



BILL C-51: A PRIMER

What is Bill C-51?

Bill C-51, the latest in a long string of initiatives to expand the government's security powers,¹ signals a dramatic new direction for Canadian security. Presented as anti-terror legislation, the Bill adopts an excessive approach that will harm online innovation, political discourse and our civil liberties.

It will reverse Canada's rich multicultural heritage and replace it with an atmosphere of fear, distrust and racial profiling – where neighbours are encouraged to turn on neighbours on the basis of 'reasonable fears'.

The Bill was drafted and defended in an atmosphere openly hostile to civil liberties,² and this is reflected in every element of it. One element of the Bill even seeks to allow our spy agencies to violate the Charter of Rights and Freedoms – our most vital protection against egregious state intrusion into our lives. It signals a return to a time when our security agencies were empowered to carry out dirty tricks against our citizens – and did so with impunity.³

It fails to address long standing and well-documented problems with Canada's already excessively broad security powers, the misuse of which has led to the torture, detention, flight restriction and privacy invasion of many innocent Canadians since they were introduced post 9/11.⁴ Innocent Canadians' lives have been ruined.⁵

This Bill not only fails to remedy those flaws, it replicates and expands the underlying problems without adding any meaningful safeguards to ensure the expansive powers it grants will not be similarly abused. It is little wonder that few who have carefully examined the Bill can fully support it in its current form.

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Who's against it?

- > **22 eminent officials** formerly responsible for balancing national security and civil liberties, including Prime Ministers, Supreme Court Judges, Public Safety & Justice Ministers & others
- > **28+ leading businesses**, including Mozilla Foundation (Firefox), Tucows & Shopify
- > **12 privacy commissioners** from across Canada
- > **106 law professors** from across Canada as well as the Canadian Bar Association
- > **100+ Civil Society Groups & experts** including Canadian Journalists for Free Expression, OpenMedia, Canadian Internet Policy & Public Interest Clinic, LeadNow, Canadian Civil Liberties Association, British Columbia Civil Liberties Association, Amnesty International, National Council of Canadian Muslims, BC Freedom of Information & Privacy Association, International Civil Liberties Monitoring Group, Centre for Law & Democracy, Electronic Frontiers Foundation, Privacy International & Greenpeace
- > **200,000+ individuals** who have participated in public demonstrations around Canada, phoned their government representatives or taken online actions against it

“Protecting human rights and protecting public safety are complementary objectives, but experience has shown that serious human rights abuses can occur in the name of maintaining national security. Given the secrecy around national security activities, abuses can go undetected and without remedy. This results not only in devastating personal consequences for the individuals, but a profoundly negative impact on Canada’s reputation as a rights-respecting nation.”⁶

– Statement against C-51 from 22 former Prime Ministers, Supreme Court justices, Ministers of Justice & Public Safety, and members of security oversight bodies

Who supports it?

Hardly anyone. Even the government who drafted this Bill and presented it has been hard pressed to find any legitimate experts to support it unreservedly. Aside from a small handful of security representatives, defenders of the Bill have had to come from the most excessive voices in Canadian society, including anti-immigration voices such as the Centre for Immigration Policy Reform and David Harris, U.S.-based right wing think tanks such as the Heritage Foundation and the Centre for Security Policy, and organizations of questionable legitimacy and unknown mandate.⁷

What will Bill C-51 do?

- > Some legitimate political discussion, whether in newspapers, on social media sites, or in the privacy of your email inbox, could be criminalized
- > Sensitive health, tax and other information provided to the government in the normal course of life could be insecurely centralized and used against you
- > Allow spy agencies to install spyware or malware on your computer
- > Sending or even promoting humanitarian aid to some war torn regions – a hallmark of Canadian peacekeeping – could be criminalized
- > Our spy agencies will be empowered to use digital ‘dirty tricks’, which could be used to disrupt communications platforms, take down websites or other content they deem problematic, perhaps even to falsify content in order to damage the reputation of political dissidents in Canada or abroad
- > Could permit intrusive border searches of laptops and other computing devices for vaguely defined ‘terrorist propaganda’

“Bill C-51 ... is a dangerous piece of legislation in terms of its potential impacts on the rule of law, on constitutionally and internationally protected rights, and on the health of Canada’s democracy.”⁸

-106 Law professors from across Canada in an Open Letter to the Government criticizing Bill C-51

Privacy excessively violated, threatening legitimate protest and dissent

The Bill will remove existing privacy protections to facilitate unprecedented information sharing and consolidation within the government if related to ‘security threats’, a confidence-inducing term which is wholly undermined by its “breathtakingly broad” definition – a definition so broad, it is not clear what it might not encompass.⁹ Life in Canada requires that we all share significant amounts of sensitive health, tax, financial and other information with the Government. Much of this information becomes ‘fair game’ under Bill C-51.

There is concern that various state agencies will ransack the government records of student protesters, religious figures, civil society groups – anyone who disagrees with the government. The government has attempted to allay this concern by excluding political protest from its excessively broad definition of ‘threats to security of Canada’. However, similarly limited definitions of security threats have been found to include legitimate advocacy already.¹⁰ Bill C-51 adopts an even broader definition of ‘security threats’.

Canadians are asked to trust that the Government will not use these expansive powers to spy on advocacy groups. However, the temptation to use information to profile political opponents has proven too great historically.¹¹ Indeed, the government recently undertook “one of the largest domestic intelligence operations in Canadian history”, involving comprehensive infiltration and scrutiny of advocacy groups such as Greenpeace.¹² If Bill C-51 passes, the vast and sensitive citizen data holdings of the Canadian government could now be placed at the beck and call of such investigations.

*“The powers of CSIS have always depended on how a “threat to the security of Canada” is defined, and section 2 of the CSIS Act already has an extremely broad definition. This has been interpreted to include environmental activists, indigenous groups, and other social or political activists. Concerns are heightened with the proposal to grant CSIS a ‘disruptive’ kinetic role.”*¹³

- Canadian Bar Association

*“[D]o you believe CSIS and the RCMP would have time or a desire to have government agencies provide them with information about protesters...?”*¹⁴

- Lavar Payne, MP (Medicine Hat, CPC), defending Bill C-51 during Committee hearings

Open Season on citizen data.

Bill C-51 will grant the government near carte blanche for internally sharing any information relating to security threats without any obligation to consider privacy implications at all.¹⁵ It also envisions persistent information-sharing arrangements, raising concerns that it will be used to consolidate security related information into one single giant database subject only to limited access restrictions.¹⁶

Security has always been a broad concept, but Bill C-51 expands it to its breaking point, including activity that might undermine the economic well-being of any country, diplomatic relations (of Canada or another country) or cybersecurity writ large. Sensitive citizen information could easily get caught up in this web of information sharing. A single cybersecurity breach could implicate the private tax, health or financial information of hundreds of thousands of Canadians.¹⁷

Yet Bill C-51 makes no attempt to limit the privacy impacts of its expansive security-sharing paradigm, nor does it limit subsequent use and disclosure of security information for other purposes.

“The scale of information sharing between government departments and agencies being proposed in this bill is unprecedented. The new powers that would be created are excessive and the privacy safeguards being proposed are seriously deficient. All Canadians – not only terrorism suspects – will be caught in this web.”¹⁸

– Privacy Commissioner of Canada,
Daniel Therrien

Clandestine spy agencies as private information recipients & distributors.

Bill C-51 will also make private information available to our spy agencies. Appearing on these agencies’ radar can lead to profiling, enhanced interrogation at borders or other indignities. It can also lead to flight restrictions and Bill C-51 expands Canada’s dysfunctional no-fly listing framework without addressing long-standing problems that have led to false positives and mistaken listings.¹⁹ Inappropriate listing remains nigh impossible to undo, and as the lists are distributed broadly to intelligence partners,²⁰ even a temporary mistaken listing can have lifetime repercussions beyond the capacity of Canada to address.²¹

Unchecked information sharing has ruined the lives of several innocent Canadians since our security powers were dramatically expanded post 9/11.²² This has included wrongful short and long term detention and torture of innocent Canadians as a result of unrestrained information-sharing.²³ Bill C-51 expands the underlying information-sharing capacities of our security agencies, while failing to address any of the underlying problems that led to these injustices.

“As the experiences of Maher Arar, Ahmad El Maati, Muayyed Nureddin and Abdullah Almalki show, a sweeping conception of ‘threat to Canadian security’ coupled with liberal information sharing practices can have devastating results”²⁴

– British Columbia Civil Liberties
Association

WHAT ARE
YOU
LOOKING AT?

Clandestine spy agencies mandated to violate the Charter & more

Bill C-51 will dramatically increase the ability of our spy agencies to interfere with Canadian lives. It will grant CSIS the power to take any ‘disruption measures’ it deems necessary for the security of Canada. This is ironic, as CSIS was created precisely because it had proven impossible to restrain the RCMP’s similarly empowered security division from acting in a manner that was unacceptable to Canadians.

The RCMP had, for decades, developed a toolset that included break-ins and robberies of the offices of Canadian newspapers, the burning of a barn where a meeting of political opponents was scheduled to occur, and the use of ‘dirty tricks’ such as the infiltration and subversion of legitimate political activist groups within Canada.²⁵

Following decades of such activity, and an embedded “willingness on the part of...RCMP [Security Services] to deceive those...who have some sort of constitutional authority or jurisdiction over them”,²⁶ the RCMP was stripped of its capacity to undertake ‘disruption security measures’ and CSIS was created as a passive intelligence gathering agency. Bill C-51 places few limits on what CSIS can do with its new powers, even allowing it to violate the Charter as long as it can convince a judge to approve.

While CSIS appears to have inherited the RCMP Security Services’ aversion to provide full and candid information to those courts charged with ensuring its activities remain constitutional (“CSIS has distressingly regularly failed to meet its duty of candour”),²⁷ to date the impact of this secrecy has been somewhat limited as it is only empowered to gather and distribute intelligence, not to take action. The open-ended measures and offensive mandate Bill C-51 grants CSIS will not be accompanied by any additional oversight to make sure the extra-ordinary powers granted to it will not be abused.

*“Shelves already groan with review body reports and Federal Court decisions complaining that CSIS has distressingly, regularly failed to meet its duty of candour in closed-door proceedings. It is difficult to know whether these reports are the tip of the iceberg—a failure to be candid is hard to detect.”*²⁸

– Professors Craig Forcese & Kent Roach

*“We are not interested in creating needless red tape.” (dismissing calls for more oversight to ensure the extraordinary powers in Bill C-51 are not abused)*²⁹

– Minister of Public Safety Parliamentary Secretary Roxanne James

Bill C-51 implicitly envisions a bigger domestic role for CSIS' more clandestine sister agency, the Communications Security Establishment (CSE). CSE is Canada's ultra secretive digital spying agency (our NSA), with technical capacities and resources on a scale that dwarfs all other Canadian investigative agencies. It has come under extensive recent criticism for its lack of any effective oversight or control, as well as for its near unchecked surveillance activities.³⁰

While CSE is currently (somewhat ineffectively) limited from directing its activities domestically,³¹ Bill C-51 will in effect set it loose on Canadians with a greatly expanded implicit domestic role.³² This is likely to include implementing any 'digital' disruption measures CSIS wishes to undertake. Digital disruption can be highly insidious and can include the planting of malware in order to disrupt computers, communications networks or even infrastructure, the takedown of legitimate websites, communications networks or content, and even the false attribution of disreputable content or commentary to individuals in order to discredit them.

As its historical powers have focused on external (non-Canadian) activities, CSE operates under minimal accountability and control. Its interactions with CSIS in particular tend to fall into oversight gaps. As such, there will be minimal controls in place to ensure the activities it undertakes under Bill C-51 will remain limited to what is reasonable and proportionate in a democratic society.



Political discourse criminalized as 'promotion of terrorism'

The Bill adopts overt censorship provisions under which discussion of legitimate political issues could be criminalized, even if it happens in private. An email or social media message sent to a friend encouraging donations to a foreign insurgency effort (regardless of its legitimacy) could be labelled 'promotion of terrorism' and therefore a crime under the Bill.³³

A newspaper calling on medics to provide humanitarian aid in a war-torn region could be committing a crime.³⁴ Comparable provisions in France have been used to arrest an 8 year old for voicing his uninformed opinion on terrorism in a classroom.³⁵

Promoting hatred or violence is already criminal under Canadian law. The excessive approach taken by Bill C-51 to criminalizing speech is unnecessary and threatens the robust discourse that is at the heart of any properly functioning democracy.

*"The chill that this law could have on expressive freedom will not be known or measurable, since those with controversial and unpopular views will simply not express themselves."*³⁶

-Canadian Civil Liberties Association

Online distribution platforms faced with criminal sanctions?

The Bill also targets online distribution platforms including blog hosting sites, online discussion fora, online stores such as Amazon and social networking sites like twitter, reddit or Facebook. Such platforms could face criminal penalties if they do not delete what the Bill labels ‘terrorist propaganda’ upon receiving a court order.

In other jurisdictions, similarly vague criminal content deletion laws have led to criminal charges against entities such as Google, when it refused to expeditiously remove YouTube videos criticizing a mayoral candidate on the grounds that the videos were legitimate political criticism.³⁷ Comparable anti-terror provisions have been used to criminally charge a generic bookstore for stocking a book widely available on Amazon.³⁸

“Bill C-51 is complex, dangerous, and poses a serious threat to free expression in Canada ... Under the new legislation, people may find themselves wary to comment on controversial topics, especially terrorism itself, which by any definition is a suppression of freedom of expression conceptually prohibited by the highest law of our land.”³⁹

-Paula Todd

I’M CONCERNED. What can I do about the Bill?

- > Sign OpenMedia’s online petition: <https://StopC51.ca>
- > Sign Amnesty’s petition: <http://bit.ly/1MyEQAk>
- > Find tons of resources to fight back at: <https://StopC51.ca/Education>
- > Use LeadNow’s Phone your MP tool: <http://www.leadnow.ca/rejectfear-call-together-om/>
- > Write to your MP: <https://stopc51.ca/mp>
- > Write a letter to the editor of your local paper: <https://openmedia.org/secretpolice>

Where can I learn more?

- > Comprehensive analysis from Professors Craig Forcese & Kent Roach: <http://antiterrorlaw.ca/>
- > OpenMedia’s action platform: <https://stopc51.ca/>
- > Canadian Journalists for Free Expression: <https://cjfe.org/category/issues/bill-c-51>
- > Michael Geist: <http://www.michaelgeist.ca/tag/c-51/>
- > BCCLA: <https://bccla.org/2015/03/8-things-you-need-to-know-about-bill-c-51/>
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“Bill C-51, if passed, would allow Federal Court judges to limit all sorts of Charter rights ... our parliament is being asked to sign a blank cheque for Charter violations under C-51’s new CSIS warrant scheme.”⁴⁰

– Professors Craig Forcese & Kent Roach

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