

Civil Society Statement Regarding Bill C-59

April 5, 2018

Civil Society Statement Regarding Bill C-59, *An Act Respecting National Security Matters*

Bill C-59 was explicitly introduced with the claim that it fixes “the problematic aspects” of its predecessor, Bill C-51—now Canada’s *Anti-terrorism Act, 2015*.

We, the undersigned civil society organizations and individual experts, are concerned that C-59 does not truly fix all of the problems with our current national security law, and it has introduced some very serious new issues.

The Bill was referred to the House of Commons Standing Committee on Public Safety and National Security (SECU) after first reading, which leaves open the possibility for amendments. SECU has had the opportunity to hear from many of us, and many others, about where Bill C-59 falls short, where it oversteps, and how it can be improved to ensure that it takes a rights-centric approach to national security. The coming days and weeks are a crucial time to speak out. As Bill C-59 moves through Parliament our government needs to hear from those who think that Canada deserves better and that this legislation can and must protect national security while firmly and unequivocally upholding human rights.

There is consensus amongst civil liberties and human rights organizations about some of the most troubling aspects of Bill C-59. Our concerns focus on: 1) the bill’s empowerment of our national security agencies to conduct mass surveillance; 2) the practical impossibility of an individual effectively challenging their inclusion on the “no-fly list”; and 3) the authorization of Canada’s signals intelligence agency, CSE, to conduct cyberattacks. While these by no means represent the only problems with Bill C-59 that require “fixes”, they are among the areas where change is both urgently required and most broadly supported.

Authorizing Mass Surveillance

We acknowledge the increase in oversight and review that may be achieved with the creation of a National Security Intelligence Review Agency and an Intelligence Commissioner. However, Bill C-59 also expressly empowers mass surveillance through the collection of bulk data and “publicly available” data – a term that is not clearly defined in the bill in relation to datasets collected by our human intelligence agency, CSIS, and extraordinarily expansively defined for the CSE. In both cases, “publicly available” is open to interpretations that are as sweeping as they are troubling. In particular, there is no requirement that publicly available information must have been lawfully obtained. In the absence of effective limits in the law, the bodies that have been set up to improve accountability may review or oversee mass surveillance activities, but not necessarily prevent or limit them. The bill also lowers the threshold to allow CSIS to collect information about Canadians – even data that is expressly acknowledged to not relate directly and immediately to activities threatening the security of Canada—if it is “relevant,” rather than

restricting collection to information that is necessary. There has been little meaningful debate on whether this lower threshold is necessary or reasonable in light of the goals the government seeks to achieve.

Secret trials with secret evidence for individuals on the “no fly” list

The no-fly list has never been shown to increase aviation safety. Bill C-59 perpetuates a scheme that severely limits rights based on a mere suspicion of dangerousness that cannot be effectively challenged in a fair and open process. The government’s proposed redress system for those mistakenly on a list of people subject to enhanced security screening (“slow fly list”) does not assist those who are simply prohibited from flying. These individuals face a process in which they can legally be denied information relevant to their case, can be denied access to their own hearing and have no right to an independent special advocate with access to all of the evidence against them. SECU has already recommended a number of changes to the no-fly list including the use of Special Advocates. Some of us, and others, have gone further, and argued for the repeal of the “no fly” system completely. Successive governments have allowed this system to endure for over a decade, and it is imperative that the fundamental rights issues it poses be acknowledged and addressed.

Legalizing Cyberattacks by “Canada’s NSA”, the Communications Security Establishment (CSE)

We are seeing our “intelligence” agencies transformed in dangerous directions. C-59 continues to allow CSIS active “disruption” powers and now also gives the CSE new powers to use cyber-attacks against foreign individuals, states, organizations or terrorist groups. This would include hacking, deploying malware, and “disinformation campaigns”. There is a significant danger of normalizing state-sponsored hacking, not to mention the obvious tension when the agency mandated with protecting our cyber infrastructure is also powerfully incentivized to hide and hoard security vulnerabilities for its own attack exploits. We need a public discussion about what threats these attack powers are meant to address and what new threats they may open us up to if a Canadian attack results in cyberwar escalation.

Canadians were told that the new law would “fix” the old law. Instead, we got a bill that nominally addresses some concerns, but exploits the opportunity to introduce more radical new powers for national security agencies.

If the goal of Bill C-59 is truly to “fix” Canada’s national security laws, there is still much work to be done.

Signed by (alphabetical order):

Amnesty International Canada
BC Civil Liberties Association
BC Freedom of Information and Privacy Association
Canadian Association of University Teachers
Canadian Civil Liberties Association

Canadian Federation of Students
Canadian Journalists for Free Expression
Canadian Union of Postal Workers
Canadian Union of Public Employees
Independent Jewish Voices Canada
International Civil Liberties Monitoring Group
Inter Pares
Lawyers' Rights Watch Canada
Ligue des droits et libertés
MiningWatch Canada
National Council of Canadian Muslims
National Union of Public and General Employees (NUPGE)
OpenMedia
Privacy and Access Council of Canada — Conseil du Canada de l'Accès et la vie Privée
Rideau Institute
Rocky Mountain Civil Liberties Association
Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC)

As individuals:

Elizabeth Block, Independent Jewish Voices, Canadian Friends Service Committee
James L. Turk, Director, Centre for Free Expression, Ryerson University
Sharon Polsky, MAPP, Data Protection Advocate & Privacy by Design Ambassador
Sid Shniad, Member of the national steering committee, Independent Jewish Voices Canada