Canada: Alarm bells must ring in response to the government’s new anti-terror bill

Bill C-51, the federal government’s Anti-Terrorism Act, 2015, is the principal official response to the increasing threat of terrorism, a phenomenon that infamously prorupted into the central block of Parliament on Oct. 22, after the murder of a soldier ceremonially guarding the grave of the unknown soldier at the war memorial in Ottawa.

The purpose of the measure is given as assurance that the people of Canada “live free from threats to their lives and their security,” as “there is no more fundamental role for a government than protecting its country and its people.” To this end, government departments and agencies are authorized and instructed to share information that could frustrate or reveal attempts “to undermine” or “threaten the security of Canada;” the Minister of Public Security and Emergency Preparedness compiles a list of people who he or she “has reasonable grounds to suspect will attempt to threaten transport security” or commit or facilitate a “terrorism offense” in Canada or elsewhere.

This sounds fairly innocuous by the standards of legislation conferring enhanced arbitrary powers on law enforcement officials, but, as is usual and to some extent unavoidable, many of the elaborations of enhanced official powers are very broadly outlined. Reading through the text of this and related bills, the principal areas of impact are lowering the threshold for arrest, criminalizing the promotion of terrorism, conferring powers of disruption on CSIS (Canadian Security Intelligence Service), giving the power to remove

designated terrorist material from the Internet, permitting court proceedings to be sealed while they are in progress for protection of investigative techniques, evidence, and personnel, expanding the government's ability to stop people from leaving the country, and granting unspecified and scarcely limited powers of arbitrary, warrantless, detention.

It becomes quite troubling with the provisions that "every person who, by communicating statements, knowingly advocates or promotes the commission of terrorism offences in general – while knowing that any of those offences will be committed or being reckless as to whether any of those offences may be committed…is liable to imprisonment of not more than five years;" and that anyone responsible for "any writing, sign, visible representation or audio recording that advocates or promotes… or counsels the commission of a terrorist offence" may have material seized, internet excerpts deleted, and be subject to detention, indictment and imprisonment, though the authority of the attorney general is required for such proceedings.

Even more worrisome is the provision that a person may be detained in custody without warrant if a peace officer "believes on reasonable grounds that a terrorist activity may be carried out," or that such arrest and detention "is likely to prevent the carrying out of the terrorist activity," pending ratification of the action by a provincial court. Most Canadians would not be too much disturbed by the requirement that such a suspect be "prohibited from possessing any firearm (or) crossbow," or be confined to a geographic area temporarily.

But alarm bells really must ring at "If there are reasonable grounds to believe that a particular activity constitutes a threat to the security of Canada, the service (CSIS) may take measures in or outside Canada, to reduce the threat." These are unspecified, and must be "reasonable and proportional," but they are unlimited except by the admonition not to violate

the Charter of Rights and Freedoms or any other law, unless "authorized to take them under a warrant," but there are no further guidelines on the issuance of warrants. It is not altogether comforting to read that the authorities are forbidden to "cause intentionally or by criminal negligence, death or bodily harm," or "wilfully (to) attempt in any manner to obstruct, pervert, or defeat the course of justice; or violate the sexual integrity of an individual."

Those representing the Public Security and Emergency Preparedness minister may decide whether a warrant is necessary for any of these initiatives, in Canada or in any other country: "Without regard to any other law, including that of any foreign state, a judge may, in a warrant… authorize the measures specified in it to be taken outside Canada." Obviously, no foreign jurisdiction would accept that a Canadian authority has any standing to approve such an intrusion, and it is fervently to be hoped that no one in the federal government imagines that it would be a good thing to exchange empowerments for the execution of such warrants with other countries, provoking a regime of reciprocal extra-legal, official outrages across international frontiers.

All of these steps create problems on the civil liberties front. As presented, Bill C-51 makes a Swiss cheese out of due process, and the three national political parties have approached the problem from distinctly different angles. The government have swaddled themselves in Stephen Harper's default-toga of protecting the public, aspersing civil liberties concerns, and uttering tired pieties that "the law enforcement agencies are on our side," presumably referring to their objectives rather than their political preferences. It is easy to be cynical about this and resignedly conclude that Vic Toews and Julian Fantino ride again (itself a terrorizing thought, and thought-terror is assumedly covered in the vast sweep of this bill). The government is responsible for preventing terrorist outrages from happening and it has to be

given some licence to protect the country and everyone in it. But it is hard to be overly sanguine about the medieval antics of the government that took the giant leap backwards that was the omnibus crime bill. Nor is it reassuring that Mr. Harper, as is his frequent custom, is imposing a shortened debate on Parliament.

The Liberals have accepted the bill but claim to seek a clearer and heavier oversight than is now provided. This has been much mocked as toadying to reactionary opinion, but again, it is an attempt to reconcile the conflicting goals – though the unofficial opposition is no more specific about increased oversight than the government is about the many open-ended powers it wants to give the whole range of law enforcement agencies. The New Democrats and their leader, Thomas Mulcair, deserve credit for tackling this sloppily worded measure head on. He and his colleagues have said that the failure to give more precision to "disrupt" and many other new official rights is careless, that anyone protesting even the construction of a pipeline could be a target for some of these actions, and that there is insufficient focus on "deradicalization," but that the NDP could support a bill adequately clarified.

We have ample proof, from the McDonald Commission's 1981 report and elsewhere, that the law enforcement agencies in this country, as in others, are capable of outrageous and unfathomably stupid abuses, and anyone who has had anything to do with any arm of the law knows it (although most people in these occupations are reasonably dedicated and honest). Definitions have to be tightened; oversight has to be stringent and prompt and answerable to parliament, and we should be careful of too much reciprocity with foreign governments. Only 10 or 12 other countries have as much respect for human liberties as Canada does and must retain; the United States, with its 99.5% conviction rate and stacked rules – a criminal justice system that is just a conveyer-belt

to its bloated and corrupt prison industry – is not one of them. If we go to sleep in Canada, we will wake up in an unrecognizable despotism, like Argentina, Turkey, or Louisiana.

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