350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: +1-212-290-4700
Fax: +1-212-736-1300; 917-591-3452

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HUMAN RIGHTS WATCH

HRW.org

June 02, 2015

The Senate of Canada
Ottawa, Ontario
Canada
K1A 0A4

Re: Bill C-51, the Anti-Terrorism Act, 2015

Dear Senator,

We write to urge you to vote "No" to Bill C-51, Canada's proposed Anti-terrorism Act, 2015. This bill would imperil fundamental rights enshrined in both Canada's Charter of Rights and Freedoms and international law. It also is unnecessary, given Canada's already ample and sufficient powers to address violent extremism.

Vague and overbroad provisions in Bill C-51 would empower the Canadian Security Intelligence Service to engage in activities that could violate rights protected under domestic and international law, including the rights to freedom of expression and association, with virtually no effective oversight. The bill's proposal for unfettered information-sharing among 17 government agencies and abroad invites violations of the fundamental rights to privacy and freedom from torture and ill-treatment.

The proposed law would deny meaningful due process to persons placed on Canada's no-fly list as well as to non-citizens facing deportation. Its new criminal offense of "advocating terrorism" could undermine free speech. In addition, it would significantly lower the threshold and lengthen the period for detaining a suspect without charge, heightening the risk of torture and unlawful deprivation of liberty.

These measures could have lasting negative consequences for Canadians, and cause incalculable damage to Canada's international standing as a rights-respecting country.

We attach a list of our key concerns.

Sincerely Yours,

Human Rights Watch

Key Human Rights Concerns Regarding Bill C-51, "The Anti-Terrorism Act, 2015"

1. Unprecedented Powers to CSIS

Bill C-51 would transform the Canadian Security Intelligence Service (CSIS) from an exclusively intelligence-gathering agency to a hybrid service capable of taking "measures"—a term the draft law never defines— both at home and abroad to disrupt perceived threats to national security.

The scope of these measures is vast and ill-defined. Under Bill C-51, CSIS could in the name of national security:

- Disrupt advocacy, protest or dissent that CSIS deems unlawful;
- Detain and interrogate individuals, provided no bodily harm is intended and no criminal investigation is involved;
- Damage or destroy property without compensation; and
- Contravene fundamental rights guaranteed by the Canadian Charter of Rights and Freedoms or other provisions of Canadian law.

These powers could lead to violations of an array of internationally protected rights. Among them are freedom of speech, assembly and association and prohibitions on torture or ill-treatment and arbitrary deprivation of liberty.

Bill C-51 lacks meaningful control over what measures CSIS can take outside of Canada. This omission has grave implications for Canada's respect for its international human rights legal obligations, and for protection of the rights of those outside of Canada.

The bill empowers CSIS to take these unspecified measures both "within or outside Canada" to reduce threats to national security. It requires the intelligence agency to seek a warrant—issued by a judge in a secret hearing—for acts that violate domestic law. CSIS may as a precautionary measure apply for a warrant to carry out threat-reduction acts in other countries, but the bill permits the judge to issue such warrants "without regard to any other law, including that of a foreign state."

In 2007, the Supreme Court of Canada in *R. v. Hape* held that the Charter and Canadian law in general do not have application outside of Canada. Thus Bill C-51 threatens to leave CSIS virtually unbound by any Canadian law in what "measures" it takes abroad.

2. Expanded Powers of Preventive Detention, Restrictions on Freedom of Movement

C-51 includes new powers to detain and severely restrict the movements of individuals without any intent to charge them with an offense or bring them to trial. Such powers are inconsistent with the Charter's protection of rights including liberty and freedom from arbitrary detention as well as international human rights law, which requires that individuals deprived of liberty be accorded due process of law.

The bill would allow law enforcement officials to detain an individual without charge for up to seven days if they believe that he or she "*may* carry out" a terrorist act, and that such detention is "*likely*" to prevent it. This significantly lowers the threshold for preventive detentions and more than doubles the maximum detention period.

Currently, Canada's Criminal Code allows law enforcement officers to detain an individual without charge if they believe he or she "*will* carry out" a terrorist act and that preventive detention is "*necessary*" to prevent it. (Emphasis added in all four cases.) The Criminal Code currently limits preventive detention to three days.

The bill also would require provincial court judges to consider placing restrictions on a suspect whom authorities believe "may carry out" a terrorist act for up to one year, or five years if the individual was previously convicted of a terrorism-related offense. These restrictions could include passport surrender, electronic monitoring, travel bans, and curfews. Judges also could order suspects to participate in an undefined "treatment program," and to abstain from alcohol and all other "intoxicating substances," as well as all non-prescription drugs, even if they are lawful. Rejecting or violating the restrictions would be punishable by up to one year in prison.

International human rights law permits preventive detention only under exceptional, narrowly defined circumstances. Yet Bill C-51 contains no sunset clauses or other limitations on these provisions.

Control orders impose serious restrictions on the fundamental rights of individuals, such as freedom of movement, association and expression, and the right to privacy and family life. "Treatment programs" and prohibitions on legal activity are sanctions normally imposed following the determination of criminal guilt.

3. Vague New "General" Terrorism Offense

The bill would create a new criminal offense of knowingly "advocating or promoting the commission of terrorism offences in general," without defining that term. The new offense would be punishable by up to five years in prison.

This proposed new criminal offense is overbroad and raises serious concerns about undue infringement on the right to freedom of expression. Moreover the Canadian

Criminal Code already makes it an offense to conspire in, instruct on, or counsel the commission of a "terrorist act,"—a term the code amply defines—making the addition of this new offense unnecessary.

International law provides that speech which incites violence may be punished as a criminal offense. However Bill C-51 would not require that communications cause or intend to cause the commission of a specific terrorism offense. Rather, it would criminalize communications that are made by someone who either knows the offenses "will be committed," or who shows "recklessness as to whether any of those offences *may* [emphasis added] be committed" as a result of that communication.

Bill C-51 also would empower a judge to order the seizure of "terrorist propaganda," or its deletion from a computer, if it "advocates or promotes the commission of terrorism offences in general." The inclusion of this same overbroad term of "terrorism offences in general" raises the prospect of confiscations from, for example, groups that work to prevent violent extremism and academics who study it.

4. Near-Unfettered Access to Personal Information Held by the Government

Bill C-51 contains a proposed new law, the *Security of Canada Information Sharing Act,* which would enable near-unfettered access by 17 police and security agencies to personal information contained in any Canadian government record. The bill further authorizes the sharing of such information among these agencies and with foreign states and private actors. Information gathering and sharing is an important threat-reduction tool. But as drafted, the bill's measures invite violations of the right to privacy and increase the risk of torture and ill-treatment.

The scope of the information gathering and sharing that would be enabled by the information sharing act encompasses far more than investigations of suspected terrorists and their activities. The information need only be "relevant" to a security agency's jurisdiction or responsibility to detect, identify, analyze, prevent, investigate or disrupt an "activity that undermines the security of Canada." The revelations of US National Security Agency whistleblower Edward Snowden demonstrate how government agencies are capable of using terms such as "relevant" to metastasize data collection and undermine democratic institutions.

The bill ties those information sharing powers to a dangerously overbroad definition of an "activity that undermines the security of Canada." For example, the definition includes interference with "diplomatic and consular relations" or "critical infrastructure." "Terrorism," ostensibly Bill C-51's main concern, is fourth on the list of nine security threats, and is not defined.

Notably, the definition of a security threat excludes “advocacy, protest, dissent and artistic expression.” However, that protection risks being eroded by other portions of the threat definition, such as “interference with the . . . economic or financial stability of Canada” or activities that “undermine” Canada’s “territorial integrity.” This is particularly the case for groups such as petroleum pipeline opponents—which the Royal Canadian Mounted Police in 2014 reportedly labeled a “growing” and “violent” threat to national security—and indigenous activists.

The bill would effectively exempt the information gathering and sharing that it authorizes from the restrictions on disclosure and use contained in Canada’s Privacy Act, making auditing, oversight and review ineffectual. Compounding the lack of accountability, one provision would exempt those who share information from civil liability, provided they acted in “good faith.”

Human Rights Watch is also concerned that the lack of essential safeguards in the *Security of Canada Information Sharing Act* contained in Bill C-51 could result in the sharing of information or misinformation, particularly with other countries, leading to torture.

The UN special rapporteur on torture has called on states to refrain from information sharing if there is a genuine risk of torture or other cruel, inhuman or degrading treatment. Two special inquiries in Canada—the Arar Report of 2006 and the Iacobucci report of 2008—noted a link between inaccurate information sharing and the torture of four Canadian citizens abroad. The information sharing act within Bill C-51 does not appear to mitigate the risk of such actions.

5. Restricting Information on Detaining, Deporting Foreigners

Bill C-51 would make it easier for the government to further restrict access to classified information used to detain and deport foreign nationals and other non-citizens for reasons of national security.

The bill would allow a judge to bar court-appointed “special advocates”—who have security clearance—from reviewing classified evidence in a detention or deportation case against non-citizens, provided the judge did not use that evidence in his or her decision. However the bill does not include any mechanism to ensure the barred evidence did not influence the judge’s opinion.

The amendments threaten to erode the already substandard fair-trial guarantees for security-related deportation cases. Currently, special advocates can review and challenge all secret evidence on behalf of the non-citizens they represent, but there are restrictions on the information they can share with their clients or gather independently.

Canada’s Parliament created special advocates to represent non-citizens in 2008 after the Supreme Court ruled that the previous system, which authorized the prolonged detention or deportation of non-citizens without allowing them to examine the evidence against them, violated the rights to liberty and habeas corpus under the Canadian Charter.
Even before Bill C-51 was unveiled, both the United Nations Committee Against Torture and the UN Human Rights Committee expressed concern about the ability of special advocates to properly represent their clients.

6. Insufficient Appeals for “No-Fly” List

Bill C-51 would create a new statute to oversee Canada’s so-called “no-fly” list for terrorism suspects. Improving and codifying Canada’s haphazard process for barring individuals from flights or requiring them to undergo special screening would be a positive step. However the proposed new system would effectively deny individuals a meaningful process of appeal, a right guaranteed under international law.

The bill would not require the Minister of Public Safety to provide an individual with information about the reasons that he or she was placed on the no-fly list—a decision the minister could make based on “reasonable grounds to suspect” the person would attempt or engage in an act that threatened transportation safety or was using a flight as transportation to subsequently carry out a terrorist act. It allows the named individual to appeal the ban before a federal court judge, but that judge can deny the individual access to some of the information that led to the no-fly decision, or allow the government to provide only a summary.

Moreover, the proposed law allows only a 60-day window for appeal, without specifying how or even if the named individual is to be informed that he or she is on a no-fly list.

Placement on a no-fly list can have serious consequences for an individual’s rights to liberty, freedom of movement, privacy and discrimination. The UN Human Rights Committee has noted that an individual has the right to ascertain what information is contained about him or her in official files and “to have his or her record rectified” if the information is erroneous. Bill C-51 fails to provide for that opportunity.