Summary List of Proposed Amendments to Bill C-51
March 12, 2015.

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Please also consult the detailed table of amendments available at www.antiterrorlaw.ca

Part I New Security of Canada Information Sharing Act

1) Replace overbroad definition of "activities that undermine the security of Canada" with the more limited and established definition of "threats to the security of Canada" from s.2 of the CSIS Act.

2) Alternatively (and as a second best solution), delete the requirement in s.2 that advocacy and protest" must be "lawful" to be protected and mirror the exemption in s.83.01(b)(ii) (E) of the Criminal Code for "advocacy, protest, dissent, or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses A to C." (A to C cover, e.g., endangering life, health or safety)

3) As recommended by Privacy Commissioner amend s.5 to require shared information be "necessary" or "proportionate" and not simply "relevant" to the receiving institution's security jurisdiction

4) Delete s.6 that authorizes subsequent disclosure "to any person, for any purpose" so long as it is "in accordance with the law"

5) Match information sharing powers with amendments that give independent review body(s) review over all of the government of Canada's information sharing activities under the new Act

6) Implement Recommendation 10 of the Air India inquiry to establish legislated rules in the CSIS Act requiring CSIS to "report information that may be used in an investigation or prosecution of an offence either to the relevant policing or prosecutorial authorities or to the National Security Advisor."

Part II New Secure Air Travel Act

1) The words "reasonable grounds to suspect" in s.8(1) should be changed to "reasonable grounds to believe"

2) The words "for transportation purposes" could be added after the words "disclosure of information" to make clear the limited and legitimate purposes of sharing of no fly lists

3) Copies of the "written arrangements" in s.12 should be shared with an independent review agency. The involvement of the Minister of Transport and CBSA in the administration of this act is sensible, but should be matched up adequate whole of government review.

4) Section 16(6) (f) should be amended to allow security cleared special advocates or amicus to see any evidence that is used by the judge in determining whether the listing is reasonable but that is not disclosed to the affected person.

Part II "Advocates and promotes terrorism offences in general"

1) Delete proposed 83.221 "advocacy or promotion of terrorism offences in general" offence as overbroad and unnecessary OR ALTERNATIVELY
2) Incorporate defences found in s.319(3) (on hate crimes)
3) Expressly incorporate defence in s.83.01(1.1) to protect expression of political and religious thought, and make it an actual, robust defence
4) Raise fault requirement from "knowing" to "willfully" advocate, "for the purpose of inciting" not "recklessness" that terrorism offences will be committed as a result of communication, thereby eliminating unnecessary debate about whether, e.g., a political party's fundraising letter containing terrorist propaganda is itself in violation of the new offence.

5) Replace "terrorism offence in general" with "terrorist activity" as defined in s.83.01 of the Criminal Code, thereby discarding an unprecedented, vague concept for one with a clear legislative definition.
6) Amend definition of "terrorist propaganda" to remove reference to written and visual material that "advocates or promotes the commission of terrorism offences in general" so that terrorist propaganda is limited to such material that "counsels" or "instructs" a terrorist activity. This would limit the provision to speech that effectively is already criminal.
7) Expressly incorporate special advocate system into the judicial deletion system
8) Reject provision for enforcement by customs officials without judicial authorization, or some sort of robust administrative review and appeal process.

"Preventive Detention" Recognizances (s.83.3 of the Criminal Code, amended by Part 3 of Bill C-51)

1) At the very least, s. 83.3(4), allowing detention in exigent circumstances without judicial warrant, should specifically provide that it applies only where the peace officer suspects on reasonable grounds that the detention of the person in custody is likely to prevent a terrorist activity that involves a *serious and imminent threat to life, health, public safety or substantial property damage that threatens life or health.*
2) The bill should specify that the questioning of a person subjected to preventive detention in s.83.3 should be conducted only pursuant to conditions imposed by the judge authorizing the detention, and consistent with the requirement that the detainee be treated humanely and with respect for human dignity, and must not be subjected to cruel, inhuman or degrading treatment as that term is understood in the UN Convention on Torture.
3) The consequential amendments to the Youth Criminal Justice Act should make clear that all relevant parts of the Youth Criminal Justice Act relating to the taking and admissibility of statements, custody and recognizances apply to those under 18 years of age who are subject to preventive arrest and/or recognizances.
4) An alternative approach would be to prohibit questioning, as under Australian preventive detention orders or regulating question as is done with respect ASIO questioning warrants under the ASIO Act in Australia, including allow on site visits by independent reviewers.

Part IV CSIS Act

1) Reconsider need for new CSIS powers to violate Canadian law OR AT MINIMUM
2) Amend proposed s.12.1(3) to remove any reference to the Charter being contravened by a measure. The revised provision would read: (3) "The Service shall not take measures to reduce a threat to the security of Canada if these measures will be contrary to Canadian law, unless the Service is authorized to take them by a warrant issued under section 21.1, and will not contravene a right or freedom guaranteed by the Canadian Charter of Rights and Freedoms."
3) Include as absolutely prohibited conduct: loss of or serious damage to property that endangers the health or safety of any person; and detention of a person.
4) Limit the new CSIS measures to counter-terror operations under s.2(c) of the CSIS Act or (if we must have "measures" for other sorts of security risks) limit them to s.2(a) and (c) matters
5) Incorporate the statutory special advocate provisions from the Immigration Refugee Protection Act into the warrant proceedings and expressly provide these special advocates with standing to appeal warrant decisions
6) Follow Criminal Code s.25.3 (for the police) and require a *public* report with data on the use of CSIS measures each year and general information on the nature of the CSIS's illegal (but judicially exonerated) conduct
7) Follow Criminal Code s.25.4 (for the police) and require that a person affected by CSIS's illegal (but judicially exonerated) conduct under a warrant must be notified of the conduct within one year, subject to reasonable exceptions analogous to those enumerated in s.25.4 of the Criminal Code

Part V: IRPA Amendments

We have concerns about reduced disclosure to the special advocates and would support recommendations made by such special advocates in this regard. We endorse the following amendments suggested by a group

of special advocates composed of Gordon Cameron, Paul Cavalluzzo, Paul Copeland, Denis Couture, Francois Dadour, Anil Kapoor, John Norris and Lorne Waldman

> 1) *The Special Advocates propose that section 59 of Bill C-51 be amended so that paragraph 85.4(1)(b) of IRPA will read that the Special Advocate shall receive "all information and other evidence that relates to" the named person.*
>
> *2)The Special Advocates therefore recommend that section 57 of Bill C-51 be removed from the Act.*

Lack of Review of the Implementation of Legislation

1) Bill C-51 should be subject to a three year review by a Parliamentary committee with a requirement that the committee start the review no later than 2.5 years after the enactment of Bill C-51 and conclude it no later 3.5 years after its enactment.

Lack of Sunsets

1) All of Bill C-51 should be subject to a 4 year sunset and would be debated in a manner informed by the proposed 3 year review.

Lack of Enhanced Review

1) The jurisdiction of SIRC should be amended to give it an "all of government" remit, and eliminate its stovepiping.
2) ALTERNATIVELY, the Arar commission recommendation 11 should be honoured and "statutory gateways" should be created that would enable SIRC, the CSE Commissioner, the RCMP Civilian Review and Complaints Body (and, given the information sharing Act) the Privacy Commissioner to share secret information and conduct joint investigations into security matters. Also as recommended by the Privacy Commissioner, it should be given judicial recourse.[1]

We would support the creation of legislation committee of parliamentarians to perform "pinnacle" review (*not* oversight).

[1] Privacy Commissioner Submission to the Standing Committee on Public Safety and National Security March 5, 2015 at https://www.priv.gc.ca/parl/2015/parl_sub_150305_e.asp Recommendation 5.