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ANTI-TERRORISM BILL, 2015

Bill to Amend—Second Reading
of Bill C-51

Speech by:

The Honourable Claudette Tardif

Thursday, May 14, 2015

THE SENATE

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[*Translation*]

ANTI-TERRORISM BILL, 2015

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Runciman, seconded by the Honourable Senator Beyak, for the second reading of Bill C-51, An Act to enact the Security of Canada Information Sharing Act and the Secure Air Travel Act, to amend the Criminal Code, the Canadian Security Intelligence Service Act and the Immigration and Refugee Protection Act and to make related and consequential amendments to other Acts.

Hon. Claudette Tardif: Honourable senators, I rise to express my opposition to Bill C-51. Like many of you, I was in Centre Block on October 22, when this symbol of our country's democracy was attacked. The tragic events of October 22 and the deadly attack on a soldier in Saint-Jean-sur-Richelieu had a profound impact on us all. However, I do not believe that those attacks justify the urgent need to violate Canadians' rights and freedoms, as Bill C-51 proposes to do.

The government chose to legislate without providing us with concrete evidence that permanent restrictions to individual liberties would contribute to making Canada safer. We have a duty to take all the time we need to properly analyze this immensely important matter, which could have harmful consequences if we do not strike the right balance between the powers granted to federal institutions and the protection of individual rights recognized under the Canadian Charter of Rights and Freedoms.

[*English*]

While I realize that some aspects of this bill may be necessary, I fear that we are trading precious rights and liberties for a false sense of security.

Some Hon. Senators: Hear, hear.

Senator Tardif: Like many of you, I have received numerous letters from Canadians expressing their concerns with Bill C-51. Not form letters — some were — but many I have received were actual written letters, and I would like to share with you, honourable colleagues, excerpts from some of the letters I have received from fellow Albertans.

One Alberta citizen wrote to me about Bill C-51:

> It makes me afraid, and not of extremists, or radical groups, it makes me afraid of the powers that watch over us and govern us. The way our basic freedoms are slowly being taken away from us is absolutely terrifying.

A Calgary resident states the following:

> The purpose of this bill is touted as being anti-terrorism, however, coordinated terrorist attacks are already being thwarted, and therefore it appears to be an unnecessary bill founded on pure paranoia.

A woman from Edmonton writes:

> This bill passing DOES NOT make me feel more safe from international threat. . . . I feel let down by the fact that my government would rather let my rights suffer than find alternative ways to support the citizens.

Another Calgary resident writes:

> For too long now Canadians have had to trade in their Charter Rights for a theoretical increase in security. We do not need Bill C-51, if passed this bill will take decades to work its way through the court system and will have a huge negative impact on all our rights.

Honourable colleagues, like these Albertans and thousands of other Canadians, I also have serious concerns with several parts of this bill, which I will outline in my remarks today.

[*Translation*]

First, the proposed definitions in the bill are too vague. These definitions do not tell us what specific acts will be considered a "terrorism offence in general." In fact, the Canadian Bar Association issued a warning about this broad definition of an act of terrorism. Allow me to read an excerpt from the Association's submission:

> If narrowly construed by the courts, the proposal will add nothing to existing offences . . . . If widely construed, it will be subject to significant challenges, at great cost to taxpayers, and may include activity more political in nature than dangerous.

The addition of the definition of what constitutes an "activity that undermines the security of Canada" is also subject to debate. Among other things, interference with critical infrastructure is considered a threat to our country's security. Many people wonder what the words "critical infrastructure" entail and whether this category includes bridges or roads. Although I acknowledge that the government amended this clause of the bill to delete the word lawful from the interpretation clause, the language remains vague and there are still many ambiguities.

[*English*]

The creation of a new security of Canada information sharing act is of major concern. Although he was not invited to testify in the other place, the newly appointed Privacy Commissioner, Daniel Therrien, did submit a very thorough review of this part of Bill C-51 and did appear before the Standing Senate Committee on National Security and Defence during its pre-study of the bill. He made several recommendations to improve Bill C-51 and to establish the necessary safeguards to protect privacy rights.

Regrettably, none of his recommendations was accepted in the other place. In his submission, Mr. Therrien stated:

> . . . the scale of information sharing being proposed is unprecedented, the scope of the new powers conferred by the Act is excessive, particularly as these powers affect ordinary Canadians, and the safeguards protecting against unreasonable loss of privacy are seriously deficient. While the potential to know virtually *everything* about *everyone* may well identify some new threats, the loss of privacy is clearly excessive.

• (1440)

In his written statement, the Privacy Commissioner stated that he believes "the threshold for sharing Canadians' personal information [is] far too low, and broadens the scope of information sharing far too much" and that "Bill C-51 is far too permissive with respect to how shared information is handled."

Indeed, information not limited to information of known terrorism suspects could be shared between 17 government agencies. This could include information on law-abiding Canadians as well, so long as it is, according to the Privacy Commissioner, "relevant to the detection of threats" — not necessary, relevant. There is also no limit on how long these government agencies could keep the information, thus allowing the 17 government agencies to keep the information indefinitely.

Honourable senators, I also have many concerns in regard to the new provisions contained in Part 2 of the bill, the secure air travel act, concerning what is commonly referred to as the "No-Fly" list. Today, a person is added to the "No-Fly" list if the minister has reasonable grounds to suspect that the individual poses a threat to aviation security. Under this bill, anyone who the minister has reasonable grounds to suspect of travelling for terrorism-related purposes will be included on this list.

I am concerned with the proper administration of this list and potential abuse against ordinary citizens. The minister is not required to provide a justification as to why an individual was added to the list or why he or she is not removed from the list.

There is an appeal process for any decision made by the minister. However, the appellants may not be able see all of the evidence against them or how that information was gathered. Although the judge is required to provide both the appellant and the minister with an opportunity to be heard, how does the appellant defend himself or herself with minimal knowledge of the evidence presented to the judge?

In addition, any information, even if gathered illegally, without a warrant, which in a court of law would be inadmissible, such as information received from torture or illegal wiretaps, will be allowed to be presented to the judge as long as, in the judge's opinion, the information is "reliable and appropriate."

The similarities between the provisions of Bill C-51 and those for dealing with security certificates are clear. Both allow for the Attorney General to present evidence to the judge but withhold that same evidence from the accused. However, Bill C-51 directly contradicts a decision made by the Supreme Court of Canada on security certificates in the *Harkat* and *Charkaoui* cases. The court ruled that security certificates are constitutional so long as a third party, known as the special advocate, has access to all of the government's information.

Bill C-51 does not provide for a special advocate, although history has made it clear that a third party is highly needed to ensure a fair assessment of the case.

The measures brought forward by this bill will undoubtedly lead to innocent Canadians being added to the "No-Fly" list without knowing the reasons why. This is definitely a serious flaw in the bill.

[*Translation*]

Bill C-51 amends the Criminal Code of Canada to address terrorist propaganda. It also adds a criminal offence in clause 16 by enacting section 83.221 of the Criminal Code of Canada. Everyone who advocates the commission of terrorism offences in general can be found guilty of an indictable offence, regardless of whether that advocacy results in an attack or not. In addition, any publication, written or recorded, whose distribution constitutes terrorist propaganda, may be seized by means of a warrant authorized by a judge. The seizure of a publication may occur if the court is satisfied, "on a balance of probabilities," that it is "terrorist propaganda." The concept that there must be reasonable grounds to believe that a crime was committed, which appears in section 487 of the Criminal Code for peace officers and allows a court to issue a search warrant, does not seem to apply. In my opinion, if this bill passes, creating an oversight mechanism to prevent potential abuses will be essential.

[*English*]

Furthermore, Bill C-51 lowers the evidentiary threshold needed for a recognizance with conditions and for preventive arrests. Under current law, the Attorney General requires reasonable grounds to believe that a terrorist activity will be carried out and that a recognizance with conditions on a person is necessary to prevent the carrying out of the terrorist activity in order to request a recognizance with conditions on a person.

Under Bill C-51, the Attorney General will need reasonable grounds to believe that a terrorist activity may be carried out — we've gone from "will" to "may" — and that a recognizance with conditions is likely — we have gone from "necessary" to "likely" — to prevent the carrying out of the terrorist activity, thus changing the word "will" for the word "may" and the word "necessary" for the word "likely" to lower the required threshold of proof needed to impose a recognizance with conditions on a person.

The same type of change can be observed for preventive arrests without warrant. Under Bill C-51 a peace officer only needs to suspect on reasonable grounds that the detention of the person in question is likely to prevent a terrorist activity instead of being necessary to prevent a terrorist activity.

This change in language will have serious consequences in the way the law is interpreted. We will likely see more people being detained preventively and under recognizance conditions.

[*Translation*]

Bill C-51 enables judges to require sureties when they order recognizance with conditions. In addition, judges will have the power to ask individuals under recognizance to surrender their

passport or remain in a designated region for the duration of the recognizance. If the judge does not order this type of condition, he will have to explain the reasons for that decision. Clearly, by asking judges to explain themselves if they do not add conditions, the government is seeking to ensure that orders with these two conditions become standard practice, not exceptional measures.

[*English*]

One of the most troubling aspects of this bill is the changes to the Canadian Security Intelligence Service Act. This bill will give greater powers to CSIS and no oversight to ensure that these added powers would be used adequately.

Currently, the role of CSIS is primarily to gather information. Bill C-51 will enable CSIS to actively intervene against terrorist plots, both domestically and internationally. This is a huge and fundamental change to CSIS's mandate. Bill C-51 does put forward boundaries or limits to the intervention, but with a warrant. CSIS can break those very same boundaries not only domestically but also internationally.

Honourable senators, no other democracy in the world would allow a judge, in a secret hearing, to allow for a warrant for their intelligence agencies to violate the Constitution.

The government is trying to reassure Canadians that these added powers will be overseen by the Security Intelligence Review Committee, as they have to submit annual reports which would include the number of warrants issued.

May I have five minutes more, honourable senators?

The Hon. the Speaker: Five more minutes?

Hon. Senators: Agreed.

The Hon. the Speaker: Five more minutes is granted.

Senator Tardif: The government is trying to reassure Canadians that these added powers will be overseen by the Security Intelligence Review Committee as they have to submit annual reports which would include the number of warrants issued to break those boundaries and the number of times warrants were refused. However, the Security Intelligence Review Committee is not adequately equipped to be part of a democratic oversight process over CSIS.

Honourable senators, there needs to be parliamentary oversight over CSIS.

The issue of the lack of parliamentary oversight has been criticized by many, including four former prime ministers and several retired Supreme Court judges.

In a statement published in *The Globe and Mail* and *La Presse*, the former prime ministers stated:

> Protecting human rights and protecting public safety are complementary objectives, but experience has shown that serious human rights abuses can occur in the name of maintaining national security. Given the secrecy around national security activities, abuses can go undetected and without remedy.

• (1450)

It is standard practice internationally, honourable colleagues, for these types of agencies to have some sort of parliamentary or congressional oversight to ensure that the fundamental rights of citizens remain protected. In fact, the UN Committee against Torture has called on Canada to improve oversight of its national security agencies. If Bill C-51 is adopted as it stands, Canada would be the only country of the Five Eyes — including the U.S., New Zealand, Australia and Britain — that would not have legislative oversight of intelligence authorities that have additional powers to deal with terrorism threats.

France is currently debating measures similar to those proposed in Bill C-51, but these measures would include an independent, national commission — *la Commission nationale de contrôle des techniques de renseignement* — that would provide direct oversight to its intelligence agency. On this commission, there would be representation from both members of l'Assemblée Nationale and their Senate.

Why is this government refusing to even consider having parliamentary oversight for CSIS?

[*Translation*]

Dear colleagues, this bill certainly has good intentions. I truly understand the world we live in. However, we also run a great risk of giving up rights and liberties. Once they are gone, it is very difficult to change course and to recover these rights and liberties.

Honourable senators, we have to strike the right balance between the right to security and the right to preserve fundamental liberties, especially individual liberties, for all citizens. According to many experts in this area, this bill does not strike the right balance. For that reason I cannot support Bill C-51.