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Director - Directeur

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TO: All employees
FROM: Director
SUBJECT: Bill C-51: Anti-terrorism Act, 2015

Today, the Government of Canada introduced an omnibus bill in the House of Commons that, if enacted, will create a range of new authorities to better enable the national security community to address the threat of terrorism and to safeguard the nation's security interests.

As with previously proposed changes to the CSIS Act, Bill C-51: Anti-terrorism Act, 2015 reiterates the depth of confidence that the government and Canadians have in the professionalism of the Service. Bill C-51 introduces a number of new and significant changes for the Service. If enacted, the suite of amendments and new legislation will directly affect the Service's mandate – positively increasing our authorities, activities and information sharing with partners.

Threat diminishment

When the CSIS Act was written in 1984, much of the national security focus was on lengthy counter-intelligence operations. The Service's role was simply to collect information, analyze intelligence and report the threats. We are unique among our allied partners in that we don't have the legislative ability to mitigate threats – only to observe.

The Anti-terrorism Act, 2015 proposes a series of amendments to the CSIS Act to authorize the Service to act directly to diminish threats. Much like our collection mandate, this new "threat reduction mandate" provides for a range of activities, including lawful measures and those that require a warrant.

Consistent with existing practices, all threat reduction measures will be conducted in a regulated fashion, guided by Ministerial Direction and assessed for risk. Threat diminishment activities will also require close coordination and de-confliction with partners as appropriate.

Duty for third parties to assist

Additional *CSIS Act* amendments will allow the Service to seek assistance orders from the Federal Court, essentially creating a duty for third parties to assist CSIS in the execution of a warrant.

Sharing and protection of information relevant to national security

The omnibus bill introduces the *Security of Canada Information Sharing Act*, a standalone piece of legislation that will create a new explicit authority for federal partners to share information with the Service that is relevant to national security. This piece of legislation has long been a priority of the Service - information collection is at the very heart of what we do - and is expected to overcome the many challenges we currently encounter in navigating the patchwork of existing legal authorities.

In addition, amendments to the *Immigration and Refugee Protection Act* will improve the use and protection of classified information in immigration proceedings and allow the government to appeal public disclosure orders before classified information is released.

Passenger Protect Program enhancements

Bill C-51 creates a firm legislative basis for the Passenger Protect Program, expanding the mandate to include individuals travelling for terrorist purposes. The legislation allows for a range of proportionate security measures, such as denial of boarding or additional physical screening at the airport, as further means to manage the risk of terrorist travellers. Of note, it also creates a new streamlined process for judicial review.

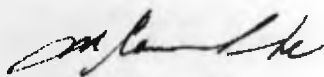
Criminal Code amendments

The *Criminal Code* will be amended to: lower the threshold to apply for terrorism peace bond and recognizance with conditions; make it an offence to promote terrorism; and authorize the courts to remove online terrorist propaganda. The witness protection program will also be expanded beyond the criminal law context, which will help protect Service employees who must testify in other proceedings.

In order for a bill to become a law, it must be debated and studied in both the House of Commons and Senate. The length of this process varies, but with an election set to take place no later than October 2015, the Senate and House of Commons would need to pass the legislation before rising for the Summer recess for the Bill to receive Royal Assent and become law prior to the election.

The Service will continue to work with our colleagues across Government throughout the introduction of the Bill. We are also actively reviewing Ministerial Direction, operational policies and Memoranda of Understanding with domestic partners, as various changes will be required to take advantage of the new authorities.

Bill C-51: Anti-terrorism Act, 2015 marks a substantial addition to the Service's ability to rely on clear legislation and multiple approaches to address the threat of terrorism. Understandably, the increase in authority will lead to a corresponding increase in the level of scrutiny of the Service's activities. However, I am certain that, if the legislation is enacted, the Service will incorporate these new authorities in a responsible manner that is in keeping with the democratic freedoms that are our duty to protect.



Michel Coulombe

Related Products

- [Backgrounder on Amending the Canadian Security Intelligence Service Act to give CSIS the mandate to intervene to disrupt terror plots while they are in the planning stages](#)
- [Questions and Answers on Amending the Canadian Security Intelligence Service Act to give CSIS the mandate to intervene to disrupt terror plots while they are in the planning stages](#)
- [Backgrounder on Criminalizing the Advocacy or Promotion of Terrorism Offences in General](#)
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- [Backgrounder on Strengthening Prevention Powers](#)
- [Backgrounder on the Security of Canada Information Sharing Act](#)
- [Backgrounder on the Canadian Security Intelligence Service Act and Prevention Activity](#)
- [Backgrounder on the Passenger Protect Program](#)
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Questions and Answers

Amending the Canadian Security Intelligence Service Act to give CSIS the mandate to intervene to disrupt terror plots while they are in the planning stages

CSIS' Mandate

Q1. How would the proposed amendments change CSIS' mandate?

A1. CSIS' primary mandate is currently limited to collecting and analyzing information and intelligence on threats to national security as defined in the *CSIS Act*, and advising Government accordingly. It does not have the mandate to intervene to disrupt terror plots while they are still in the planning stages.

The proposed amendments would:

- allow CSIS to intervene to disrupt terror plots from developing while still in the planning stages;
- give CSIS a clear new mandate to intervene to disrupt threats to the security of Canada, at home and abroad, similar to partner agencies around the world;
- where any proposed measures contravene *Charter* rights or would otherwise be contrary to Canadian law, authorize the Federal Court to issue warrants for threat disruption activities, allowing CSIS to lawfully undertake such measures against threats; and
- authorize judges to make assistance orders, requiring that third parties assist in the execution of CSIS warrants, where that assistance is reasonably necessary to give effect to the warrant.

With this new mandate, CSIS would be able to actively intervene to disrupt threats to the security of Canada. This would provide the Government with a flexible new tool to address threats to national security.

Q2. Would the proposed legislation make CSIS a law enforcement agency?

A2. No, CSIS would not become a law enforcement agency. CSIS employees would not be given the powers of peace officers, such as the ability to arrest or imprison individuals.

CSIS would continue to work closely with law enforcement partners, who may be in a position to take enforcement action. When crimes are committed, law enforcement would investigate and make arrests as and when appropriate.

Q3. How will this new mandate for CSIS address the current global threat environment?

- A3. CSIS has personnel in place across Canada and in key regions abroad. It is thus well-placed to act directly and early to prevent threats from materializing, before they have a chance to damage our national security, as well as following arrest and criminal conviction where threats persist. CSIS would have the opportunity to take timely action.

Broadening CSIS' mandate to include threat disruption would help the Government confront threats and protect Canada and its citizens from harm.

With its new mandate, CSIS could intervene to disrupt threats abroad – in cooperation with partners or independently, as required – to address threats before they reached our shores.

Intelligence services in most of Canada's close democratic allies – including Sweden, Norway, Finland, Denmark, France, the United Kingdom, the United States, and Australia – disrupt threats. Our allies can take action both domestically and abroad, and use threat disruption powers routinely to protect national security.

Q5. Why should CSIS be given threat disruption powers now?

- A5. The *CSIS Act* has not changed significantly since 1984, but the threats facing Canada have grown and become more complex. Canada must adapt to the changing global threat environment.

The interconnected phenomena of global terrorism, home grown terrorism and terrorist travel illustrate how the threats to Canada's security have evolved since the passage of the *CSIS Act*. Canada must keep in step with its allies, most of whom have had a mandate to disrupt threats for decades and view it as integral to their operations.

The current threat environment, in which threats such as terrorist travellers are highly connected and mobile, requires a more flexible toolkit. Technology has increased the speed with which plots move from conception to execution, making it essential to respond to threats as soon as they emerge.

CSIS has a unique mandate to investigate a broad range of threats to national security. Its intelligence collection capabilities mean that it is often first to detect a threat to Canada. With a threat disruption mandate, CSIS could act quickly to intervene to disrupt a threat before it could develop.

Q6. What types of threat disruption measures would CSIS take?

- A6. Threat disruption activity consists of a range of techniques designed to impede the ability of those who pose security threats to plan and conduct threat activities and to

develop their networks. These may include disrupting a threat actor's ability to move funds, to travel, to operate securely, to recruit or to develop the means to mount a terrorist attack.

Examples of measures CSIS could take under its new mandate include:

- Employing human sources to provide a cautionary voice or counter-narrative;
- Asking a trusted associate of a prospective terrorist traveller, such as a family member, to intervene to dissuade the person from travelling;
- Making a person aware of CSIS' investigation through interviews with the person, family members or associates in order to dissuade the person from taking certain actions;
- Calling a hostile foreign intelligence operative in for an interview, or informing the contacts of a known hostile foreign intelligence officer that their affiliation is known to authorities;
- Reporting social media accounts for violation of terms of use (hate speech/graphic violence); and
- Conducting overt surveillance to deter them from taking certain actions.

Other examples of measures CSIS could take with judicial authorization would include:

- Intercepting and/or degrading equipment or weapons destined for terrorist or weapons-of-mass-destruction purposes;
- Disabling or rendering inoperable a vehicle to prevent the execution of an attack;
- Disrupting financial transactions of terrorists or proliferators; and
- Disabling or altering personal electronics (computer, phone) used to support threat activities.

Q7. Would threat disruption activity by CSIS have stopped recent terrorist attacks here in Canada?

- A7. With a threat disruption mandate, CSIS could have taken measures to disrupt the threat posed by an individual like Martin Couture-Rouleau or Micahel Zehaf-Bibeau based on early signs of radicalization or attack planning.

The public safety dilemma is that the time between conception and execution of a terror attack can be very short. Impeding the activities of a terrorist network in the preparatory stage could, in some instances, be the most effective and efficient way to protect lives and property.

For example, early indications of radicalization or terrorist activities could be deterred with swift and decisive early actions to disrupt the threat.

Q8. How would threat disruption activity help address travel for terrorist purposes?

- A8. To address terrorist travel, CSIS could employ an array of techniques to frustrate a threat actor's plans or alter their behaviour.

CSIS could ask a trusted associate of a prospective terrorist traveller, such as a family member or moderate imam, to intercede.

Alternatively, and with appropriate judicial authorization, CSIS could use its unique expertise in covert action to impede threat-related communications and planning, cancel travel reservations, delay travel or block terrorist financial transactions.

Q9. How does the proposed approach compare with allied approaches?

- A9. Intelligence services in most of Canada's close democratic allies have the mandate to disrupt threats and have a range of threat disruption powers. Many can take action both domestically and abroad. Our allies use threat disruption powers routinely and view it as essential to protecting national security.

Allied countries whose intelligence agencies disrupt threats include Sweden, Norway, Finland, Denmark, France, the United Kingdom, the United States, and Australia.

The proposed approach would include safeguards, such as judicial authorization, not found in many allies' legislation. Many allies rely on executive authorization, not judicial authorization. Canada's approach would require court warrants when the proposed activity contravene *Charter* rights or would otherwise be contrary to Canadian law, not unlike the existing intelligence collection warrant regime.

Threat Disruption Activity Abroad

Q1. Would CSIS disrupt threats abroad?

- A1. To ensure the safety and security of Canadians, CSIS must be able to address threats to the security of Canada whether they originate at home or abroad.

The threat disruption mandate would apply in Canada and abroad.

CSIS' intelligence collection mandate also extends abroad. CSIS can collect intelligence abroad when necessary to investigate threats to the security of Canada.

Q2. Would a threat disruption mandate turn CSIS into a foreign intelligence agency or paramilitary force?

A2. No. CSIS would only disrupt threats to the security of Canada as already defined in section 2 of the *CSIS Act*. It would remain a security intelligence agency.

CSIS would be strictly prohibited from any acts causing death or bodily harm, in Canada or abroad. It could in no way function as a paramilitary force.

Q3. Does CSIS currently ask foreign partners to disrupt threats on its behalf?

A3. CSIS does not ask foreign partners to disrupt threats to the security of Canada on its behalf.

Q4. What would be the approval mechanism for threat disruption activities abroad?

A4. Any threat disruption activities abroad which contravene *Charter* rights or would otherwise be contrary to Canadian law would require a court warrant. Threat disruption activities abroad that did not contravene *Charter* rights or that were not contrary to Canadian law would be subject to Ministerial direction, and review by the Security Intelligence Review Committee.

Q1.

A1.

Q2. Would CSIS coordinate with other parts of the Government of Canada?

A2. CSIS would coordinate closely with other departments and agencies of the Government of Canada. This would ensure optimal use of available legislative tools and resources across Government, while avoiding duplication of efforts or inadvertent conflicts with the operations of others.

CSIS would coordinate with any and all departments and agencies as the need arose. Key partners would include the Royal Canadian Mounted Police (RCMP),

Communications Security Establishment (CSE), Canada Border Services Agency and the Department of Foreign Affairs, Trade and Development.

Q3. Do the police have powers like those proposed for CSIS?

A3. Law enforcement is granted similar powers through various statutes, but most notably section 25.1 of the *Criminal Code*.

Q4. Would CSIS threat disruption activity interfere with the activities of law enforcement?

A4. CSIS and the RCMP work closely to ensure that their operations do not inadvertently come into conflict. The two organizations would extend and build upon their existing robust cooperation, and would develop any new processes needed to manage threat disruption activity. In this way, the work of CSIS and the RCMP would continue to be complementary.

CSIS would be specifically prohibited in law from interfering with the course of justice.

A5.

Assistance Orders

Q1. Why does CSIS need assistance orders?

A1. At present,

Q2. How would assistance orders help CSIS address threats to Canada?

- A2. The proposed amendments would authorize judges to make assistance orders for CSIS. These orders would require third parties to assist CSIS in carrying out certain measures authorized by its intelligence collection and threat disruption warrants.

Assistance orders would improve CSIS' access to vital information on threats to the security of Canada. Assistance orders would also ensure that CSIS could carry out its threat disruption warrants quickly and effectively.

Law enforcement has long had the power to request assistance orders for certain types of law enforcement warrants. This proposal would simply extend the same power to CSIS in regard to its own warrants.

Resources

Q1. Would CSIS require new resources to disrupt threats?

- A1. Most threat disruption activity would be an extension of ongoing investigations into threats to the security of Canada for which personnel and other resources would already be in place. As such, the costs of threat disruption would be low.

CSIS would manage the costs of threat disruption activity from within its existing appropriations. A threat disruption mandate would not force CSIS to redirect resources currently dedicated to intelligence investigations or to its other duties and functions.

Safeguards

Q1. Would threat disruption activities carried out by CSIS be independently reviewed?

- A1. Any threat disruption activities which contravene *Charter* rights or would otherwise be contrary to Canadian law would require a judicial warrant.

The Security Intelligence Review Committee (SIRC) is authorized to review all CSIS operational activity. This will automatically include any threat disruption activity.

In addition, the Bill proposes new reporting requirements to ensure that Parliament and the Minister of Public Safety and Emergency Preparedness are appropriately informed regarding CSIS' activities under its new mandate.

CSIS, in its annual report to the Minister, would have to include an account of its threat disruption activity. SIRC would also be required annually to examine at least one aspect of CSIS' performance of its threat disruption mandate, and would then summarize its findings in its annual report to the Minister, which is then laid before Parliament. SIRC would also be required to report statistics on CSIS' use of threat disruption warrants.

Q2. What conditions and limits would govern CSIS' mandate to disrupt threats?

- A2. CSIS would only take threat disruption measures when it had reasonable grounds to believe that there was a threat to the security of Canada. CSIS would weigh each threat disruption measure to establish that it was reasonable and proportional in the circumstances.

CSIS could not take, in any circumstance, any measure that caused, intentionally or by negligence, death or bodily harm, violated the sexual integrity of an individual, or wilfully obstructed, perverted or defeated the course of justice.

Threat disruption activity would be subject to direction issued by the Minister, as are all other CSIS activities. Ministerial Direction would build on legislation by issuing more detailed instructions to CSIS. Ministerial Direction is a means of ensuring Ministerial oversight of CSIS' new mandate and of supplementing legislation with additional conditions or limits deemed advisable by the Minister.

Q3. How would the courts authorize threat disruption activity by CSIS?

- A3. CSIS would request case-by-case judicial authorization for any threat disruption activity that contravene *Charter* rights or that would otherwise be contrary to Canadian law.

The court warrant process would be rigorous and set out in legislation.

To issue a warrant, a judge of the Federal Court would have to be convinced that the proposed threat disruption measures were reasonable and proportional in the circumstances.

As with current warrants, the judge could include in the warrant any terms or conditions deemed advisable in the public interest.

Q4. What are the privacy implications of threat disruption activity by CSIS?

- A4. Some CSIS threat disruption activities may contravene *Charter* rights or would otherwise be contrary to Canadian law. All such activities would require a court

warrant, just like CSIS currently obtains a warrant before any intelligence collection that engages privacy rights.

A threat disruption mandate would be exercised in the context of the existing protections governing CSIS' use of private information. CSIS' mandate to collect intelligence on threats to Canada's national security is not changing.

SIRC would continue to have the authority to review CSIS operations with regard to the privacy interests of Canadians. CSIS also engages the Privacy Commissioner on its programs and activities.

Relation to Bill C-44

Q1. How are Bill-C44 (the *Protection of Canada from Terrorists Act*) and this bill (the *Anti-Terrorism Act, 2015*) related?

A1. Bill C-44 makes targeted and limited amendments to the *CSIS Act* that are necessary to address important issues raised by the courts. Bill C-44 does not expand CSIS' mandate or alter its duties and functions.

This Bill, on the other hand, would give CSIS a new mandate to disrupt threats to the security of Canada.

Like Bill C-44, the proposed amendments would make clear CSIS' authority to operate within or outside Canada.

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Director - Directeur

PROTECTED
October 27, 2014

TO: All employees
FROM: Michel Coulombe, Director
SUBJECT: Proposed Changes to the CSIS Act

As many of you know, this week marked an important moment for the Service with the Government's introduction of legislation proposing changes to the *CSIS Act*. These changes are the first significant update to the *CSIS Act* – the legislation that created us – in our 30-year history. That our government is prepared to give us the abilities we need to fulfill our mandate speaks to the confidence that the government and, by extension, Canadians have in us.

The proposed legislation is called the *Protection of Canada from Terrorists Act*. As the title implies, it is largely designed to help us address the evolving threat as manifested in terrorist travel, failing states and other phenomena that have illuminated more vividly than ever before the global nature of terrorism today.

The Act proposes amending the *CSIS Act* to make the following changes:

- confirm that CSIS has the authority to conduct s.12 and s.15 investigations outside Canada;
- confirm that the Federal Court of Canada has the authority to issue warrants authorizing CSIS to conduct intrusive activities outside of Canada notwithstanding the laws of other states;
- create a means to protect the identity of confidential human sources; and
- create a means to protect the identity of CSIS employees who are likely to become engaged in covert activities.

The Service's abilities to effectively investigate targets outside of Canada and to better protect those human sources who are the lifeblood of the Service are increasingly critical requirements of the Service. Likewise, the evolution of the threat environment and our work makes protecting the identity of employees very important.

The process for Parliament to study and hopefully pass the legislation will now unfold. The Service will support that process, and I am optimistic this will ultimately result in a Service better equipped to protect Canada's national security interests.

Michel Coulombe
Director