Review Committee has expanded powers to follow the trail in and out of CSIS and ultimately to review all national security activities.

The issue of review is also tied with issue of information sharing. The former government ignored the recommendations of both the Arar and Air India Commission in using C-51 to establish a broad and uncertain information sharing regime without adequate review or guarantees that CSIS will be required to share intelligence that relates to terrorism offences.

Given the preference in the *Enhancing RCMP Accountability Act*, S.C. 2013, c. 18 Part VI for hearing complaints, limitations on the complaint body’s access to secret information and increased resources being devoted in the RCMP to national security, a priority should be to expand SIRC’s to include the national security activities of the RCMP as well as the Canadian Border Services Agency and the departments of immigration and foreign affairs.

New legislation will also be necessary to allow a Parliamentary committee to have controlled access to secret information — information that is vital to provide effective review and to follow up on the executive

response to the many classified reports issued by SIRC and other reviewers such as the CSE Commissioner.

The new government has committed itself to Ministerial accountability and appointed a strong and senior Minister of Public Safety. Nevertheless, as the Air India Commission suggested, whole of government oversight needs to be re-thought. This is particularly so if the new Trudeau government follows the Martin's government's all risk security plan which includes issues related to disasters and climate change.

The new government should introduce some of the most urgent reforms early in 2016 but also commit itself to wide ranging consultations on revamping its entire security strategy.

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