

19 September 2017

Hon. Ralph Goodale

Minister of Public Safety and Emergency Preparedness
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Hon. Jody Wilson-Raybould

Minister of Justice and Attorney General of Canada
mcu@justice.gc.ca

Hon. Ahmed Hussen

Minister of Immigration, Refugees and Citizenship
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RE: Bill C-59, *An Act respecting national security matters*

Dear Ministers Goodale, Wilson-Raybould, and Hussen:

We, the undersigned civil society organizations and individual experts, are writing to convey a series of preliminary comments and concerns regarding Bill C-59 (*An Act respecting national security matters*).

Bill C-59 is the first comprehensive outcome of your government's sweeping review of Canada's national security framework, intended to fulfill campaign promises to reverse pre-existing human rights harms as well as respond to new threats wrought by the *Anti-terrorism Act, 2015* (formerly known as Bill C-51). Many of the undersigned parties have called for the full repeal of all elements introduced by Bill C-51, and we are united in seeking change that embeds human rights, fundamental freedoms and the equal protection of vulnerable minorities as a foundational underpinning to Canada's national security framework. We are not alone in seeking change. During last year's national security consultations, the overwhelming majority of responses the government received—thousands in all—affirmed the need for this rights-centric approach.

While Bill C-59 contains a number of welcome improvements, it also introduces new problems that cause us grave concern while not doing enough to reverse the legacy of Bill C-51, to address prior human rights shortcomings in the country's national security framework and to safeguard hard-won and cherished rights and freedoms for all.

Bill C-59 introduces some long-awaited reforms to Canada's national security framework. The creation of the National Security and Intelligence Review Agency (NSIRA) and an independent, quasi-judicial Intelligence Commissioner (IC) are particularly welcome improvements. Once properly staffed and resourced, these institutions have the potential to fill a vast gap in Canada's national security oversight, accountability and control framework. Additionally, the introduction of a detailed *Communications Security Establishment Act*, and injection of some proportionality requirements into CSE's framework both constitute important steps towards modernizing Canada's approach to signals intelligence and cybersecurity. However, even these significant reforms remain hampered by secrecy, lack of guarantees for diversity and independence, and impediments to adversarial input under which they will operate.

We are also encouraged by the new protections Bill C-59 offers for the rights of youth involved in terrorism-related offences and by some of the solutions this newly proposed legislation offers for provisions in Bill C-51 that contravened human rights requirements. Reforming the unconstitutional "terrorist speech" offences and re-establishing the necessity standard for preventative detention are both welcome steps toward repairing some of Bill C-51's more problematic aspects.

Yet serious C-51 issues persist. Compared to its predecessor, the newly-renamed *Security of Canada Information Disclosure Act* has been improved by the addition of a proportionality limitation. At the same time, it still permits government departments to disclose far too much, including information about political

activists and information sought to further the questionable security objectives of foreign governments. The more precise framing of the Canadian Security Intelligence Service (CSIS) “disruption powers” may reduce the potential for abuse, but the government has yet to clearly defend the necessity or constitutionality of these powers, and they remain deeply problematic in light of Canada’s historical experience with active intelligence agencies. The government has failed both to reverse the low threshold Bill C-51 set for terrorism peace bonds, and to ensure that due process protections in security certificate proceedings are commensurate with the severe consequences at stake by, at minimum, mandating full access to information by special advocates.

In addition, Bill C-59 fails to address problems which—though in many cases exacerbated by Bill C-51—have long been entrenched features of Canada’s national security framework. The no-fly list and the unacceptable delays in funding its redress mechanism, the terrorist entities list, the preventative detention powers introduced in 2001, the general risk that our security activities will contribute to torture, and the lack of oversight for the Canada Border Services Agency (CBSA) are just some of the areas where C-59 falls far short of meaningful change. Vulnerable communities—who already face the bulk of security agencies’ attention—are disproportionately and unacceptably impacted by such gaps.

Finally, Bill C-59 introduces serious new problems that compound historical threats to civil liberties. In particular, many of the powers granted to CSIS and CSE have profound implications for privacy rights, the non-discriminatory treatment of vulnerable minorities, freedom of expression, democratic participation and public safety. Bill C-59 seeks to legitimize troubling conduct—from mass surveillance to state-sponsored hacking, impersonating journalists, and extensive data-mining—developed by these agencies in secret and without the public approval or extensive debate required by a democratic system. Bill C-59 even expands these activities by adding permissive new exceptions and reversing court decisions that sought to place limits on the excessive activities of these agencies.

We recognize that Bill C-59 is a substantial undertaking that aspires toward balanced policy-making. Unfortunately, it is not the fundamental change needed to undo C-51’s legacy, nor to fully realize and respect that human rights must sit at the core of our national security framework.

We are encouraged to hear that your government, when comprehensively reviewing Bill C-59 in committee, intends to extend the consultative spirit that has so far characterized your approach to national security. We look forward to discussing our concerns and elaborating upon proposals for further reform with you this fall.

The undersigned,

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Amnesty International Canada (English branch)
Amnistie internationale Canada francophone
BC Freedom of Information & Privacy Association (BCFIPA)
British Columbia Government Employees Union (BCGEU)
Canadian Association of University Teachers (CAUT)
Canadian Civil Liberties Association
Canadian Federation of Students (CFS)
Canadian Journalists for Free Expression (CJFE)
Canadian Muslim Lawyers Association (CMLA)
Independent Jewish Voices Canada
International Civil Liberties Monitoring Group
Inter Pares
Lawyers' Rights Watch Canada
LeadNow
Ligue des droits et libertés
MiningWatch Canada

National Council of Canadian Muslims (NCCM)

Open Media

PEN Canada

Privacy and Access Council of Canada - Conseil du Canada de l'Accès et la vie Privée (PACC-CCAP)

Rocky Mountain Civil Liberties Association (RKCLA)

Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC)

Voices / Voix

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