

Backgrounder: Green Party Amendments to C-51

Part 1

Problem: A Radical New Definition of a Threat, Information Sharing With No Restrictions

Solution: A More Reasonable Definition, the Right to Protest, Strict Controls over Information Sharing, the Right to Privacy, Remembering Arar

Part 1 of C-51 will allow almost every government department to share information with virtually no restrictions. Starting with the broadest definition of threats to Canada anywhere in Canadian law, it then allows departments that receive information to further disclose it “to any person, for any purpose.” The government has refused to limit the definition of threats to exclude civil disobedience, insisting that protest must be “lawful.” Ms. May’s amendments to Part 1 would ensure that the right to protest is codified in the law. The amendments, following the recommendations of the many experts who testified before committee, also try to insert reasonable principles to make sure that any information is shared responsibly. The Green Party believes that we need to learn from the lessons of Maher Arar who was sent to be tortured in Syria due to the sharing of unreliable information. C-51 makes it likelier that we’ll see more Arars in the coming years, though this time any victims would be without compensation, since C-51 relieves the government of liability for faulty information sharing. Information sharing between departments should be subject to strict information sharing agreements. Ms. May’s amendments also seek to add the right to privacy as a guiding principle of the act.

Part 2

Problem: Undue Burden on Airlines, Due Process in Jeopardy, Ministerial Overreach

Solution: Work with Airlines, More Transparency – Better Appeal Process, Limits on Ministerial Powers

Canada's airlines are worried the Secure Air Travel Act section of C-51 gives the Minister of Public Safety too much authority to complicate their lives. It would authorize the minister to ask the airlines to do "anything" the government thinks could reasonably stop someone from engaging in a prohibited act (see Section 9 [1] of the Secure Air Travel Act). Mr. Hyer’s amendments attempt to limit the power of the Minister in his/her authority to instruct the airlines. Arguments against no-fly lists cite four basic flaws: effectiveness, due process, discrimination, and security. If the program cannot be demonstrably proven effective, why should civil liberties be put in the balance? Lists are secret and their criteria are vague raising due process concerns. Mr. Hyer’s amendments to Part 2 would ensure that the criteria for, appearance on, and removal from the list are clear and documented. C-51 would also allow the Minister to look at any computer or document in the area where a search is being conducted regardless of relevance. MP Hyer’s amendments will limit the scope of the Ministers ability to seize personal devices and documents from any to only those that relate to the investigation.

Part 3

Problem: Chilled Speech, Lower Thresholds for Preventive Detention

Solution: Protecting Free Speech, Keeping Thresholds

Part 3 of C-51 adds a new offence to the Criminal Code for promoting terrorism. The offence is so broadly worded that, aside from obvious free speech issues, it could push dangerous speech underground and make deradicalization efforts impossible. The new thresholds for preventive detention would also allow peace officers to arrest people on the suspicion that they may commit a terrorist act and that the detention would be likely to stop them. Ms. May's amendments would ensure that there are defences available to the charges of promoting 'terrorism in general' and terrorist propaganda that protect free speech and allow for legitimate discussion of sensitive topics with people who are prone to radicalization. It would also keep the current thresholds for preventive detention that prohibit a peace officer from placing fundamental restrictions on a person's liberty based on mere suspicion.

Part 4

Problem: Secret Police with No Accountability, Jurisdictional Confusion, Will Make Canadians Less Safe

Solution: Removing All 'Kinetic' Powers, CSIS-RCMP Coordination, Best Practices

Part 4 of C-51 transforms the Canadian Security and Intelligence Service (CSIS). Born of RCMP overreach and abuse, CSIS was purposefully designed by lawmakers with a broad mandate for domestic intelligence gathering, but no police powers. C-51 completely ignores the history of CSIS and our understanding of best practices in managing National Security agencies by giving CSIS sweeping police powers with no change to their mandate. CSIS is already a flawed organization with scant oversight and review – C-51 would not only ignore these serious problems, but further exacerbate them. The Green Party believes that this is a mistake that will undoubtedly jeopardize the liberties of Canadians and will also make Canadians less safe from threats to our national security. Ms. May's amendments first and foremost seek to strip CSIS of these proposed police powers as they risk Canadian's safety and Charter rights. Failing that, Ms. May intends to introduce amendments that would limit the mandate and extent of CSIS 'disruptive' powers, increase reporting requirements for when CSIS invokes these powers, and, explicitly prohibit CSIS from detaining or torturing any person. The amendments would also create special advocates for CSIS warrant proceedings, with particular attention to First Nations representation, and require CSIS to communicate with the RCMP prior to taking disruptive measures. Currently, CSIS and the RCMP have no requirement to coordinate, a relationship that has been shown by experts to have made the criminal prosecution of terrorists more difficult. Finally, Ms. May's amendments seek simply to ensure that no judge shall ever be asked to issue a warrant to violate the Charter.

Part 5

Problem: More Secrecy in Court, Less Information to Special Advocates in Security Certificate Cases

Solution: Full Information to the Court, Full Information to Special Advocates

Part 5 of C-51 makes serious changes to the Immigration and Refugee Protection Act (IRPA) that have gone almost unnoticed. Most of the changes deal with the security certificate regime. The Green Party believes that security certificates are a fundamental violation of the right to an open trial since they rely on secret evidence and offer no opportunity for a full defence. The amendments to IRPA in C-51 would extend this secrecy even further. It would allow the government to restrict the information given to the court and would further limit the information given to the special advocate. The Green Party is concerned that this restriction on information could allow the government to use information obtained through torture and not disclose this to the judge. Ms. May's amendments seek to make sure that the government must disclose all the information they have to the judge, including "all other information related to the information's origin and reliability." They would also ensure that the government needs to give all the information they have to the special advocate so that they can properly fulfill their role.

Bill C-51 as a whole

Problem: No Oversight, Poor Drafting

Solution: Parliamentary Review, Charter-proofing

As almost every critic at committee testified, we desperately need a real program for reviewing our national security operations. Ms. May proposed following the template put forward by Joyce Murray in her Private Member's Bill, C-622 which would create a committee of Parliamentarians who have access to secret information and can report on our national security apparatus as a whole.

C-51 suffers from poor drafting and Ms. May and Mr. Hyer's amendments seek to clarify some of the inconsistencies before they end up before the courts. The Harper administration has shown time and again its inability to make legislation comply with the Canadian Charter of Rights and Freedoms, meaning extended court proceedings costing taxpayers millions in legal fees.

For the amendments, Ms. May and Mr. Hyer relied on the following information

Submissions to Committee:

The Canadian Bar Association:

English: <http://www.cba.org/CBA/submissions/pdf/15-15-eng.pdf>

French: <http://www.cba.org/Dev/ABC/memoires/PDF/15-15-fr.pdf>

The British Columbia Civil Liberties Association:

English: <https://bccla.org/wp-content/uploads/2015/03/BCCLA-Submissions-on-C-51-For-website.pdf>

The Privacy Commissioner of Canada:

English: https://www.priv.gc.ca/parl/2015/parl_sub_150305_e.asp

French: https://www.priv.gc.ca/parl/2015/parl_sub_150305_f.asp

Amnesty International Canada:

English: http://www.amnesty.ca/sites/default/files/amnesty_international_brief_regarding_bill_c-51.pdf

French: http://amnistie.ca/sites/default/files/upload/documents/publications/bill_c-51_memoireamnistie_fr_f.pdf

The Canadian Council for Refugees:

English: <http://ccrweb.ca/sites/ccrweb.ca/files/c-51-comments-2015.pdf>

French: <http://ccrweb.ca/sites/ccrweb.ca/files/c-51-commentaires-2015.pdf>

Pam Palmater's witness testimony:

<https://www.youtube.com/watch?v=21rUWpxwHJI&sns=tw>

The Canadian Muslim Lawyers Association Brief:

<http://cmla-acam.ca/cmla-publishes-submissions-to-house-of-commons-committee-on-bill-c-51/>

Ongoing work by:

Kent Roach and Craig Forcese:

<http://antiterrorlaw.ca/>

Michael Geist:

<http://www.michaelgeist.ca/>

Joyce Murray's Bill C-622:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6680729>