



LEGISLATIVE SUMMARY



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

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Legislative Summary of Bill C-51
(Legislative Summary)

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1 BACKGROUND

On 30 January 2015, the Minister of Public Safety and Emergency Preparedness introduced 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 (short title: Anti-terrorism Act, 2015), in the House of Commons. On 6 May 2015, the bill passed through the House of Commons with amendments. The Senate referred the bill to the Standing Senate Committee on National Security and Defence, which reported it, without amendment but with observations, on 27 May 2015.¹ The bill received Royal Assent on 18 June 2015.

1.1 ANTI-TERRORISM LEGISLATION

The Canadian anti-terrorism legislative framework includes measures found in three Acts:

- the *Anti-terrorism Act* (2001);
- *An Act to amend the Aeronautics Act* (2001); and
- the *Public Safety Act* (2002).

However, in recent years, other important anti-terrorism measures have been included in a number of Acts or bills, including:

- the *Immigration and Refugee Protection Act*;
- the *Justice for Victims of Terrorism Act*;
- the *Combating Terrorism Act*;
- the *Nuclear Terrorism Act*;
- the *Strengthening Canadian Citizenship Act*;
- the *Protection of Canada from Terrorists Act*;
- the *Prevention of Terrorist Travel Act*; and
- Bill C-51.

1.2 PURPOSE OF BILL C-51

In broad terms, Bill C-51:

- expands information sharing among federal government institutions that have jurisdiction or responsibilities concerning national security threats;
- expands the scope of the existing Passenger Protect Program to include persons who are suspected of posing a threat to transportation security or who may travel by air to commit a terrorism offence;
- lowers the thresholds needed to obtain recognizances to keep the peace relating to terrorism, lengthens the duration of these recognizances and increases the range of conditions that a judge can impose;
- criminalizes knowingly advocating or promoting the commission of terrorism offences in general and enables judges to order the seizure or removal of terrorist propaganda, including materials posted on the Internet;
- increases protection for witnesses, particularly those participating in proceedings involving security information or criminal intelligence information;
- enables the Canadian Security Intelligence Service (CSIS) to conduct threat disruption operations; and
- enhances the ability of the Minister of Public Safety and Emergency Preparedness to prevent disclosure of national security information in security certificate cases.

The summary that follows provides background information and a brief description of the main proposals in Bill C-51. The document addresses the substance of each part of the bill. For ease of reference, the information is presented in the same order as it appears in the bill:

- Part 2.1 deals with information sharing between Government of Canada institutions (Part 1 of the bill).
- Part 2.2 deals with security of air travel, including the “no fly list” (Part 2 of the bill).
- Part 2.3 summarizes the amendments to the *Criminal Code* in relation to terrorism offences (Part 3 of the bill).
- Part 2.4 summarizes the amendments to the *Canadian Security Intelligence Service Act* relating to disruption activities (Part 4 of the bill).
- Part 2.5 summarizes the amendments to the *Immigration and Refugee Protection Act*, including amendments to the security certificate regime (Part 5 of the bill).

2 DESCRIPTION AND ANALYSIS

2.1 ENACTMENT OF THE SECURITY OF CANADA INFORMATION SHARING ACT (PART 1 OF BILL C-51, CLAUSES 2 TO 10 AND SCHEDULES 1 TO 3)

Over the past number of years, concerns relating to intelligence gathering, investigations, and the sharing of information in the national security context have been brought to light in the findings and recommendations arising from three commissions:

- Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police (McDonald Commission);²
- Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (Arar Inquiry);³ and
- Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 (Air India Inquiry).⁴

As noted in the Air India Inquiry report, CSIS usually begins the investigation of threats well before other agencies (such as the police) are involved.⁵ In his report, Justice Major, the Commissioner of the Air India Inquiry, explained how the collection and sharing of information can be employed in assessing threats to the security of Canada:

Terrorism is both a serious security threat and a serious crime. Secret intelligence collected by Canadian and foreign intelligence agencies can warn the Government about terrorist threats and help prevent terrorist acts. Intelligence can also serve as evidence for prosecuting terrorism offences.⁶

As such, the “need for reciprocity and cooperation among states has deep historical antecedents; it is not a new phenomenon.”⁷ Justice McDonald, in the Second Report of the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, explained the importance and need for information sharing and cooperation between Canadian and foreign security intelligence agencies:

Relationships with foreign security and intelligence agencies inevitably involve a sharing or exchange of intelligence: in order to receive information, Canada must be willing to give information to those agencies. The notion of reciprocity is, then, central to successful liaison relationships with foreign agencies.⁸

It may be that a certain degree of flexibility is required in the national security context, as the best response is contingent on the nature of the situation. Justice Major explained the case-by-case analysis required when responding to a terrorist threat:

The delicate balance between openness and secrecy presents challenges at each stage of the response to the threat of terrorism. Each terrorist threat is unique, and will require a response tailored to the specific circumstances of the threat, so it follows that there can be no presumptively “best” response. In some cases, it will clearly be appropriate to engage the police early on. In others, it may better serve the public interest to allow intelligence agencies to continue to monitor and report on the threat or to use other, non-police, agencies to disrupt an evolving plot. The most effective use of intelligence may not even involve the criminal justice system.⁹

The enactment of the *Anti-terrorism Act* in 2001 introduced legislative provisions that

specifically affect the ability of Canadians and those in Canada to access information about themselves or their government, as well as provisions that allow the government to collect personal information about Canadians and those in Canada and share it with others.¹⁰

Justice O'Connor, in the Arar Inquiry, called for an independent arm's-length review body for the information sharing activities of the Royal Canadian Mounted Police (RCMP) (recommendation 10). Justice O'Connor also made a general recommendation that agencies involved in the sharing of information relating to national security should review the recommendations made to the RCMP on information sharing to ensure that their information sharing policies conform, to the appropriate extent, with the approaches recommended for the RCMP (recommendation 11).¹¹

In his policy review, Justice O'Connor recommended the independent review of the national security operations of the Canada Border Services Agency, Citizenship and Immigration Canada, Transport Canada, the Financial Transactions and Reports Analysis Centre of Canada, and Foreign Affairs and International Trade Canada (recommendation 9). Furthermore, he recommended an expanded review jurisdiction for the Security Intelligence Review Committee (SIRC) (recommendation 10) and the creation of statutory gateways among the national security review bodies, in order to provide for the exchange of information, referral of investigations, conduct of joint investigations and coordination in the preparation of reports (recommendation 11).¹²

In addition to the recommendations made by Justice O'Connor, parliamentary committees that have reviewed the *Anti-terrorism Act* have also called for the establishment of a National Security Committee of Parliamentarians,¹³ as well as statutory review provisions.¹⁴

Within this context, Part 1 of Bill C-51 enacts the Security of Canada Information Sharing Act, which seeks to enhance the government's ability to respond to multi-dimensional security threats by enabling multi-institutional information sharing.

2.1.1 PREAMBLE

The Security of Canada Information Sharing Act contains a preamble setting out its legislative intent. While a more substantive statement of its purpose and principles can be found in sections 3 and 4 of the Act, some of the notions enumerated in the preamble include the following:

- Canada is not to be used as a conduit for activities that threaten the security of another state;
- activities that undermine the security of Canada are often carried out in a clandestine, deceptive or hostile manner, are increasingly global, complex and sophisticated, and often emerge and evolve rapidly;

- the protection of Canada and its people often transcends the mandate and capability of any one Government of Canada institution;
- Parliament recognizes that information needs to be shared and that disparate information needs to be collated; information is to be shared in a manner that is consistent with the *Canadian Charter of Rights and Freedoms* and the protection of privacy; and
- Government of Canada institutions are accountable for the effective and responsible sharing of information.

2.1.2 PURPOSE AND PRINCIPLES GOVERNING THE SHARING OF INFORMATION (SECTIONS 3 AND 4 OF THE SECURITY OF CANADA INFORMATION SHARING ACT)

Section 3 of the Security of Canada Information Sharing Act states that the purpose of the legislation is to encourage and facilitate the sharing of information among Government of Canada institutions in an effort to protect Canada against activities that undermine its security.

The principles guiding information sharing found in section 4 include the notions that:

- effective and responsible information sharing protects Canada and Canadians;
- respect for caveats and originator control over shared information is consistent with effective and responsible information sharing;
- entry into information sharing arrangements are appropriate when Government of Canada institutions share information regularly;
- the provision of feedback as to how shared information is used and as to whether it is useful in protecting against activities that undermine the security of Canada facilitates effective and responsible information sharing; and
- only the persons within an institution exercising its jurisdiction or carrying out its responsibilities in respect of activities that undermine the security of Canada should receive information disclosed under the Act.

The statements of purpose and principles found in sections 3 and 4 aim to serve as a source of interpretive guidance to those administering the new Act.

In respect of caveats on, and originator control over, shared information, Justice O'Connor had enunciated a specific recommendation in the Arar Inquiry regarding the importance of written caveats (recommendation 9). He noted:

It is also important that the RCMP control, to the extent it is able, the use to which information provided to other agencies may be put. Written caveats are used by the RCMP and other agencies that share information to try to prevent recipient agencies from further disseminating information or using it for purposes of which they do not approve. While such caveats do not guarantee protection against unacceptable use, common sense tells us that they should significantly reduce the risk.¹⁵

2.1.3 DISCLOSURE OF INFORMATION (SECTIONS 2 AND 5 TO 8 OF THE SECURITY OF CANADA INFORMATION SHARING ACT)

Section 5(1) of the Security of Canada Information Sharing Act permits a Government of Canada institution to disclose information to the head of a recipient Government of Canada institution listed in Schedule 3¹⁶ on its own initiative or on request, if the information is relevant to the recipient institution's jurisdiction or responsibilities under an Act of Parliament or another lawful authority in respect of activities that undermine the security of Canada, including in respect of their detection, identification, analysis, prevention, investigation or disruption.¹⁷

A privacy safeguard in section 5(1) provides that the sharing of information is "subject to any provision of any other Act of Parliament, or of any regulation made under such an Act, that prohibits or restricts the disclosure of information." The interpretive framework provided in section 4 appears to establish a more restrictive approach to information sharing practices than the information sharing authority found in section 5. Further disclosure by a Government of Canada institution as defined by and in accordance with section 5(1) is permitted under section 5(2).

Section 6 deals with the use and further disclosure of information received pursuant to section 5(1), where the use and further disclosure are not governed by the information sharing framework of the Act. In its consideration of Bill C-51, the House of Commons Standing Committee on Public Safety and National Security amended section 6 to specify that the use and further disclosure of information obtained under section 5(1) that is not governed by the information sharing framework of the Act continues to be subject to other existing legal requirements, restrictions and prohibitions.

The non-derogation clause in section 8 stipulates that nothing in the Act limits or affects any authority to disclose information under another Act of Parliament or a provincial statute. Thus, existing sharing authorities continue to apply to the information sharing framework.

Section 2 of the Security of Canada Information Sharing Act defines "activity that undermines the security of Canada" broadly, and in more detail than the existing definition of "threats to the security of Canada" in section 2 of the *Canadian Security Intelligence Service Act* (CSIS Act). The House of Commons Standing Committee on Public Safety and National Security amended this definition by removing the word "lawful" from the exception that originally excluded only "lawful" advocacy, protest, dissent and artistic expression from the definition. As such, all advocacy, protest, dissent and artistic expression are excluded from the definition of activity that undermines the security of Canada.

Table 1 compares terminology used in the CSIS Act and the Security of Canada Information Sharing Act to describe targeted activities.

Table 1 – Comparison of the Terminology Used in the CSIS Act and the Security of Canada Information Sharing Act to Describe the Targeted Activities

Section 2 of the CSIS Act	Section 2 of the Security of Canada Information Sharing Act
<p>"[T]hreats to the security of Canada" means</p> <p>(a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,</p> <p>(b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,</p> <p>(c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and</p> <p>(d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,</p> <p>but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d).</p> <p>[Authors' emphasis]</p>	<p>"[A]ctivity <i>that undermines</i> the security of Canada" means <i>any activity</i>, including any of the following activities, if it undermines the sovereignty, security or territorial integrity of Canada or the lives or the security of the people of Canada:</p> <p>(a) interference with the capability of the Government of Canada in relation to intelligence, defence, border operations, public safety, the administration of justice, diplomatic or consular relations, or the economic or financial stability of Canada;</p> <p>(b) changing or unduly influencing a government in Canada by force or unlawful means;</p> <p>(c) espionage, sabotage or covert foreign-influenced activities;</p> <p>(d) terrorism;</p> <p>(e) proliferation of nuclear, chemical, radiological or biological weapons;</p> <p>(f) interference with critical infrastructure;</p> <p>(g) interference with the global information infrastructure, as defined in section 273.61 of the <i>National Defence Act</i>;</p> <p>(h) an activity that causes serious harm to a person or their property because of that person's association with Canada; and</p> <p>(i) an activity that takes place in Canada and undermines the security of another state.</p> <p>For greater certainty, it does not include advocacy, protest, dissent and artistic expression.</p> <p>[Authors' emphasis]</p>

2.1.4 RELATED AMENDMENTS (CLAUSES 3 TO 8 OF BILL C-51)

Part 1 of Bill C-51 also makes amendments to the *Excise Tax Act*, the *Department of Fisheries and Oceans Act*, the *Customs Act*, the *Income Tax Act*, the *Chemical Weapons Convention Implementation Act* and the *Excise Act, 2001* in order to bring them within the scheme of the new Act, with particular amendments reflecting the specific confidentiality requirements of their information sharing regimes. For instance, the very strict rules governing the sharing of taxpayer information gathered through the administration of the *Income Tax Act* are amended to provide that taxpayer information can be shared, but only where there are reasonable grounds to suspect that the information would be relevant to the investigation of threats (as defined in

section 2 of the CSIS Act) or an investigation of whether certain offences may have been committed (terrorism and money laundering in relation to a terrorism offence under the *Criminal Code*).

2.2 ENACTMENT OF THE SECURE AIR TRAVEL ACT (PART 2 OF BILL C-51, CLAUSES 11 TO 14)

Transport Canada established the Passenger Protect Program and its associated “Specified Persons List” in June 2007, following the enactment in 2004 of the *Public Safety Act, 2002*. That Act resulted in numerous amendments to the *Aeronautics Act*, including the enactment of section 4.81(1), which authorizes the Minister of Transport to require that air carriers disclose information on “any particular person specified by the Minister.” This information, when disclosed, is consolidated into the Specified Persons List.

In accordance with Transport Canada’s *Identity Screening Regulations*,¹⁸ passenger information entered into an airline reservation system is automatically screened against a database containing the names of persons on the Specified Persons List. If a passenger is found on the list, this is flagged and forwarded to the carrier’s security officer for confirmation of a match between the passenger’s name, date of birth and gender, and the information provided on the list.

The Minister of Transport’s authority to bar a specified person from boarding an aircraft derives from section 4.76 of the *Aeronautics Act*, which authorizes him or her to issue directions in emergency situations on the basis of an immediate threat to aviation security or to any aircraft or aerodrome or other aviation facility, or to the safety of the public, passengers or crew members. These emergency directions come into force immediately but cease to be in effect 72 hours later (section 4.771 of the *Aeronautics Act*).

There is a process that allows for a specified person to seek the removal of his or her name from the list. The onus is on the specified person to provide an explanation to the Office of Reconsideration demonstrating that he or she should be taken off the list, rather than the government having to justify the retention of the name on the list. The Office of Reconsideration then makes a recommendation to the Minister of Public Safety and Emergency Preparedness, who decides whether the person’s name should remain on the Specified Persons List. Although judicial review of the minister’s decision may be sought, no appeal rights are provided.

In its 2011–2012 annual report, the Security Intelligence Review Committee identified challenges and deficiencies in the Passenger Protect Program that it found had “significantly undermined the potential of the SPL [Specified Persons List] to be an effective aviation security tool”:

SIRC found that the program’s statutory threshold is difficult to meet in practice. This has led to uncertainty among nominating departments over the criteria for inclusion on the SPL. Under the PPP [Passenger Protect Program], a person on the SPL can be denied boarding if it is believed that he/she poses an “immediate threat” to aviation security, a threshold rooted in the *Aeronautics Act*. The concept of “immediate threat” is open to interpretation.

As a result, nominating departments and agencies have struggled with the nomination process. This lack of clarity has also been the subject of public debate, with civil liberties associations (among others) taking aim at what they see as the program's lack of clear boundaries and legislative mandate.¹⁹

2.2.1 ESTABLISHMENT OF THE LISTED PERSONS LIST AND MINISTERIAL DIRECTIONS (SECTIONS 8 AND 9 OF THE SECURE AIR TRAVEL ACT)

Part 2 of Bill C-51 enacts the Secure Air Travel Act, which replaces the previous regime under which specified persons were listed.

Section 8(1) of that Act establishes a legislative framework authorizing the Minister of Public Safety and Emergency Preparedness to establish a list of persons in respect of whom he or she has reasonable grounds to suspect:

- will engage or attempt to engage in an act that would threaten transportation security; or
- will travel by air for the purpose of committing a specified terrorism offence (participation in the activities of a terrorist group, facilitating terrorist activity or the commission of an offence for a terrorist group) or an indictable offence where the act or omission involved also constitutes a terrorist activity,²⁰ inside or outside of Canada.

It should be noted that section 8(1)(b)(i) of the Secure Air Travel Act specifically lists certain terrorism offences, as opposed to all of the terrorism offences in the *Criminal Code* (Code).

The minister must review the list every 90 days to determine whether the grounds for placing each name on the list remain. However, the conduct of this review does not affect the validity of the list (section 8(2)). The minister may at any time change the information relating to a listed person and amend the list by deleting the name of a person (and all information relating to that person) if the grounds for placing his or her name on the list no longer exist (section 8(3)).

Pursuant to section 9, the minister is given the power to issue any direction that, in his or her opinion, is reasonable and necessary to prevent a listed person from engaging in an act that would threaten transportation security or that would constitute travelling by air to carry out a terrorist activity (as defined in sections 8(1)(a) and 8(1)(b)), including a direction for the denial of transportation to a person or for the screening of a person before they enter a “sterile” (restricted) area of an airport or board an aircraft (section 9(1)).²¹ It would appear that, pursuant to section 9, the minister could also make such a direction for other reasons not listed in the provision. The Secure Air Travel Act does not appear to provide for the notification of persons that they have been added to the list prior to their becoming the subject of a direction.

The Standing Committee on Public Safety and National Security modified the wording in section 9. As originally proposed, the bill provided the minister the power to direct an air carrier to do “anything” that, in his or her opinion, was reasonable and necessary to prevent a listed person from engaging in any act set out in section 8(1),

and as amended, the provision empowers the minister to “direct an air carrier to *take a specific, reasonable and necessary action* to prevent a listed person from engaging in any act set out in subsection 8(1).” [Authors’ emphasis]

2.2.2 THE ADMINISTRATION OF THE ACT AND THE COLLECTION AND SHARING OF INFORMATION (SECTIONS 6, 10 TO 14 AND 18 OF THE SECURE AIR TRAVEL ACT)

The Secure Air Travel Act provides a framework for assistance to the Minister of Public Safety and Emergency Preparedness by the Minister of Transport, the Minister of Citizenship and Immigration, a member of the Royal Canadian Mounted Police or a civilian employee of that police force, the Director or an employee of the Canadian Security Intelligence Service, an officer or employee of the Canada Border Services Agency and any other person or entity prescribed by regulation. Such assistance may be provided by collecting information from, and disclosing information to, the Minister of Public Safety and Emergency Preparedness and each other (section 10).

The Act specifically provides that the Canada Border Services Agency will assist the minister in the administration and enforcement of the Act by (1) disclosing information in respect of a listed person that is collected from air carriers and operators of aviation reservation systems to the Minister of Public Safety and Emergency Preparedness and to any other person or entity assisting in the administration of enforcement of the Act (i.e., the persons referred to in section 10 of the Secure Air Travel Act) and (2) disclosing to air carriers and to operators of aviation reservation systems that the name of a passenger is the same as that of a listed person (section 14).

Moreover, section 13(b) of the Act provides that the Minister of Transport may assist the Minister of Public Safety and Emergency Preparedness by collecting the information held by air carriers and aviation reservation system operators concerning a listed person. (This information is referred to in the Schedule to the *Aeronautics Act*.)²² The Minister of Transport must destroy such information within seven days of its receipt if it is not reasonably required for the purposes of the Act (section 18).

The bill provides that not only air carriers, but also operators of aviation reservation systems, must provide any information referred to in the Schedule to the *Aeronautics Act* that is in their control concerning the persons who are on board or expected to be on board an aircraft for any flight (section 6(2)).²³

The Minister of Transport is authorized to disclose information collected from air carriers and operators of aviation reservation systems to the Minister of Public Safety and Emergency Preparedness and to any other person or entity referred to in section 10 (section 13(d)). In addition, the Minister of Transport is authorized to disclose the list of specified persons to air carriers and to operators of aviation reservation systems, and to disclose to air carriers any direction made by the Minister of Public Safety and Emergency Preparedness under section 9 (sections 13(a) and 13(c)).

The Minister of Public Safety and Emergency Preparedness is given the power to disclose information obtained in the exercise or performance of his or her powers, duties or functions under the Act for the purposes of transportation security or the prevention of travel by air for the purpose of engaging in terrorist activity²⁴ inside or outside of Canada (section 11). Additionally, the Act authorizes the Minister of Public Safety and Emergency Preparedness to enter into a written arrangement, with the government of a foreign state or an international organization, relating to the disclosure of such information, and he or she may disclose the list of specified persons, in whole or in part, only in accordance with the written arrangement (section 12).

2.2.3 ADMINISTRATIVE RECOURSE AND APPEALS (SECTIONS 15 TO 17 OF THE SECURE AIR TRAVEL ACT)

A listed person may apply to the Minister of Public Safety and Emergency Preparedness to have his or her name removed from the list within 60 days after being denied transportation and must be afforded a reasonable opportunity to make representations.²⁵ The minister must then decide whether reasonable grounds to maintain the applicant's name on the list continue to exist and, without delay, give the applicant notice of any decision (but not the reasons for it) made in respect of the application. If the minister does not make a decision in respect of the application within 90 days, or within any further period that is agreed on by the Minister and the applicant, the minister is deemed to have denied it (section 15).

The Secure Air Travel Act affords a listed person the right to appeal to the Federal Court in respect of any ministerial direction (made under section 9 of the Act) and any ministerial decision to add or retain the person's name on the list (made under section 8 or section 15 of the Act). In such appeals, the Federal Court must review whether the decision is reasonable on the basis of the information available. A listed person who has been denied transportation as a result of a direction made under section 9 may commence an appeal only after having been denied the removal of his or her name from the list of specified persons as a result of the administrative recourse provided in section 15 of the Act. There is a 60-day appeal period (section 16).²⁶

The usual rules of evidence do not apply to the appeal proceeding, as the Act allows for the admission of hearsay evidence: "the judge may receive into evidence anything that he or she considers to be reliable and appropriate, even if it is inadmissible in a court of law, and may base a decision on that evidence" (section 16(6)(e)).²⁷

Several provisions relating to the initial appeal proceedings (under section 16), as well as to any further appeals of the original decision, aim to protect national security interests and the safety of persons (sections 16(6) and 17). Specifically:

- The judge must ensure the confidentiality of information and other evidence provided by the minister if its disclosure would be injurious to national security or endanger the safety of any person.

- The judge must, on the request of the minister, hear information or other evidence in the absence of the public and of the appellant and his or her counsel if its disclosure could be injurious to national security or endanger the safety of any person.
- The judge must ensure that the appellant is provided with a summary of information and other evidence that enables him or her to be reasonably informed of the minister's case, but that does not include anything that would be injurious to national security or endanger the safety of any person if disclosed.
- Ultimately, the judge may base a decision on information or other evidence even if a summary of that information or other evidence has not been provided to the appellant.

The appeal procedures in the Secure Air Travel Act are very similar to the pre-2008 *Immigration and Refugee Protection Act* (IRPA) scheme for the review of security certificates and detention orders, which was examined by the Supreme Court of Canada in *Charkaoui v. Canada (Citizenship and Immigration)*. The Court found that the IRPA scheme was in violation of the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice guaranteed under section 7 of the Charter.²⁸

Despite the similarity of the Secure Air Travel Act appeal provisions with those of the former (and unconstitutional) IRPA scheme, the extent of the intrusion on liberty and security resulting from the operation of the Secure Air Travel Act appeal provisions is central to the consideration of whether the new provisions would engage section 7 of the Charter. The section 7 analysis is context specific, the question to be answered being whether “the principles of fundamental justice relevant to the case have been observed in substance, having regard to the context and the seriousness of the violation.”²⁹

2.2.4 PROHIBITIONS (SECTIONS 20 TO 22 OF THE SECURE AIR TRAVEL ACT)

The Secure Air Travel Act states that it is prohibited to disclose the listed persons list itself, except as required by sections 10 to 14 of the Act. To disclose the fact that an individual was or is a listed person is also prohibited, unless this is done for the purposes of carrying out the activities described in sections 10 to 16 of the Act,³⁰ or that it is required for law enforcement purposes or to carry out a lawful activity. Disclosure of the fact that an individual was or is a listed person is also permitted in order to comply with a subpoena, a document issued or an order made by a court, person or body with jurisdiction to compel the production of information, or where the individual discloses that he or she is or was a listed person (section 20).

The prohibition against disclosing any information relating to a listed person or the fact that the individual was or is a listed person is also applicable to air carriers or operators of an aviation reservation system except for the purposes of carrying out their duties under the Act (described in sections 6, 13 and 30).

Air carriers are prohibited from transporting persons to whom a direction for screening has been issued under section 9, unless they have been so screened (section 21(2)).

2.2.5 OFFENCES AND PUNISHMENT (SECTIONS 22 TO 27
OF THE SECURE AIR TRAVEL ACT AND CLAUSE 12 OF BILL C-51)

A person who contravenes section 6 (duty of air carriers), section 20 or section 21 (prohibitions) or a direction issued under section 9, or any provision of any regulation made under the Act is guilty of an offence punishable on summary conviction. The offence of obstructing a person in the exercise of his or her powers, duties or functions under the Act is a hybrid offence punishable by indictment or by summary conviction (section 22).³¹

It should also be noted that a consequential amendment is made to section 7.6(1)(a) of the *Aeronautics Act* allowing for the designation of provisions under the Secure Air Travel Act as contraventions to be dealt with according to the procedures under the *Aeronautics Act* that provide for the assessment of monetary penalties.

An individual who is prosecuted by way of indictment is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than one year, or to both. A corporation that is convicted of an indictable offence is liable to a fine of not more than \$500,000. Imprisonment is precluded where an individual is convicted by way of summary conviction or is in default of payment of the fine in question (section 23).

An unpaid fine is subject to recovery. If and when the conviction is registered, it is of the same force and effect as a judgment obtained by her Majesty in right of Canada against the individual as a debt in the amount of the fine. Furthermore, all costs and charges in relation to the registration of the conviction in the Superior Court of any province are recoverable as though they had been registered as part of the conviction (sections 23(6) and (7)).

The defence of due diligence is applicable to any contravention of the Secure Air Travel Act, its regulations or a direction made under section 9, if the person exercised all due diligence to prevent the contravention (section 24). However, this defence is not applicable to the offence of obstruction under section 22 of the Act.

Section 25 imposes a 12-month limitation period on prosecutions that are dealt with by way of summary of conviction.

2.2.6 INSPECTION POWERS (SECTIONS 28 TO 31
OF THE SECURE AIR TRAVEL ACT)

Section 28 grants the Minister of Transport the power to enter any place (including any aircraft, aviation facility or premises used by the Canadian Air Transport Security Authority) and to seize and retain information. In carrying out these inspection and audit powers, the Minister of Transport may, among other things, use any computer system or data processing system in order to examine its data or data that are available to it (section 28(2)).

Sections 487 to 492 of the *Criminal Code* apply to offences committed or suspected of being committed under the Secure Air Travel Act (section 28(3)). Sections 487 to 492 of the Code include a range of provisions touching on search

warrants, DNA sampling and the sex offender registry. The inclusion of offences *suspected* to have been committed in the threshold for the application of Code search and seizure provisions arguably provides a lower threshold than certain other *Criminal Code* requirements for “reasonable grounds to believe” that an offence has been committed. The fact that section 28(3) is within the authorities governing the Minister of Transport’s powers of inspection may indicate a legislative intent to limit the applicable Code provisions to those that are consistent with inspection activity.

Under section 31, the Minister of Transport may, if he or she is of the opinion that an air carrier has failed to comply with a provision under the Act or its regulations or with any direction made under section 9, order any person to do (or to refrain from doing) anything that is reasonable and necessary to do (or to refrain from doing) in order to ensure compliance. In addition, the Minister of Transport may (among other things) make orders in respect of the movement of aircraft or persons and the diversion of aircraft to alternative landing sites.

2.2.7 REGULATION MAKING POWERS (SECTION 32 OF THE SECURE AIR TRAVEL ACT)

Section 32 of the Secure Air Travel Act empowers the Governor in Council (GIC) to make regulations “prescribing anything that may be prescribed under the Act,” including the verification of air passenger identity, the use and protection of directions (issued under section 9) and the use and protection of information provided by the Minister of Public Safety and Emergency Preparedness, the Minister of Transport, or the Canada Border Services Agency to air carriers and to operators of aviation reservation systems. The GIC may also make regulations prohibiting an air carrier from transporting a passenger in circumstances in which the passenger does not resemble his or her identification papers.

2.3 AMENDMENTS TO THE *CRIMINAL CODE* (PART 3 OF BILL C-51, CLAUSES 15 TO 39)

The *Anti-terrorism Act*,³² which came into force in three stages between 2001 and 2003, created a number of terrorism offences under Part II.1 of the *Criminal Code*, such as financing of terrorism (sections 83.02 and 83.03); participating in any activity of a terrorist group (e.g., recruiting or providing a skill) (section 83.18); facilitating a terrorist activity (section 83.19); committing an offence for a terrorist group (section 83.2); instructing a person to carry out an activity for a terrorist group (section 83.21); and harbouring a person who is likely to carry out terrorist activity (section 83.23).

The *Anti-terrorism Act* also made a number of changes to hate crime legislation. Among other things, it added section 320.1 to the hate propaganda provisions of the Code, allowing for the seizure, deletion and destruction of hate propaganda found and stored on, and available from, a computer system.

Nevertheless, terrorism threats are constantly evolving. Early signs of radicalization are not easily detectable, and there may be limited or no warning signs of the execution of an attack, making it difficult to gather evidence that would support prosecutions.³³ Part 3 of Bill C-51 amends the *Criminal Code* to provide police with enhanced enforcement powers that aim to respond to the current threat of terrorism.

2.3.1 GLORIFICATION OF TERRORISM (CLAUSE 16)

Other countries, including Australia, France and the United Kingdom, have introduced legislation addressing the glorification of terrorism.³⁴ Similarly, Bill C-51 creates a new offence related to the glorification of terrorism: advocating or promoting the commission of terrorism offences. New section 83.221 of the Code requires a *mens rea*³⁵ of knowledge or of recklessness and makes liable to imprisonment for a term of not more than five years any person who, by communicating statements,³⁶ knowingly advocates or promotes the commission of terrorism offences *in general*³⁷ while knowing that any of those offences will be committed, or while being reckless as to whether any of those offences may be committed, as a result of such communication.

New section 83.221 of the Code provides for an exception, possibly included in the bill to take into account the freedom of expression guaranteed under section 2(b) of the Charter. As a result, a person who advocates or promotes the commission of the glorification of terrorism will not be found guilty under the new offence in section 83.221.

According to then Minister of Justice, Peter MacKay:

The proposed offence will fill a gap in the criminal law by making it a crime for a person to knowingly promote or advocate the commission of terrorism offences in general, while knowing that any of those offences will be committed or being reckless as to whether or not any of the terrorism offences may be committed as a result of such a communication.

The current criminal law only applies to counselling of the commission of a specific terrorism offence, such as telling people to go bomb a train station. However, the current law would not necessarily apply to somebody who actively encourages others to commit terrorism offences more generally.³⁸

2.3.1.1 SEIZURE AND IMPORTATION OF TERRORIST PROPAGANDA (CLAUSES 15, 16 AND 31)

Bill C-51 provides for obtaining warrants for the seizure and forfeiture of publications (new section 83.222 of the Code) that are “terrorist propaganda”³⁹ and for ordering the deletion of all electronic materials that are terrorist propaganda from a computer system (new section 83.223 of the Code). However, this order is limited to computer systems within the court’s jurisdiction.

As is currently the case for child pornography, voyeuristic recordings, the advertisement of sexual services and hate propaganda, no criminal charges are necessary to obtain such warrants of seizure. However, the peace officer must have reasonable grounds to believe that the publication or the electronic material is terrorist propaganda. As in the seizure of hate propaganda, prior consent from the attorney general is required.

Creating a new offence for the glorification of terrorism entails a number of consequential amendments, such as a prohibition against importing terrorist propaganda into Canada (clause 31 of the bill).⁴⁰ The other consequential amendments are listed below.

2.3.1.2 ELECTRONIC SURVEILLANCE (CLAUSE 19)

Section 183 of the Code lists the offences for which law enforcement agencies may, generally under the authority of a warrant, conduct electronic surveillance activities. The bill amends section 183 of the *Criminal Code* by adding to the list of offences the new glorification of terrorism offence.

2.3.1.3 DNA SAMPLING (CLAUSE 23)

Section 487.04 of the Code sets out a list of offences for which, upon conviction, samples of bodily substances may be taken from the offender for the purpose of forensic DNA analysis. Clause 23 amends section 487.04 such that a person convicted of the new glorification of terrorism offence will be subject to DNA sampling, unless the offender establishes that such sampling would have a grossly disproportionate impact on his or her privacy and security.

2.3.1.4 RESIDENCE REQUIREMENT AND DETENTION (CLAUSE 30)

If a detainee presents an undue risk of committing the new glorification of terrorism offence before the expiration of his or her sentence according to law, the National Parole Board may, under clause 30 of the bill, order that the detainee remain in a community-based residential facility or a psychiatric facility during statutory release.

Furthermore, if certain conditions are met, the National Parole Board may decide to detain an offender found guilty of glorifying terrorism for the entirety of his or her sentence (that is, to refuse statutory release).⁴¹

2.3.2 RECOGNIZANCE WITH CONDITIONS/PREVENTIVE ARREST (CLAUSES 17, 18, 26, 27 AND 32)

Section 83.3 of the Code provides that a peace officer may preventively arrest a person or may ask the court to impose a recognizance with conditions on a person when the officer suspects on reasonable grounds that doing so is necessary to prevent the carrying out of a terrorist activity. This provision was first added to the Code when the *Anti-terrorism Act* came into force in December 2001, but, because of a sunset clause, it ceased to have effect in 2007.

In 2013, the *Combating Terrorism Act* re-established section 83.3 in the Code, but it is again subject to a sunset clause. This section will cease to have effect on the 15th sitting day after 15 July 2018, unless it is extended by a resolution passed by both houses of Parliament (section 83.32 of the Code).

Clause 17 of the bill lowers the burden of proof required to obtain a recognizance with conditions (new section 83.3(2) of the Code)⁴² and to arrest a person without a warrant if the person is likely to commit a terrorist activity (new section 83.3(4) of the Code). Table 2 shows the amendments made by the bill to sections 83.3(2) and 83.3(4) of the Code.

Table 2 – Burden of Proof in the *Criminal Code* for a Recognizance with Conditions and Preventive Arrest, Before and After Bill C-51 Amendments

Before Bill C-51 Amendments	After Bill C-51 Amendments
<p>Section 83.3(2)</p> <p>Subject to subsection (1), a peace officer may lay an information before a provincial court judge if the peace officer</p> <p>(a) believes on reasonable grounds that a terrorist activity <i>will</i> be carried out; and</p> <p>(b) suspects on reasonable grounds that the imposition of a recognizance with conditions on a person, or the arrest of a person, is <i>necessary</i> to prevent the carrying out of the terrorist activity.</p> <p>Section 83.3(4)</p> <p>Despite subsections (2) and (3), a peace officer may arrest a person without a warrant and cause the person to be detained in custody, in order to bring them before a provincial court judge in accordance with subsection (6), if</p> <p>(a) either</p> <p>(i) the grounds for laying an information referred to in paragraphs (2)(a) and (b) exist but, by reason of exigent circumstances, it would be impracticable to lay an information under subsection (2), or</p> <p>(ii) an information has been laid under subsection (2) and a summons has been issued; and</p> <p>(b) the peace officer suspects on reasonable grounds that the detention of the person in custody is <i>necessary</i> in order to prevent a terrorist activity.</p> <p>[Authors' emphasis]</p>	<p>Section 83.3(2)</p> <p>Subject to subsection (1), a peace officer may lay an information before a provincial court judge if the peace officer</p> <p>(a) believes on reasonable grounds that a terrorist activity <i>may</i> be carried out; and</p> <p>(b) suspects on reasonable grounds that the imposition of a recognizance with conditions on a person, or the arrest of a person, is <i>likely</i> to prevent the carrying out of the terrorist activity.</p> <p>Section 83.3(4)</p> <p>Despite subsections (2) and (3), a peace officer may arrest a person without a warrant and cause the person to be detained in custody, in order to bring them before a provincial court judge in accordance with subsection (6), if</p> <p>(a) either</p> <p>(i) the grounds for laying an information referred to in paragraphs (2)(a) and (b) exist but, by reason of exigent circumstances, it would be impracticable to lay an information under subsection (2), or</p> <p>(ii) an information has been laid under subsection (2) and a summons has been issued; and</p> <p>(b) the peace officer suspects on reasonable grounds that the detention of the person in custody is <i>likely</i> to prevent a terrorist activity.</p> <p>[Authors' emphasis]</p>

Clause 17 of the bill also increases from three days to seven days the maximum length of time the arrested person may be detained (new sections 83.3(7.1) and 83.3(7.2) of the Code).⁴³ However, the person maintains the right to counsel,⁴⁴ and the bill introduces a new condition to authorize an adjournment to a maximum of seven days: the peace officer must satisfy the judge that “the investigation in relation to which the person is detained is being conducted diligently and expeditiously.” In addition, the attorney general and the Minister of Public Safety and Emergency Preparedness must include information in their annual reports on the application of section 83.3 of the Code about the number of adjournments granted after three days of detention (clause 18 of the bill).

Clauses 17(4) and 17(6) of the bill authorize the judge to impose sureties and to include in the recognizance additional conditions: the deposit of any passport or other travel document and the obligation to remain in a specified geographic area. If the judge does not add either of these two conditions to a recognizance, the judge must include in the record a statement of the reasons for not adding it.

The maximum duration for a recognizance is extended from one year to two years if the person was convicted previously of a terrorism offence (clause 17(5) of the bill). The maximum term of imprisonment for committing a breach of recognizance is also increased from two years to four years (for an indictable offence) and from 6 months to 18 months (for a summary conviction) (clause 27 of the bill).

**2.3.3 RECOGNIZANCES TO KEEP THE PEACE
(CLAUSES 25, 26 AND 27)**

Sureties to keep the peace, provided for in section 810 and following of the Code, are fairly similar to the recognizances with conditions outlined in section 83.3. They are all intended to prevent the commission of a future offence, which is why many of the amendments made by Bill C-51 to section 83.3 (preventive arrest and recognizance with conditions to prevent a terrorist attack) also apply to the surety to keep the peace (also known as a peace bond) in the case of fear that a terrorism offence will be committed (fear of terrorism offence);⁴⁵ this surety is provided for in new section 810.011 of the Code.

Like the changes made to a recognizance with conditions, clause 25 of the bill lowers the burden of proof for obtaining a surety to keep the peace (fear of terrorism offence). Table 3 presents new section 810.011(1) of the Code and Table 4 compares it with a recognizance with conditions.

Table 3 – Burden of Proof in the *Criminal Code*
for the Surety to Keep the Peace (Fear of Terrorism Offence),
Before and After Bill C-51 Amendments

Before Bill C-51 Amendments	After Bill C-51 Amendments
<p>Section 810.01(1)</p> <p>A person who fears on reasonable grounds that another person <i>will</i> commit an offence under section 423.1, a criminal organization offence or a terrorism offence may, with the consent of the Attorney General, lay an information before a provincial court judge. [Authors' emphasis]</p>	<p>Section 810.011(1)</p> <p>A person who fears on reasonable grounds that another person <i>may</i> commit a terrorism offence may, with the Attorney General's consent, lay an information before a provincial court judge. [Authors' emphasis]</p>

Table 4 – Comparison of Bill C-51 Provisions on a Recognizance with Conditions (Section 83.3) with Its Provisions on a Surety to Keep the Peace (Fear of Terrorism Offence) (Section 810.011)

	Recognizance with Conditions (Section 83.3 of the Code) [Clause 17 of the Bill]	Surety to Keep the Peace (Fear of Terrorism Offence) (Section 810.011 of the Code) [Clause 25 of the Bill]
Grounds	<ul style="list-style-type: none"> • Belief on reasonable grounds that a terrorist activity may be carried out • Suspicion on reasonable grounds that the imposition of a recognizance with conditions on a person is likely to prevent the carrying out of the terrorist activity 	<ul style="list-style-type: none"> • Fear on reasonable grounds that a person may commit a terrorism offence
With prior consent from the attorney general	Yes	Yes
Arrest without warrant and prolonged detention before being brought before a judge	Yes (maximum of 7 days' detention)	No
Recognizance may be with sureties	Yes	Yes
Deposit of passport	Yes	Yes
Obligation to remain in a designated geographic area	Yes	Yes
Any reasonable conditions	Yes	Yes
Requirement to participate in a treatment program	Yes, if reasonable	Yes
Requirement to wear an electronic monitoring device	Yes, if reasonable	Yes
Requirement to return to and remain at place of residence at specified times	Yes, if reasonable	Yes
Requirement to abstain from the consumption of drugs or alcohol	Yes, if reasonable	Yes
Requirement to provide a bodily substance for the purpose of analysis ^a	Yes, if reasonable	Yes
Prohibition against possessing a firearm or prohibited weapon	Yes	Yes
Maximum length of the recognizance	1 year (2 years if prior conviction for terrorism)	1 year (5 years if prior conviction for terrorism)

	Recognizance with Conditions (Section 83.3 of the Code) [Clause 17 of the Bill]	Surety to Keep the Peace (Fear of Terrorism Offence) (Section 810.011 of the Code) [Clause 25 of the Bill]
Term of imprisonment in case of breach	<ul style="list-style-type: none"> • No minimum • Maximum: 4 years (indictable offence) or 18 months (summary conviction) 	<ul style="list-style-type: none"> • No minimum • Maximum: 4 years (indictable offence) or 18 months (summary conviction)

Note: a. This condition was established in Bill C-30 ([Response to the Supreme Court of Canada Decision in R. v. Shoker Act](#), S.C. 2011, c. 7), which came into force on 12 March 2015.

2.3.4 SECURITY OF WITNESSES (CLAUSES 15, 21, 22 AND 24)

2.3.4.1 PROTECTION MEASURES FOR WITNESSES (CLAUSES 21 AND 22)

Section 486 of the Code establishes a general rule to the effect that criminal court proceedings shall be held in open court. The judge may order the exclusion of the public if doing so is in the interest of public morals, the maintenance of order or the proper administration of justice.

Clause 21 of the bill provides that the judge may order the exclusion of the public on his or her own motion, but also on application of the prosecutor or a witness. A witness may also be authorized to testify behind a screen or other device that would allow the witness not to be seen by members of the public. The application by the prosecutor or witness may be made during or before the proceedings.

Sections 486.1 to 486.5 of the Code provide other special measures to protect witnesses, especially vulnerable people such as children. For example, the judge could order that a support person be permitted to be close to the witness; that the accused not personally cross-examine the witness; or that the publication of any information that could identify the witness not be published.

Clause 22 of the bill adds that the judge, on his or her own motion, may make any other order to protect the security of a witness. For example, a judge may allow a witness to testify anonymously.⁴⁶ Before making an order, the judge must take into account the factors listed in new section 486.7(3) of the Code, including the right to a fair and public hearing and society’s interest in encouraging the reporting of offences.

2.3.4.2 INTIMIDATION OF A JUSTICE SYSTEM PARTICIPANT (CLAUSES 15 AND 24)

Section 423.1 of the Code outlines an offence for intimidating “a justice system participant.” The definition of this term is given in section 2 of the Code, and includes witnesses, jurors and Crown prosecutors who play a role in the administration of criminal justice.

Bill C-51 expands the scope of the offence outlined in section 423.1 by adding to the definition of “justice system participant” any person who plays a role in proceedings involving sensitive or confidential information about criminal intelligence, international

relations, defence or national security (clause 15(2) of the bill). For example, this would include witnesses involved in a security certificate case under the *Immigration and Refugee Protection Act*.⁴⁷

At the same time, the bill expands the scope of the sureties to keep the peace outlined in section 810.01 of the Code. A judge may order that the defendant enter into a recognizance with conditions if the judge fears on reasonable grounds that the defendant will intimidate any person who plays a role in proceedings involving sensitive or confidential information (clause 24 of the bill).

2.4 AMENDMENTS TO THE *CANADIAN SECURITY INTELLIGENCE SERVICE ACT* (PART 4 OF BILL C-51, CLAUSES 40 TO 51)

Before Bill C-51, the *Canadian Security Intelligence Service Act* (CSIS Act) had not been substantively amended since CSIS was created in 1984.⁴⁸ In 2015, the *Protection of Canada from Terrorists Act*⁴⁹ granted general protection to CSIS's human sources, clarified the scope of CSIS's mandate and confirmed the jurisdiction of the Federal Court to issue warrants that have effect outside Canada.

Part 4 of Bill C-51 amends section 12 of the CSIS Act to allow the Service to undertake measures, both within Canada and outside, to reduce activities that constitute a threat to the security of Canada. These measures are referred to in this document as “disruption activities or operations.”

2.4.1 DISRUPTION ACTIVITIES OR OPERATIONS (CLAUSES 40 AND 42)

The duties and functions of CSIS are outlined in sections 12 to 17 of the *Canadian Security Intelligence Service Act*:

- to collect information on “threats to the security of Canada” and report to and advise the Government of Canada in relation thereto (section 12);⁵⁰
- to investigate to provide security assessments to Government of Canada departments (sections 13 and 15);
- to investigate to provide advice and information to a minister about security issues or criminal activities that are relevant to the exercise of any power or the performance of any duty or function by that minister under the *Citizenship Act* or the *Immigration and Refugee Protection Act* (sections 14 and 15);
- to assist the Minister of National Defence or the Minister of Foreign Affairs, within Canada, in the collection of information or intelligence relating to the capabilities, intentions or activities of a foreign state or a person who is not a Canadian citizen or a permanent resident (section 16); and
- to enter, with the approval of the Minister of Public Safety and Emergency Preparedness, into an arrangement or otherwise cooperate with any department of the federal government or provincial governments or any police force in a province, or the government of a foreign state or an international organization of states (section 17).

Inside Canada, CSIS has, incidentally at least, been engaging in disruption activities for many years.⁵¹ In this context, the Security Intelligence Review Committee has expressed some concern that CSIS disruption activities may:

- overlap with police disruption operations;
- be unlawful, noting that although section 12 of the CSIS Act does not prohibit disruption, such activities are not a natural extension of the Service's mandate to collect and analyze intelligence and report to and advise the Government of Canada;
- lack sufficient ministerial oversight.⁵²

It is also apparent that CSIS has engaged in disruption activities outside of Canada. For example, in a statement prepared for the House of Commons Standing Committee on Public Safety and National Security in 2010, the then director of CSIS, Richard Fadden, indicated that the Service's overseas investigations as part of Canada's mission to Afghanistan "led to the disruption and dismantling of insurgent networks planning imminent IED [improvised explosive device] and car bomb attacks against military and civilian targets."⁵³

According to the Government of Canada backgrounder on Bill C-51, CSIS did not have "a legal mandate to take action concerning threats."⁵⁴ As a result, clause 42 of Bill C-51 provides that, if there are reasonable grounds to believe⁵⁵ that a particular activity constitutes "a threat to the security of Canada," CSIS may "take measures, within or outside Canada, to *reduce* the threat" [authors' emphasis], for example by dissuading a person from participating in a terrorist activity (new section 12.1(1) of the CSIS Act).

The bill does not provide a definition of "measures to reduce the threat." However, these measures are somewhat limited. Before undertaking disruption activities or operations, CSIS must consider the reasonable availability of other means to reduce the threat. In all circumstances, these measures must be "reasonable and proportional to the circumstances"⁵⁶ and they cannot obstruct the course of justice, cause bodily harm or violate the sexual integrity of an individual (new sections 12.1(2) and 12.2(1) of the CSIS Act).

During its study of the bill, the House of Commons Standing Committee on Public Safety and National Security amended section 12.1 of the CSIS Act to specify that the power of CSIS to take measures to reduce a threat to security does not confer any law enforcement power on CSIS (new section 12.1(4)).

The Director of CSIS must include in the periodic reports to the Minister of Public Safety and Emergency Preparedness the number of disruption activities or operations undertaken in respect of each type of threat to the security of Canada, that is, espionage, sabotage, foreign influenced activities, terrorism and internal subversion (clause 40 of the bill; new section 6(5)(a) of the CSIS Act).

**2.4.2 WARRANT FOR DISRUPTION ACTIVITIES
(CLAUSES 40 TO 49)**

If CSIS wishes to use intrusive measures, such as installing listening devices or intercepting a target’s online communications as part of an investigation, section 21 of the CSIS Act requires it to obtain a warrant from the Federal Court.

Bill C-51 adds a warrant to authorize the carrying out of certain disruption activities and operations. If measures to reduce a threat to the security of Canada would contravene a right or freedom guaranteed by the Charter or would be contrary to other Canadian law, CSIS must obtain a warrant from the Federal Court (new section 12.1(3) of the CSIS Act).⁵⁷

Table 5 compares the new disruption activities and operations warrant provisions with the previous warrant provisions in section 21 of the CSIS Act, which authorizes intrusive measures such as the installation of electronic surveillance devices.

Table 5 – Comparison of CSIS Act Provisions, Before and After Bill C-51 Amendments, Regarding Warrants to Reduce Threats

	Before Bill C-51 Amendments (Section 21 and Following of the CSIS Act)	After Bill C-51 Amendments (Section 21.1 and Following of the CSIS Act)
Grounds to seek a warrant	<ul style="list-style-type: none"> A belief on reasonable grounds that a warrant under this section is required to enable the Service to investigate a threat to the security of Canada or to perform its duties and functions under section 16 (assisting the Minister of National Defence or the Minister of Foreign Affairs within Canada) (section 21(1)) 	<ul style="list-style-type: none"> A belief on reasonable grounds that a warrant under this section is required to enable the Service to take measures, within or outside Canada, to reduce a threat to the security of Canada (new section 21.1(1)) A need to obtain a warrant if those measures will contravene a right or freedom guaranteed by the Charter or that is contrary to other Canadian law (new section 12.1(3))
Application for warrant must be submitted by the CSIS Director to the Federal Court (after consultation with the Deputy Minister)	Yes	Yes
Prior consent is required from the Minister of Public Safety and Emergency Preparedness	Yes	Yes
Required content of the application for a warrant	<ul style="list-style-type: none"> That other investigative procedures have been tried and have failed, or why it appears that such procedures are unlikely to succeed (section 21(2)(b)) 	<ul style="list-style-type: none"> The reasonableness and proportionality, in the circumstances, of the proposed measures, having regard to the nature of the threat, the nature of the measures and the reasonable availability of other means to reduce the threat (new section 21.1(2)(c))

LEGISLATIVE SUMMARY OF BILL C-51

	Before Bill C-51 Amendments (Section 21 and Following of the CSIS Act)	After Bill C-51 Amendments (Section 21.1 and Following of the CSIS Act)
Hearing of applications for a warrant	In private	In private
Authorizations that may be included in the warrant	<ul style="list-style-type: none"> To intercept any communication or obtain any information To enter any place or open or obtain access to any thing To search for, remove or return, or examine, take extracts from or make copies of or record in any other manner the information, record, document or thing To install, maintain or remove any thing (section 21(3)) 	<ul style="list-style-type: none"> To take the measures specified To enter any place or open or obtain access to any thing To search for, remove or return, or examine, take extracts from or make copies of or record in any other manner the information, record, document or thing To install, maintain or remove any thing To do any other thing that is reasonably necessary to take those measures (new section 21.1(3))
Warrant has effect outside of Canada	Yes ^a	Yes ("Without regard to any other law, including that of any foreign state") (new section 21.1(4))
Maximum duration of the warrant	<ul style="list-style-type: none"> 60 days for internal subversion cases One year in any other case (such as espionage or terrorism) (section 21(5)) 	<ul style="list-style-type: none"> 60 days for internal subversion cases 120 days in any other case (such as espionage or terrorism) (new section 21.1(6))
Renewal of warrant	No limit to the number of times a warrant may be renewed (section 22)	Maximum two renewals (new section 22.1(2))
Assistance order	No	Yes
Application of Part VI of the <i>Criminal Code</i> (Invasion of Privacy) ^b	No	No
Content of periodic reports from the CSIS Director to the Minister of Public Safety and Emergency Preparedness	<ul style="list-style-type: none"> CSIS operational activities (section 6(4))^c 	<ul style="list-style-type: none"> Number of warrants for measures to reduce threats that were issued and number of applications that were refused For each threat, a general description of the measures taken under the warrants (new section 6(5))

Notes: a. [Bill C-44, An Act to amend the Canadian Security Intelligence Service Act and other Acts](#), confirmed that the Federal Court may issue warrants that have effect outside of Canada.

- b. Part VI of the Code addresses all electronic surveillance activities carried out by the police. It includes two provisions on accountability: the publication of an annual report by the Minister of Public Safety and Emergency Preparedness with statistics on electronic surveillance (s. 195) and written notifications sent to the person who was the object of the interception of communications (s. 196).
- c. The Security Intelligence Review Committee occasionally presents reports on the number of warrants issued.

2.4.3 SECURITY INTELLIGENCE REVIEW COMMITTEE (CLAUSES 50 AND 51)

The Security Intelligence Review Committee is responsible for carrying out an independent review of past CSIS operations. In the future, it will also have to review *at least one aspect* of the Service's performance in taking measures to reduce threats to the security of Canada (clause 50 of the bill).

Currently, the SIRC must present an annual report on its review activities to the Minister of Public Safety and Emergency Preparedness. Its report is tabled before both houses of Parliament. Clause 51 of the bill adds that this report will have to specify the number of warrants to reduce security threats that were issued and refused.

2.5 AMENDMENTS TO THE *IMMIGRATION AND REFUGEE PROTECTION ACT* (PART 5 OF BILL C-51, CLAUSES 52 TO 62)

Part 5 of Bill C-51 amends the procedures governing the non-disclosure of national security, sensitive and confidential information in appeals, judicial reviews and security certificate cases found in Divisions 8 and 9 of Part 1 of the *Immigration and Refugee Protection Act* (IRPA).

A security certificate⁵⁸ is one method used to remove from Canada a non-citizen who is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality and who has been determined by the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness to present a high level of risk to national security. This method may be used when the risk determination is based on secret evidence that the government considers cannot be disclosed to the person subject to removal. A person named in a security certificate is often detained pending the determination of whether the certificate is reasonable. A judge is required to commence a review of the reasons for detaining a permanent resident within 48 hours of the person being taken into custody. The continued detention is reviewed, at a minimum, at six-month intervals until the judge determines whether the certificate is reasonable.

A judge is required to examine the evidence to determine whether the certificate is reasonable. The review is administrative in nature and does not provide the full array of rights and procedural safeguards included in criminal law proceedings. The judge will appoint a special advocate whose role is to act on behalf of the named person in the security certificate proceedings. Since 2008, special advocates review the information against the person named in the security certificate and can challenge the ministers' claim that the secret evidence may not be disclosed to the person, the relevance, reliability and sufficiency of the secret evidence, as well as the weight to be given to it.

The information is then imparted by way of summary to the subject of the security certificate in order to allow him or her to be reasonably informed of the case against him or her. After the special advocate receives the secret evidence, he or she may not communicate with anyone about the proceeding, including with the person named in the certificate, without first obtaining the judge's authorization to do so.

2.5.1 DIVISION 9 OF THE *IMMIGRATION AND REFUGEE PROTECTION ACT*:
SECURITY CERTIFICATES AND THE PROTECTION OF INFORMATION

Clause 54 of Bill C-51 modifies the scope of the information that must be disclosed to the judge. It is no longer the entire file, but only the evidence that is relevant to the particular ground of inadmissibility stated in the certificate that must be disclosed (new section 77(2) of IRPA).

The appeal procedure for the ministers in matters requiring disclosure of information during security certificate proceedings is facilitated by the amendment to IRPA in clause 55 of the bill. At any stage of a security certificate proceeding, the ministers may now appeal a decision requiring the disclosure of information without the Federal Court judge having to certify that a serious question of general importance is involved (new section 79.1 of IRPA). The effect of the ministers' appeal suspends the Federal Court judge's determination as to whether the certificate is reasonable, as well as the execution of the decision in question. Moreover, the right of the Minister of Public Safety and Emergency Preparedness to appeal decisions requiring the disclosure of information during proceedings related to a detention review of the subject of a security certificate has also been facilitated by the new provision (clause 56, new section 82.31 of IRPA).

The provisions that relate to the protection of information are modified to allow the Federal Court judge to exempt the ministers from having to provide the special advocate with information that does not enable the individual to be reasonably informed of the case made by the ministers, when the certificate is not based on this information and this information is not filed with the Federal Court (clause 57(1), new section 83(1)(c.1)). If considerations of fairness and natural justice require it, the judge may ask the special advocate to make submissions regarding the exemption of such information (clause 57(1), new section 83(1)(c.2)). A judge may not base his or her decision as to whether the security certificate is reasonable on exempted information (clause 57(2), new section 83(1)(k)). Section 84 of IRPA, related to the protection of information during appeals, is modified to apply to the new appeal procedures introduced by Bill C-51 (clause 58).

The section of IRPA dealing with the obligation of the ministers to provide information to special advocates is modified to reflect the new scheme under which the special advocate may no longer have access to the entire file. There are now two types of information: the information filed with the Federal Court that is relevant (whether or not it constitutes information upon which the certificate is based) – which must be provided to the special advocate – and information that may be exempted from this requirement by a Federal Court judge upon the ministers' request (clause 59, new section 85.4; clause 57, new section 83(1)(c.1)).

Bill C-51 modifies IRPA in order to provide that the ministers may, without having to apply for leave to do so, seek the judicial review of any decision made during proceedings such as an admissibility hearing, a detention review or an appeal before the Immigration Appeal Division at the Immigration and Refugee Board of Canada requiring the disclosure of information or other evidence if, in the ministers' opinion, the disclosure would be injurious to national security or endanger the safety of any person (new section 86.1 of IRPA). Similarly, the ministers may appeal any decision made in the course of a judicial review requiring the disclosure of such information or evidence to the Federal Court of Appeal without it being necessary for the judge to certify that a serious question of general importance is involved (clause 60, new section 87.01 of IRPA).

Existing provisions allowing the ministers to apply for the non-disclosure of information and evidence during a judicial review are made applicable to any appeal of the judicial review proceedings (amended section 87 of IRPA).

2.5.2 DIVISION 8 OF THE *IMMIGRATION AND REFUGEE PROTECTION ACT*: JUDICIAL REVIEW

The *Immigration and Refugee Protection Act* provides specific rules in relation to judicial review by the Federal Court of a decision, a determination, an order made, a measure taken or a question raised in proceedings under the Act. Bill C-51 amends certain provisions relating to the non-disclosure of information described in section 76 of IRPA, namely, "security or criminal intelligence information and information obtained in confidence from a source in Canada, the government of a foreign state, an international organization of states or an institution of such a government or international organization."

The bill amends section 72 of IRPA to allow both the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness to refer an application for the non-disclosure of information to the Federal Court for judicial review without a prior application for leave requiring the applicant to demonstrate that there is a serious issue (clause 52).

The procedures for the ministers in matters relating to non-disclosure are further simplified by an amendment to section 74 of IRPA allowing them to appeal a decision by the Federal Court to the Federal Court of Appeal at any time during a proceeding, without the need for a certification by the Federal Court judge that a serious question of general importance is involved (clause 53).

NOTES

1. [Observations to the Fourteenth Report of the Standing Senate Committee on National Security and Defence \(Bill C-51\)](#), 27 May 2015.
2. Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, Second Report, [Freedom and Security under the Law](#), Ottawa, 1981. [McDonald Commission]

3. Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, [Report of the Events Relating to Maher Arar: Analysis and Recommendations](#), Ottawa, 2006. [Arar Inquiry]
4. Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, [Air India Flight 182, A Canadian Tragedy, Volume One – The Overview](#), Ottawa, 2010. [Air India Inquiry]
5. Ibid., p. 150.
6. Ibid., p. 147.
7. Stanley A. Cohen, *Privacy, Crime and Terror – Legal Rights and Security in a Time of Peril*, LexisNexis Butterworths, 2005.
8. McDonald Commission (1981), p. 632.
9. Air India Inquiry (2010), p. 147.
10. Special Senate Committee on the *Anti-terrorism Act*, [Fundamental Justice in Extraordinary Times: Main Report of the Special Senate Committee on the Anti-terrorism Act](#), February 2007. [Special Senate Committee]
11. Arar Inquiry (2006).
12. Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, [A New Review Mechanism for the RCMP's National Security Activities](#), Ottawa, 2006.
13. House of Commons, Standing Committee on Public Safety and National Security, [Review of the Findings and Recommendations Arising from the Iacobucci and O'Connor Inquiries](#), 2nd Session, 40th Parliament, June 2009, recommendation 5. See also recommendations 58, 59 and 60 of the Final Report of the House of Commons Standing Committee on Public Safety and National Security, [Rights, Limits, Security: A Comprehensive Review of the Anti-terrorism Act and Related Issues](#), 1st Session, 39th Parliament, March 2007; recommendation 16 of the Interim Report of the Special Senate Committee on Anti-terrorism, [Security, Freedom and the Complex Terrorist Threat: Positive Steps Ahead](#), 3rd Session, 40th Parliament, March 2011.
14. Recommendation 57 of the Final Report of the House of Commons Standing Committee on Public Safety and National Security, [Rights, Limits, Security: A Comprehensive Review of the Anti-terrorism Act and Related Issues](#), 1st Session, 39th Parliament, March 2007. See also Special Senate Committee (2007), recommendation 40.
15. Arar Inquiry (2006), p. 23.
16. Schedule 3 specifically targets the following agencies: the Canada Border Services Agency; Canada Revenue Agency; Canadian Armed Forces; Canadian Food Inspection Agency; Canadian Nuclear Safety Commission; Canadian Security Intelligence Service; Communications Security Establishment; Department of Citizenship and Immigration; Department of Finance; Department of Foreign Affairs, Trade and Development; Department of Health; Department of National Defence; Department of Public Safety and Emergency Preparedness; Department of Transport; Financial Transactions and Reports Analysis Centre of Canada; Public Health Agency of Canada; Royal Canadian Mounted Police.
17. The term “disruption” is not defined in the Act.
18. [Identity Screening Regulations](#), SOR/2007-82.
19. Security Intelligence Review Committee [SIRC], *SIRC Annual Report 2011–2012: Meeting the Challenge*, “[Section 2: Summaries of SIRC Reviews and Complaints](#),” 2012.
20. As defined in ss. 2 and 83.01(1) of the *Criminal Code*.
21. The term “sterile area” is defined in s. 3 of the Secure Air Travel Act.

22. This includes 34 items, including the passenger's name, date of birth, citizenship, gender, the names of the travel agency and travel agent that made the person's travel arrangements, whether the person's ticket for the flight is a one-way ticket, the city or country in which the travel begins, the itinerary cities, the person's destination, the pre-selected seat assignment, the tag numbers for the person's baggage, the person's address, the address of the travel agency that made the travel arrangements and the manner in which the person's ticket was paid for.
23. *Aeronautics Act*, "[Schedule](#)."
24. As defined in s. 8(1)(b).
25. The Minister may extend the 60-day period in exceptional circumstances (s. 15(2)).
26. This period may be extended within any further time that a judge may allow (s. 16(3)). It should also be noted that a transitional provision found in s. 33 of the Act states that s. 16 applies to any decision in respect of a listed person made before the day on which the Act comes into force by the Minister (as defined under s. 4.81(1)(b) of the *Aeronautics Act*) following the transfer of the Minister of Transport's duties and functions to the Minister of Public Safety and Emergency Preparedness by order in council.
27. The Supreme Court of Canada found that a similar provision did not violate the right to a fundamentally fair process guaranteed in s. 7 of the *Canadian Charter of Rights and Freedoms* in [Canada \(Citizenship and Immigration\) v. Harkat](#), [2014] 2 S.C.R. 33, paras. 74–76.
28. [Charkaoui v. Canada \(Citizenship and Immigration\)](#), [2007] 1 S.C.R. 350.
29. *Ibid.*, para. 22.
30. Sections 10 to 16 of the Act concern the collection and disclosure of information, administrative recourses and appeal provisions.
31. Many offences can be prosecuted either by summary conviction or indictment. The Crown chooses the mode of prosecution. Such offences are referred to as "hybrid," "Crown option" or "dual procedure" offences. Hybrid offences are considered indictable until the Crown makes its election.
- Under the *Criminal Code*, summary conviction offences are considered to be less serious than indictable offences. The main differences between them are that the procedure for summary conviction offences is more straightforward and the penalties are generally less severe.
32. *Anti-terrorism Act*, S.C. 2001, c. 41.
33. Standing Senate Committee on National Security and Defence, [Evidence](#), 2nd Session, 41st Parliament, 27 October 2014 (Bob Paulson, Commissioner, Royal Canadian Mounted Police).
34. See division 80.2C of the [Criminal Code Act 1995](#) of Australia; article 421-2-5 of the [Code pénal](#) of France; and s. 1 of the [Terrorism Act 2006](#) of the United Kingdom. See also Article 5 ("Public provocation to commit a terrorist offence") of the [Council of Europe Convention on the Prevention of Terrorism](#). For further information, see Craig Forcese and Kent Roach, [Terrorist Babble and the Limits of the Law: Assessing a Prospective Canadian Terrorism Glorification Offence](#), Canadian Network for Research on Terrorism, Security, and Society [TSAS] Working Paper no. 15-02, Canadian Network for Research on Terrorism, Security and Society, 2015.
35. That is, the criminal *intent* to commit the offence. The element of criminal *conduct* is called *actus reus*.

36. Bill C-51 refers to the definitions of “communicating” and “statements” given in s. 319(7) of the Code, which deals with hate propaganda. Section 319(7) provides very broad definitions of these terms, referring to all forms of communicating and all forms of statements – for example, all statements made using a computer or smartphone. Courts looking to interpret new s. 83.221 will potentially refer to case law on hate propaganda (see, for example, [R. v. Keegstra](#), [1990] 3 S.C.R. 697). Note that new s. 83.221 does not include defences to the offence of advocating or promoting the commission of terrorism offences, as s. 319(3) of the Code does for the wilful promotion of hatred.
37. This means it is not necessary to advocate or promote the commission of a specific terrorism offence. The definition of “terrorism offence” is outlined in s. 2 of the Code, and “terrorist activity” is defined in s. 83.01(1), while offences specific to terrorism are defined in ss. 83.02–83.04, 83.12 and 83.18–83.231 of the Code.
38. Senate, Standing Committee on National Security and Defence, [Evidence](#), 2nd Session, 41st Parliament, 30 March 2015.
39. New s. 83.222(8) of the Code defines “terrorist propaganda” to mean “any writing, sign, visible representation or audio recording that advocates or promotes the commission of terrorism offences in general – other than an offence under s. 83.221(1) [glorification of terrorism] – or counsels the commission of a terrorism offence.”
40. See s. 136 of the [Customs Tariff](#), S.C. 1997, c. 36.
41. See ss. 130(3)(a) and 133(4.1) of the [Corrections and Conditional Release Act](#), S.C. 1992, c. 20.
42. The recognizance will be ordered by a provincial court judge. Clause 32 of the bill states that a youth justice court has jurisdiction to make orders against a young person for such a recognizance.
43. For other offences, the delay in appearing before a justice is generally 24 hours (s. 503 of the Code).
44. *Canadian Charter of Rights and Freedoms*, s. 10(b).
45. For example, hearings may be conducted by video conference (clause 26 of the bill).
46. See the provisions regarding testimonial aids in the [Victims Bill of Rights Act](#), in particular with respect to new s. 486.31 of the *Criminal Code*.
47. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27, see s. 76 ff.
48. Until very recently, the *Canadian Security Intelligence Service Act* also contained the legislative authority for the Office of the CSIS Inspector General. Appointed by the Governor in Council, the Inspector General was responsible for overseeing the operational activities of CSIS for the minister of Public Safety in order to support the minister in his or her role as minister responsible for CSIS. The Office was abolished in June 2012 by the *Jobs, Growth and Long-term Prosperity Act*.
49. [Protection of Canada from Terrorists Act](#), S.C. 2015, c. 9.
50. An amendment made by [Bill C-44, An Act to amend the Canadian Security Intelligence Service Act and other Acts](#) enables CSIS to carry out its investigations into threats to the security of Canada both within and outside Canada.
51. Security Intelligence Review Committee, [Annual Report 2009–2010: Time for reflection – Taking the measure of security intelligence](#), Ottawa, 30 September 2010, p. 16.
52. *Ibid.*, p. 16.

53. It should be noted that the above-cited quote was read into the record by Phil McColeman, as Mr. Fadden did not read this part of his opening statement to the House of Commons Standing Committee on Public Safety and National Security. See House of Commons, Standing Committee on Public Safety and National Security, [Evidence](#) (McColeman, reading part of Fadden's statement into the record), 3rd Session, 40th Parliament, 11 May 2010.
54. Government of Canada, "[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*, 30 January 2015.
55. This requirement is more onerous than the current conditions for CSIS to obtain authorization to collect security intelligence under s. 12 of the CSIS Act, that is, "reasonable grounds [to suspect]." In [R. v. Chehil](#), the Supreme Court of Canada addressed the issue of reasonable grounds: "[W]hile reasonable grounds to suspect and reasonable and probable grounds to believe are similar in that they both must be grounded in objective facts, reasonable suspicion is a lower standard, as it engages the reasonable possibility, rather than probability, of crime" ([2013] 3 S.C.R. 220, para. 27).
56. See also new s. 22.2 of the CSIS Act.
57. Before the Standing Committee on Public Safety and National Security, Michael Duffy, Senior General Counsel, National Security Law, Department of Justice, stated:
- What it turns on is section 1 of the Charter, which provides that the rights referred to in the Charter are guaranteed only to the extent that they are not restricted by reasonable limits prescribed by law in a free and democratic society.
- The judge may determine that a particular right referred to in the Charter, be it mobility or something else, is violated, and that's in a sense the preliminary stage. The point that goes to the judge is, is that violation a reasonable one because the restriction is prescribed by law in a free and democratic society? That's the judicial inquiry that has to take place on the warrant process. ... A right may appear to be infringed or be infringed and that's fine. The judge has to determine whether that infringement is a reasonable one or whether it's a reasonable restriction. (House of Commons Standing Committee on Public Safety and National Security, [Evidence](#), 2nd Session, 41st Parliament, 31 March 2015.)
- John Davies, Director General, National Security Policy, National and Cyber Security Branch (Public Safety Canada), added: "Essentially it's a ruling in advance." (Senate, Standing Committee on National Security and Defence, [Evidence](#), 2nd Session, 41st Parliament, 26 May 2015.)
58. For information on security certificate provisions, see Public Safety Canada, [Security certificates](#). Security certificate provisions were established in 1978 in immigration law. In total, 27 security certificates have been issued since 1991. A total of 19 certificates have resulted in removals from Canada. The two most recent removals were in December 2006, when a man using the alias Paul William Hampel was removed to Russia on the grounds that he had engaged in espionage, and in March 2005, when Ernst Zündel was deported to Germany in relation to political violence (right-wing extremism).