

## Key points

By The National Council on Canada Arab Relations (NCCAR) – October 2015

### Issue:

The Antiterrorism Act, 2015 (Bill C-51) was passed by the Government of Canada earlier this year to expand Canada's anti-terror laws.

### Background:

As a result of a lone gun man's terrorist attack on Parliament Hill on October 22, 2014, the government introduced legislation to [expand](#) the powers of CSIS and the RCMP, increasing information sharing and creating new Criminal Code charges for offenses such as the promoting terrorism.

### Considerations:

#### What have politicians been saying?

NDP leader Mr. Thomas Mulcair strongly [opposed Bill C-51](#) and has called into question the necessity of many of these measures, suggesting that Canada's new security legislation is an unnecessary infringement on the civil liberties of Canadians and an overreaction to an isolated attack. Mr. Mulcair offered several amendments to the bill, including oversight of CSIS powers by a body of elected officials. Liberal leader Mr. Justin Trudeau [voted in favour](#) of Bill C-51 and specified that his party, if elected to government, would introduce legislation to amend the law to heighten protections for the individual rights of Canadians. Green Party leader Ms. Elizabeth May also said she would present amendments but [strongly opposed](#) the bill as it moved Canada towards a police state.

#### What have commentators and experts been saying in the media?

The concerns expressed have been in the following areas:

1. The use of broad and undefined terms leaves a disproportionate amount of unchecked discretion in the hands of law enforcement.
2. The limits on *Charter* rights are likely to be challenged in the courts and distract from genuine efforts of law enforcement officials to protect Canada.
3. Community-based programs such as the RCMP's new counter-extremism initiative, among other progressive programs will likely be undermined and create additional challenges for law enforcement to identify and prevent terror threats.
4. The Antiterrorism Act, 2015 is likely to be selectively applied with the potential to alienate and marginalize Arab Canadians while turning a blind eye to a range of threats to Canada's national security.

### NCCAR's Perspective:

The implications of the Antiterrorism Act, 2015 as adopted concerns NCCAR. National security and the protection of all Canadians is essential for a thriving democracy. However, national security must be balanced with democratic freedoms while ensuring law enforcement are provided with effective tools which comply with the *Charter*. Absent time-tested judicial checks and parliamentary oversight, the Antiterrorism Act results in a Faustian bargain that trades away core Canadian values with the potential to alter the fabric of Canada's democracy by moving towards unchecked state and police powers.

## Appendix:

### Background on media and expert views on the antiterrorism Act, 2015 or Bill C-51

The concerns have been expressed in the following areas:

#### 1) The use of loose definitions and implications:

- a) [Canadian Association of University Teachers](#): C-51 amends the Criminal Code to create a new crime of *advocating or promoting commission of terrorism offences*. The new offence is vaguely defined and broadly worded. It will have a chilling effect on free speech, academic freedom, advocacy, and protest as academics and others may avoid saying things in order to avoid prosecution.
- b) [The Canadian Civil Liberties Association \(CCLA\) and Canadian Journalists for Free Expression \(CJFE\)](#) : The section criminalizing the promotion of “the commission of terrorism offences in general” is “unconstitutionality vague and imprecise” and fails to put limits on how the law may be applied by law enforcement, and thus unconstitutional [...] that it is an undue limit on free expression guaranteed. The vague definitions within the act afford the executive with “sweeping and unchecked power” to apply the law.
- c) [Ed Broadbent, Chair of the Broadbent Institute](#): Vague definitions in the text of C-51 open up troubling questions with regard to who can be targeted, and what might be censored under the new bill. For example, the bill seeks to counter not only “terrorism” but [also] what it describes broadly as “threats to the security of Canada.” How broadly will “threats” to Canada’s “security” be defined? It also introduces new prohibitions on speech that promote or glorify terrorism. Will this mean any Facebook post or Tweet touching upon the issue of terrorism will be subjected to charges?
- d) [Assembly of First Nations’ National Chief Perry Bellegarde](#): We see this as a euphemism for an “excuse to spy on” First Nations when they exercise their collective and individual rights. Our people could find themselves under increasing surveillance because of the broad, vague concepts and activities covered by the phrase “undermine the security of Canada”.

#### 2) A severe impacts on Canadian civil liberties:

- a) [Canadian Bar Association](#) : For Bill C-51 to be a meaningful success, Canadians must not only feel safer but must in fact be safer – and this reality must be accompanied by the well founded and secure belief that Canada remains a democracy that leads the way internationally in scrupulously protecting privacy rights and civil liberties.
- b) [Canadian Bar Association](#): The Conservative government’s anti-terrorism bill contains ill-considered measures that will deprive Canadians of liberties without increasing their safety. It potentially brings the entire Charter into jeopardy, undermines the rule of law and goes against the fundamental role of judges as the protectors of Canada’s constitutional rights.
- c) [Open letter signed by 60 Canadian business leaders](#): We are already concerned about the negative impact the activities of CSE and CSIS, including reports of spying on our trading partners, have had on Canada’s reputation. The impact of these new rules could collapse the necessary distance

between investigative and executorial powers. This distance should be increased, not done away with. Furthermore, Bill C-51 leads to expanded powers to detain or revoke travel for people on the Specified Persons list. We need to rethink the fundamental problems with the “false positives” on this list, and instead address this flawed process. Travel to and from Canada is a necessity for international trade. Most importantly, we ask for data security. We know that many of our clients, including our government, will only host services in Canada because of the invasive privacy issues in the U.S. The U.S. tech industry has already lost billions in revenue because of this, and we don’t want it to happen here.

- d) [Tom Henheffer, Executive Director of the Canadian Journalists for Free Expression](#): Bill C-51 is a grave threat to our rights in Canada. It will lead to censorship and a massive chill on free expression, and enables a potentially widespread abuse of power. It unjustifiably infringes on the rights of all Canadians without making our country any more secure, and must be struck down.

### **3) Community-based programs such as the RCMP’s new counter-extremism initiative will be more difficult to continue:**

- a) [Craig Forcese and Kent Roach, professors of law at the University of Toronto and the University of Ottawa](#): In the meantime, the speech provisions of Bill C-51 will cast a chill on any opinion touching upon the issue of terrorism—including opinions that are politically extreme and irresponsible, but that are far removed from actual or threatened terroristic violence. Those opinions will not disappear, of course. They will persist in secret, renewed by a sense of grievance. The more attentive holders of these views will go silent, especially on social media. This important open-source form of intelligence—on, particularly, al Qaeda- or ISIS-inspired radicalization—may degrade. And our most promising response to violent extremism—community-based programs such as the RCMP’s new counter-extremism initiative—may prove less successful, since they rely on open and candid communication with those who harbour radical views.
- b) [Craig Forcese and Kent Roach, professors of law at the University of Toronto and the University of Ottawa](#): Imagine, for instance, that after the passage of C-51, CVE program representatives reach out to the leaders of a mosque, wishing to convene a meeting in which community members discuss the dangers of ISIS and al-Qaeda inspired ideology, which posits that Islam is under attack by “Western crusaders” and that it is the duty of good Muslims to act in its defense, even with violence. The desired airing of views requires a venue in which local Muslims can speak freely, and the mosque is asked to provide it.

Whereas the imam might formerly have cooperated, he will now have to worry that at such a meeting members of his congregation may make general comments interpreted as supporting the broad concept of violent jihad; or they may critique Canadian foreign policy in a way that is seen as sympathetic with Muslim terrorist groups.

Wisely, the imam might consult with a local lawyer who concludes that such statements at the meeting might be interpreted as active encouragement of “terrorism offences in general,” since they would be voiced in a venue where the speaker may know that other

participants might be inclined to then commit a terrorism offence (say, by giving money to an overseas group that practices political violence). Under the legal elements of the new speech crime, what was once the RCMP's "pre-criminal" CVE space would turn into a criminal space, full stop. The imam has no choice but to cancel the meeting, and the CVE program fails to reach a key constituency.

- c) [Open letter signed by more than 100 Canadian professors of law and related disciplines](#): De-radicalization outreach programs could be negatively affected because those programs depend on frank discussions between the RCMP, communities and parents of those at risk of radicalization. The RCMP may cease to be invited in at all, or, if they are, engagement will be fettered by restraint that defeats the underlying methods of the program. What C-51 now does is turn judges into agents of the executive branch (here, CSIS) to pre-authorize violations of Canadian law.... This completely subverts the normal role of judges.
- 4) The antiterrorism Act, 2015 could potentially target disproportionately Arab Canadians:**
- a) [Formerly Associate Chief Justice of Ontario Dennis O'Connor, overseeing the inquiry into Maher Arar's case back in 2006](#): Given the tendency thus far of focusing national security investigations on members of the Arab and Muslim communities, the potential for infringement on the human rights of innocent Canadians within these groups is higher.
- b) [Lawyer Rocco Galati](#) : If you use the same religious or codeful symbols that some terrorist group has misappropriated for their own purpose, even though they are valid religious or cultural symbols of Islam or being Arab or being Tamil or being Sikh, then the legislation grants the police and the Courts the right to use that as the basis of suspicion. In my language that is just racist profiling. Racism, that is all it is.
- c) [Matthew Behrens, Rabble](#) : In the initial flurry of C-51 coverage, much focus has been devoted to the potential restraints on speech, advocacy and the media. The bill's overly broad, vague terminology -- the term "terrorist offences in general" could capture just about any activity -- could, for example, be used against a journalist interviewing a Taliban commander or a columnist who urges anti-Russian forces in Ukraine to blow up oil refineries. Frightening as the chilling effect of these provisions will be, it is perhaps helpful to remind ourselves that like its antecedent, the Anti-Terrorism Act of 2001, this bill will be used to continue targeting, disrupting and roughing up very specific and often marginalized communities. Among those are Indigenous rights activists, Arab Muslims and those perceived as such, refugees and immigrants, and those who quite rightly have concluded that the only way to initiate meaningful social change in this country is to operate outside the boundaries of "acceptable" legal definitions of protest and resistance.