



Comments on Bill C-51, the Anti-Terrorism Act, 2015

11 March 2015

1. Excessive government powers compromise fundamental rights and the rule of law

The Canadian Council for Refugees (CCR) shares the concerns raised by many commentators about the vast government powers accorded by Bill C-51, without adequate protection for individual rights. Many refugees flee situations where alleged security risks are used as a justification for government to suspend rights protections and commit serious abuses. People who came to Canada as refugees therefore know well how dangerous it is to sacrifice rights in the pursuit of security, and how often it leads in fact to increased insecurity. Having sought protection in a country they believed would respect rights and the rule of law, many refugees feel a particular concern about Canada turning its back on these basic principles that lie at the foundation of our collective security.

The Canadian Council for Refugees believes that Canada's response to potential security threats should be founded on full commitment to human rights.

2. Persons in the immigration process must be able to defend themselves fully

The CCR strongly opposes the proposed changes to Division 9 of the Immigration and Refugee Protection Act (IRPA). Division 9 concerns the use of secret evidence in immigration decision making, whether in security certificate cases or in other proceedings where the government wishes to introduce evidence without disclosing it to the person affected (section 86 procedures). We note that while security certificate procedures are rarely used, under section 86 the Minister may apply for the non-disclosure of evidence in any immigration admissibility hearing, detention review or appeal before the Immigration Appeal Division. Such applications are not exceptional and indeed have been made with greater frequency in recent years.¹

Bill C-51 would compromise still further the ability of affected persons to defend themselves, by allowing the government not to disclose to the person's Special Advocate evidence that the government deems is not relevant.

The use of secret evidence runs directly counter to the vital principles that courts must be open and that individuals have the right to know and meet the case against them. These principles are particularly important when fundamental rights, including the right to life, liberty and security of the person, are at stake, as they are in security certificates and often are in other immigration proceedings.²

¹ For more information on use of section 86 procedures, see the factum of CCR and ICLMG in Canada (MCI) v. Harkat, 2014 SCC 37, http://www.scc-csc.gc.ca/WebDocuments-DocumentsWeb/34884/FM080_Intervener_Canadian-Council-for-Refugees-et-al.pdf

² For more information on CCR's concerns with secret evidence, see 2007 comments on Bill C-3, <http://ccrweb.ca/sites/ccrweb.ca/files/static-files/documents/C-3submission.pdf>

Under the current law, Special Advocates are already compromised in their ability to effectively defend an individual because they cannot share the secret evidence with the person. Denying them access to evidence that the government deems not relevant will reduce still further their ability to effectively challenge the government's case.

Bill C-51 also allows the government to appeal an order by the Federal Court to disclose information to the Special Advocate. This makes the process even more unequal (an equivalent right of appeal is not given to the person affected) and risks adding extra delays to an already long-drawn out process.

The Canadian Council for Refugees urges that the proposed amendments to the IRPA be rejected.

3. Canada must unequivocally reject torture

The CCR is deeply concerned about the proposed new information-sharing provisions, which could lead to torture or involve information obtained through torture. Canadians are well-aware of the risks of security-related information being linked to torture, as a result of the inquiries into the experiences, including torture, of Maher Arar, Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin. Many refugees who have found safety in Canada have survived torture: they have a particular interest in ensuring that Canada is not complicit with torture.

The Canadian Council for Refugees urges that Parliament adopt strong protections in law against any government agencies sharing information when it could lead to torture or using information that may have been obtained through torture.

4. Muslims and Arabs are overwhelmingly those most affected by security measures

Arabs and Muslims face widespread and growing prejudice, discrimination and stereotyping in Canada. They have also been the particular target of Canadian security measures in recent years. When serious errors have occurred, Arabs and Muslims are those whose rights have been violated.

The Canadian Council for Refugees urges Parliament and the government to make it a priority to plan, execute and review security measures in a manner that combats discrimination against Arabs and Muslims.

5. Benamar Benatta's experience highlights the human cost of mistakes

On 12 September 2001, Benamar Benatta, an Algerian refugee claimant who had recently arrived in Canada, was unlawfully transferred to the US as a potential suspect in the September 11 attacks. He was labelled a terrorist simply because he was Muslim and had been in the air force. Despite being completely innocent, he spent nearly five years in jail in the US and endured serious abuse. The Government of Canada has recently settled a lawsuit with Mr Benatta in recognition of the harm done to him as a consequence of the actions of Canadian officials.³

³ <http://champlaw.ca/Benatta>

The Canadian Council for Refugees urges Parliament, in debating Bill C-51, to remember that a failure to ensure rigorous respect of human rights leads to innocent people suffering devastating consequences, as Mr Benatta did.

6. Canada urgently needs to enact effective oversight and review mechanisms for security activities

In 2006, Justice Dennis O'Connor concluded, on the basis of his inquiry into the abuses suffered by Maher Arar, that the existing mechanisms for review of Canadian government security activities were inadequate. He recommended an integrated review mechanism for all agencies involved in national security matters, to ensure conformity with legal and policy requirements and Charter values. His recommendations have not been addressed. One of the affected agencies, the Canada Border Services Agency, is not subject to any external review mechanism. The need for oversight and review has only become more necessary in the years since Justice O'Connor made his recommendation, as more government agencies become involved in security matters and share more information, and existing mechanisms have in some regards been weakened. Bill C-51 would dramatically expand government powers and information-sharing between agencies; yet nothing is proposed to address the serious problem identified by Justice O'Connor in 2006.

The Canadian Council for Refugees urges Parliament to enact effective oversight and review mechanisms for Canada's security activities, including for immigration-related activities, as soon as possible.