

**CANADIAN CIVIL LIBERTIES ASSOCIATION**  
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**March 23, 2015**

**SPEAKING NOTES TO THE STANDING COMMITTEE ON PUBLIC  
SAFETY AND NATIONAL SECURITY**

Mr Chair, Mr Clerk, and Honourable Committee Members, I am grateful for the opportunity to speak with you today, and I thank my colleagues at Open Media for sharing their time.

I appear on behalf of the Canadian Civil Liberties Association. We are an independent, national, nongovernmental organization, with thousands of members drawn from all walks of life, from across the country. For over 50 years, CCLA has effectively fought for and protected civil liberties and fundamental rights throughout Canada. You have our detailed written submissions, and in the four minutes allotted to me I will focus only on two issues, information sharing and CSIS.

Let me state at the outset however, the CCLA understands that the government requires effective tools to protect Canada and its peoples from terrorist threats and acts. What we do not understand is why this Bill is needed given the

existing robust, and in some cases, exceptional tools at our disposal, and the success rate of law enforcement and courts most recently demonstrated with the Via Rail terrorist convictions.

It has not been shown that Bill C51 provides any necessary new tools. We are concerned that it will increase powers without any commensurate increase in accountability mechanisms.

## **1. SECURITY OF CANADA INFORMATION SHARING ACT**

First, turning to the *Security of Canada Information Sharing Act*, or SISA as I will call it. The SISA expansively allows for the unprecedented sharing and collection of information (including personal information) across at least 17 State agencies -- and to foreign governments -- and to foreign and domestic private actors -- without enforceable privacy safeguards, and without clearly limiting the information to “terrorist activities”. This is overbroad.

The legislated objective of SISA -- to keep Canada safe from terrorist threat -- is beyond dispute -- but the drafting of SISA is not. Unless enforceable safeguards are included information sharing will result in error. The surnames of Arar,

Almalki, Nureddin, El Maati, Abdelrazik, Benatta, Almrei are serious terrible reminders of the devastation wreaked by misuse and mistake in information sharing. Failure to properly share information failed to prevent the Air India flight 182 Terrorist bombing which killed all 329 people aboard.

SISA does not heed any of the recommendations of the Arar Commission for integrated review of the integrated operations of agencies, nor for statutory gateways to facilitate such review, nor does it benefit from the lessons and in-depth study of the Air India Commission. Existing review mechanisms for national security agencies are simply inadequate in the context of SISA, due to mandate or resource constraints (such as with the Privacy Commissioner or SIRC) or even absence of any review mechanisms such as with the CBSA.

The reference to Caveats in the guidelines are undermined by subsequent provisions (section 6) which allow the further sharing of information “to any person, for any purpose”, and civil immunity for information mistakenly shared in good faith.

Information sharing in the national security context requires proper legal safeguards of necessity, proportionality, and minimal impairment and includes written agreements and caveats with respect to reliability, use, dissemination, storage and destruction. All of this is wholly absent in SISA.

## **2. CSIS ACT AMENDMENTS**

Next I turn to the CSIS Act Amendments – CCLA has three very serious concerns with Bill C-51 here:

(i) The amendments transform CSIS from the recipient collector and analyst of intelligence into an agency with powers to Act. There is no explanation for this radical transformation at odds with the findings of the McDonald Commission which heralded distinction between intelligence and law enforcement. Further, there is no limit on what CSIS disruption powers will be other than the outer limits of ‘bodily harm, obstruction of justice, and violation of sexual integrity’ – thereby indicating a very large sphere within which CSIS can now act. These new powers will blur the lines between intelligence and law enforcement and may further increase tensions between mandates in practice of CSIS and

the RCMP, which can undermine security. And blurring the lines between intelligence and evidence may in fact undermine terrorist prosecutions.

(ii) Bill C-51 enables CSIS to obtain a judicial warrant to contravene the Canadian Charter of Rights and Freedoms. This is a shocking prospect to the CCLA, given that Canada is a country committed to constitutional paramountcy and rule of law, not to mention independence of the judiciary. Further, this process would be executed on an *ex parte* basis, and *in camera*. There is no adversarial process built-in which permits challenge of the government case presented to the judge.

(iii) In conjunction with Bill C44, Bill C51 permits CSIS to act at home and abroad, without regard to any law including foreign domestic law and international law. In our view this is a dangerous signal for Canada to send to its international partners, and in particular to foreign intelligence agencies with respect to Canadians.

### [3. SPECIAL ADVOCATES

CCLA is deeply concerned by amendments to the Immigration and Refugee Protection Act which would allow the Minister to withhold relevant evidence from Special Advocates in Security

Certificate cases. These amendments appear to blithely backpedal on important gains in the protection of the section 7 liberty rights and the principles of fundamental justice – we remind the Committee that in its unanimous decision in Charkaoui leading to Parliament’s creation of the Special Advocate scheme, The court stated that “the whole point of the principle [of fundamental justice ] that a person whose liberty is in jeopardy must know the case to be met”, and **further that the national security context cannot be used to “erode the essence” of the section 7 protection**, which is meant to provide “meaningful and substantial protection” and due process.] \*note because of time constraints I did not speak on Special Advocates

## **CLOSING**

We close in respectfully reminding the Committee that across the board, safeguards and accountability mechanisms are not meant to be impediments to national security – Rather safeguards and accountability mechanisms ensure we do not, however unintentionally, violate or impair the constitutional rights of innocent law abiding people in Canada; that we do not waste or misdirect precious national security resources, that we do not tarnish/harm/ruin the lives of innocent

individuals, and that in turn, our national security actions are efficacious.

As the Supreme Court stated in *Suresh*, it would be a Pyrrhic victory, if we defeated terrorism at the cost of sacrificing our commitment to the values that lie at the heart of our constitutional order (rule of law and fundamental justice)

And in *Application under s.83.28 Criminal Code*:

*“ The danger in the “war on terrorism” lies not only in the actual damage the terrorists can do to us but what we can do to our own legal and political institutions by way of shock, anger, anticipation, opportunism or overreaction. “*

Thank you.