

19 September 2017

Hon. Ralph Goodale

Minister of Public Safety and Emergency Preparedness
ps.publicsafetyemcu-securitepubliqueucm.sp@canada.ca

Hon. Jody Wilson-Raybould

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

Hon. Ahmed Hussein

Minister of Immigration, Refugees and Citizenship
minister@cic.gc.ca

Dear Ministers Goodale, Wilson-Raybould, and Hussein:

Re: Bill C-59, *An Act respecting national security matters*

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 Organizations and Individuals

Organizations

AMINA Corp	Inter Pares
Amnesty International Canada (English branch)	International Civil Liberties Monitoring Group (ICLMG)
Amnistie internationale Canada francophone	Lawyers' Rights Watch Canada
BC Freedom of Information & Privacy Association (BCFIPA)	LeadNow Independent Jewish Voices Canada
British Columbia Government Employees Union (BCGEU)	Ligue des droits et libertés
Canadian Association of University Teachers (CAUT)	MiningWatch Canada
Canadian Civil Liberties Association (CCLA)	National Council of Canadian Muslims (NCCM)
Canadian Federation of Students (CFS)	Open Media
Canadian Internet Policy and Public Interest Clinic (CIPPIC)	PEN Canada
Canadian Journalists for Free Expression (CJFE)	Privacy and Access Council of Canada - Conseil du Canada de l'Accès et la vie Privée (PACC-CCAP)
Canadian Muslim Lawyers Association (CMLA)	Rocky Mountain Civil Liberties Association (RKCLA)
Independent Jewish Voices Canada	Voices / Voix

Individuals

Colin Bennett, Professor, Department of Political Science, University of Victoria	Fenwick McKelvey, Assistant Professor, Department of Communication Studies, Concordia University
Gabriella Coleman, Wolfe Chair in Scientific and Technological Literacy at McGill University	Víctor M. Muñoz-Fraticelli, Associate Professor of Law and Political Science, McGill University
Dr. Ronald Deibert, Professor of Political Science and Director, Citizen Lab, Munk School of Global Affairs, University of Toronto	Dr. Christopher Parsons, Managing Director of the Telecom Transparency Project & Research Associate at Citizen Lab, Munk School of Global Affairs at the University of Toronto
Professor Evan Fox-Decent, Faculty of Law, McGill University	Sharon Polsky MAPP, Data Protection Advocate & Privacy by Design Ambassador
Lex Gill, Research Fellow, Citizen Lab, Munk School of Global Affairs at the University of Toronto	Bill Robinson, Research Fellow, Citizen Lab, Munk School of Global Affairs at the University of Toronto
Steve Hewitt, Senior Lecturer, University of Birmingham	Valerie Steeves, Full Professor, University of Ottawa
Richard Janda, Associate Professor, McGill University Faculty of Law, Associate Member, McGill School of Environment	James L. Turk, Director, Centre for Free Expression, Ryerson University
Dr. Florian Martin-Bariteau, Assistant Professor of Law and Technology, Director, Centre for Law, Technology and Society, University of Ottawa	Samuel Trosow, Associate Professor, University of Western Ontario, Faculty of Law, Faculty of Information & Media Studies