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FROM A MANDATE FOR CHANGE TO A PLAN TO GOVERN

Defending Freedoms by Effectively Countering Terrorism

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INTRODUCTION

National security can be a bit of an abstract concept for most Canadians. It is not like education or health, which touch our lives on a daily basis. Our typical encounter with national security is limited to airport screening when we travel for business or with our families. And yet, at the same time we are bombarded with media accounts of acts of violent extremism, occurring around the world with increasing frequency and tragic results. If it seems like mass terrorist attacks are increasing exponentially, it is because they are. So how should Canadians understand the available counter-terrorism policy options? Some perspective is required.

The new government has begun to articulate its plan to address the threat posed by ISIS in particular and violent extremism in general at home and abroad. Two weeks ago it recalibrated the mission against ISIS by ceasing the air strikes and expanding Canada's training role and humanitarian assistance in the

region. The government will soon release its plan for domestic security, including "new legislation that strengthens accountability with respect to national security and better balances collective security with rights and freedoms" (Trudeau).

The minister of public safety and emergency preparedness's mandate letter from the prime minister provides some insight into the government's key national security objectives. His letter states:

> . . . your overarching goal will be to lead our government's work in ensuring that we are keeping Canadians safe. This goal must be pursued while protecting the rights of Canadians, and with an appreciation that threats to public security arise from many sources, including natural disasters, inadequate regulations, crime, terrorism, weather-related emergencies, and public health emergencies. I will expect you to work with your colleagues to ensure a close link between defence policy, foreign policy, and national security. (Trudeau)

It is hard to argue with these ends. The question, of course, is what the best means are to achieve them. The purpose of this essay is to set out key considerations with respect to both the means and ends of Canada's counter-terrorism policy.

As we will discuss, a major factor in the development of national security policy ought to be the tension between careful, deliberate pre-emptive steps to prevent terrorism and the risk of sweeping emergency measures in the aftermath of a terrorist incident such as we have witnessed in Paris where civil liberties have now been suspended for four months. Deferring pre-emptive steps now may lead to much more draconian ones later.

The goal should be to detect, deter, and disrupt individuals whose behaviour puts them at disproportionate risk of moving from thought to violent action. This can be done sensibly, accountably, and with minimal intrusion on personal freedoms. And most importantly: it can better protect us and make Canadian democracy, civil liberties, privacy, and due process more resilient – even after an incident. The government ought to remember that freedom and order are not a simplistic zero-sum game. They are complementary and fundamental parts of modern democratic life.

The Macdonald-Laurier Institute's mission is to help to inform sound public policy at the federal level. Our goal in this essay series is to help the new government best achieve its top policy objectives.

This ninth essay in the series will help Canadians better understand the rationale and evolution of Canada's approach to counter-terrorism with a particular focus on the goals and key provisions of Bill C-51. The goal is to inform policy thinking as the new government prepares to introduce new legislation in the Parliamentary session.

We will then survey Canadian and international evidence to gauge the best policy options for an effective approach to counter-terrorism. The ultimate goal, as the minister's mandate letter rightly puts it, is "keeping Canadians safe."

To this end, the essay recommends that (1) the government should recognize the threat that violent extremism poses to our security and democracy; (2) that it should take sensible action to improve oversight and accountability of counter-terrorism activity and operations; (3) any changes to CSIS's disruption authorities should not erode their utility; (4) that it should facilitate effective local engagement and outreach as part of its counter-terrorism strategy; and (5) the government should consider options to better promote basic Canadian values and principles.

THE THREAT ENVIRONMENT

The post-9-11 security environment has been marked by the rise of violent extremism. The pernicious effects of ideological extremism emanating from Salafi Islamist militants in the Middle East has become a major national security concern in recent years. Jihadi-inspired terrorism is likely to continue to destabilize fragile states with the objective of establishing a base of operations from which to attack and threaten not only neighbouring countries but the rest of the civilized world. The growth of and support for the so-called Islamic State in Iraq and Syria drives this point home.

The threat of violent extremism transcends any one country or region. High-profile terrorist attacks from Paris and Beirut through Jakarta are bleak reminders that no country is immune. Canada is not exempt, as evidenced by the killing of Warrant Officer Patrice Vincent in Saint-Jean-sur-Richelieu and Cpl. Nathan Cirillo in the Parliament Hill attack in October 2014.

It can be expected that the threat posed by violent and extremist Islamist ideology and groups will persist for the foreseeable future. Data compiled by the US National Consortium for the Study of Terrorism and Responses to Terrorism shows the extent to which terrorism presents a clear and growing threat. Between 1970 and 2013, an average of four mass-fatality terrorist attacks (defined as attacks resulting in the deaths of more than 100 people, excluding perpetrators) occurred worldwide. In 2014, 26 such attacks took place (see

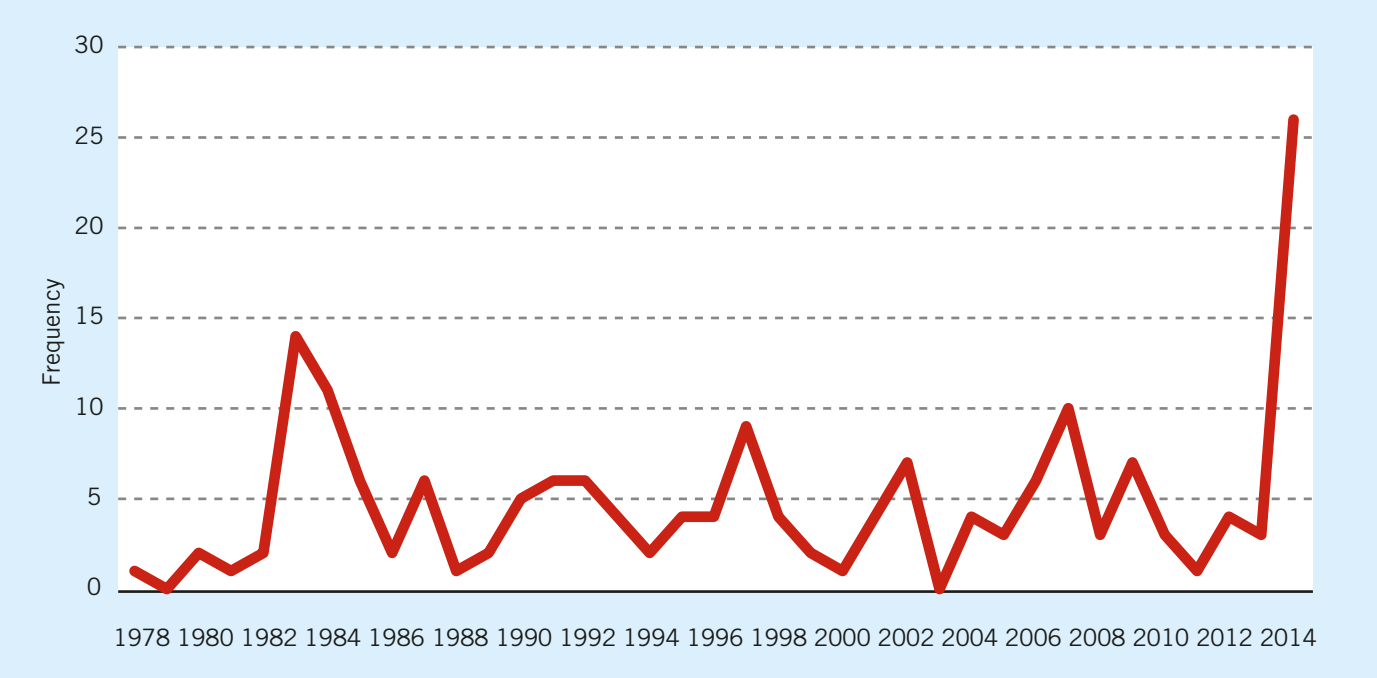

chart 1) – a statistically significant 5.5 times above the average (Wilner 2015).

Chart 1: Number of mass terrorist attacks per year, 1978–2014

Sources: Wilner 2015, figure 1, page 2; data from the Global Terrorism Database.

The rise of so-called "homegrown" terrorism that is inspired rather than directed by foreign entities – or a hybrid of the two, such as when veteran foreign fighters return to plan and orchestrate an attack – is the newest manifestation of this threat. It is different from more conventional transnational, international (state-sponsored), and domestic terrorism in critical aspects that policy-makers and security services are struggling

to comprehend and confront.

The initial al-Qaeda model was centralized and directed. The 9-11 terrorists were trained, financed, and aided by a central command. Their ambitions were large-scale, mass casualty attacks in Western countries. Western security organizations and policies thereafter came to focus on targeting this type of hierarchical threat and, with few exceptions, have been generally effective at limiting its risk. This is the direct result of policy responses under both Liberal and Conservative governments here in Canada to adapt intelligence and security efforts.

The new model – demonstrated in the attacks orchestrated in Canada and most recently in San Bernardino, California – is different and more difficult to track, monitor, and avert. These so-called "lone wolf" terrorists are amateurs, decentralized, and inspired by jihadi ideas but not dispatched by an organization. This phenomenon has given rise to a security environment in which the number of potential targets vastly exceeds resources and capacities of security intelligence agencies. Typical security and intelligence methods such as tracking Internet and telephone communications with foreign contacts or international money transfers may not bring at-risk individuals to the attention of security agencies. How to detect risks and pre-empt them is a major policy conundrum for Western governments – especially since, as the new government rightly notes, it must be done in a way that conforms to our constitutional and legal rights.

What is to be done about the few who are bent on abusing democratic freedoms to attack the democratic edifice and way of life? Throw money at security agencies? Suspend civil liberties in the aftermath of an attack? To committed democrats with a preference for limiting state intervention in people's lives, neither of these options is appealing.

BALANCING COLLECTIVE SECURITY AND INDIVIDUAL FREEDOM

The new government frequently talks about striking a balance between security and freedom in confronting the threat of violent extremism. It is a formulation that the prime minister and members of the Cabinet use to describe the government's vision for national security policy. As the Liberal Party (2015) platform puts it: "Canadians know that in Canada, we can both improve our security while protecting our rights and freedoms."

This is a legitimate concern and the government is right to ensure that the spectre of terrorism does not cause us to redefine Canada's conception of individual rights. The basic premise of democracy is to impose limits on state action that violates individual rights and freedoms. This is a fundamental principle.

But democrats also accept state intervention insofar as it is justifiable to advance freedom, equality, and justice. Consider, for instance, progressive taxation, the redistributive welfare state, and criminal justice sanctions. All of these policies limit the freedom of the individual in exchange for some form of collective goal. This tension is never fully reconciled. It is an evolving question that is at the root of democratic politics.

To posit freedom and security as a zero-sum dichotomy is a straw man of an argument. These are complementary principles – we cannot have one without the other. The government's formulation of a balance between security and freedom can thus present a false choice. The experience elsewhere such as France shows that the absence of careful, deliberate pre-emptive policies can lead to a breakdown of public trust and ultimately to much more significant curtailments of individual freedoms in the aftermath of a terrorist attack. The focus therefore ought to be on smart policies that protect our collective security and preclude the prospect of

sweeping emergency measures down-the-road.

Another linked, yet distinct question is how to think about democracy's enabling role in creating the conditions for domestic terrorism without violating basic principles that underpin the system. Democracies may take reasonable precautions to protect themselves, their values and institutions, and their citizens from violent extremists who seek to bring down the democratic edifice itself.

Generally Canada has mostly been spared the turmoil of political violence, especially of the kind determined to overthrow the established democratic order. Democratic allies such as the United Kingdom, Germany, and Spain have long had to confront the threat of terrorism. As a result, their courts and societies have developed greater sensitivity towards the protection of public safety and democratic institutions. These jurisdictions have reasoned, dispassionate policy debates about the reasonableness of different steps that democracies ought to take to protect against fifth columnists determined to use violent means to achieve political ends. As MLI Managing Director Brian Lee Crowley (2013) writes:

> If we are serious about the free society, if we do not want our list of freedoms to become our suicide note, we must police the frontier between thought and act without fear and without apology. To repeat, it is not illegal to be a radical Islamist or an anti-Muslim bigot. What is illegal and must not be tolerated is to step over the line between belief and action, including speech counselling illegal acts. Not to police the line is to prove ourselves unworthy of the heritage of freedom we enjoy and for which so much has been sacrificed.

The key is to ensure that the state has the requisite toolkit to act pre-emptively — as circumstances warrant to preserve our democratic freedoms and way of life — along with the lives of innocent civilians.

EVOLUTION OF NATIONAL SECURITY POLICY POST-9-11

Successive Canadian governments have responded to the threat of violent extremism with incremental changes to the national security toolkit. The shock of the 9-11 attacks in the United States was an impetus for governments to re-evaluate their national security policies and enact new regimes, including the reorganization of national security agencies in the case of Canada and the US. Subsequent policy and operational changes have been enacted as the result of changing needs.

Pre-9-11 the *Criminal Code* had been amended periodically as required to implement UN counter-terrorism directives adopted since 1970. Terrorism was addressed using the various normal processes of investigation, prosecution, and conviction under the *Criminal Code*. It reflected a reactive stance that saw terrorism as largely a local police matter.

The attacks on 9-11 caused the then-Liberal government to devise a new counter-terrorism strategy. The goal was to prevent terrorist attacks rather than prosecute the perpetuators after an incident had occurred. This shift in legal and operational thinking was in part a reflection of a United Nations Security Council resolution (1373) which, inter alia, required all UN members to prevent and suppress the financing of terrorist acts, criminalize the wilful provision or collection of funds to be used to finance terrorist acts, suppress the recruitment of terrorist groups, and deny safe haven to those who finance, plan, support, or commit terrorist acts. Western governments were awakened from their collective slumber and realized that they were ill-equipped to deal with the new terrorist threat.

The *Anti-Terrorism Act, 2001* amended a number of statutes and enacted a new one.[1] The new law created a legislative framework for combatting terrorist financing and established new penal definitions of "terrorist activity" and "terrorist group" (including establishing a legal process for the government to maintain a list

of entities that are engaged in terrorism, facilitating it, or acting on behalf of such an entity). The legislative provisions were rooted primarily in the principle of the prevention of terrorist acts. New offences such as "knowingly instructing the carrying out of any activity for a terrorist group" or "knowingly facilitating a terrorist group" were designed to face criminal sanction irrespective of whether an attack is ultimately carried out or if the accused knows the specific nature of the terrorist activity being contemplated (Bill C-36).

The *Act* also contained new powers for law enforcement and national security agencies to identify, disable, and prosecute prospective terrorists. The legislation provided for "investigative hearings" under the *Criminal Code* to facilitate the gathering of information for the purpose of investigating a terrorist offence and gave law enforcement new powers of surveillance, arrest, and detention to disrupt potential attacks. Most controversially it created the legal authority for the policy to arrest and detain individuals without charges for up to 72 hours if they were suspected of planning a terrorist attack.

Overall, the measures contained in the *Anti-Terrorism Act* were designed to enhance the government's abilities to effectively deter, disable, identify, prosecute, convict, and punish terrorists with a particular pre-emptive focus. As then-Attorney General Anne McLellan explains: "The goal was to break up terrorist acts before they happened and that's not the normal purpose of the criminal law. We wanted to create offences that spoke to the planning of terrorist attacks and prevent them from happening in the first place" (Tibbets 2011).

It represented a major shift in policy and operational thinking that is still the prevailing principle of Canada's counter-terrorism regime. This new approach attracted considerable opposition on grounds of civil liberties and privacy. The Privacy Commissioner, for instance, wrote to the Attorney General that she was "gravely concerned" about different provisions in the legislation (Cavoukian 2001). But the Liberal government held firm in defending the bill and made few concessions through the Parliamentary process save for the adoption of a five-year sunset clause.

The *Anti-Terrorism Act* from 2001 is so important because it (1) became the first clear test of the constitutional line between protecting our democracy and preserving individual rights and freedoms and (2) as mentioned, has since served as the foundation for subsequent legal steps to bolster Canada's counter-terrorism policy framework.

Aspects of the legislation – particularly the powers of investigative hearings – were the subject of a constitutional review by the Supreme Court of Canada in 2004 and were determined to pass "constitutional muster." It is worth citing the affirmative decision because the justices specifically addressed the big questions about the right of a democracy to protect itself from internal and foreign threats while at the same time abiding by Canada's constitutional formulation of individual rights. The justices write:

> The challenge for democracies in the battle against terrorism is not whether to respond, but rather how to do so. This is because Canadians value the importance of human life and liberty, and the protection of society through respect for the rule of law. Indeed, a democracy cannot exist without the rule of law. So, while Cicero long ago wrote "*inter arma silent leges*" (the laws are silent in battle), we, like others, must strongly disagree . . . Although terrorism necessarily changes the context in which the rule of law must operate, it does not call for the abdication of law. Yet, at the same time, while respect for the rule of law must be maintained in the response to terrorism, the Constitution is not a suicide pact[.] (Application under s. 83.28 of the *Criminal Code* (Re), [2004] 2 S.C.R. 248, 2004 SCC 42)

The judges also note that the executive and legislative branches – as "democratic agents of the highest rank" – ought to focus on solutions and approaches that conform to fundamental rights and freedoms. The clean bill of constitutional health for the *Anti-Terrorism Act* and the deferential signal to Parliament have contributed to the law's status as a foundational precept of modern counter-terrorism policy.

Parts of the legislation – particularly the powers of investigative hearings and preventative arrests – expired

in 2007 due to opposition in a minority Parliament. But the Harper government restored them for another five-year period effective April 2013. It is worth noting that Liberal MPs (including the current public safety minister) voted with the government to pass this legislation (Hansard 2013).

The Harper government subsequently passed two additional laws that sought to strengthen the existing legal framework. Both bills were tabled following the attacks in Saint-Jean-sur-Richelieu and Ottawa. C-44 was introduced in response to court decisions that created ambiguities with regards to the Canadian Security Intelligence Service's (CSIS) ability to conduct investigations outside of Canada and protect human intelligence sources. The legislation was thus a bit of a housekeeping exercise to bring greater clarity to the role of CSIS and its interactions with international security agencies. The bill was supported by Liberal MPs (Hansard 2013).

C-51 was the Harper government's legislative response to the attacks of October 2014 and heightened concerns about the evolving threat of violent extremism. The new *modus operandi* of jihadist-inspired attacks – evidenced by Canada's experience but also by the Charlie Hebdo attacks and the assault in Sydney, Australia for instance – presented a new security challenge: violence inspired by ideological extremism yet perpetrated by individuals or small groups.

C-51 draws on past principles of deterrence, pre-emption, and disruption, and applies them to the new threat. It was a further shift in the counter-terrorism strategy from prosecution to pre-emption. Prosecution is a high bar to clear, resource-intensive, lengthy, and sometimes counter-productive to the extent that it brings into the public domain security and intelligence efforts and leaves perpetrators with criminal records. The goal of C-51 was to expand the toolkit of alternative options.

DEMYSTIFYING C-51

The *Anti-Terrorism Act, 2015* generated significant controversy for its perceived violation of individual rights and freedoms. Some of these critiques reflected informed interpretations of the legislation's provisions. Others were based on misinformation, wrong assumptions, or preconceived views about the government's motives. The result was the same: C-51 was debated and ultimately passed in a tense political climate. The proximity to the pending federal election doubtless also contributed.

But perhaps the biggest challenge was a failure on the part of the government to drill down into the bill and explain its purpose, how it fit in the broader evolution of counter-terrorism strategy in the post-9-11 era, and how key provisions were to be executed. Some provisions were rightly subjected to significant scrutiny and debate. The new government may be right to revisit aspects of the bill. But that is not really the debate that unfolded. Instead we got a highly-politicized legislative process that left the public confused about the bill's goals and means.

A line-by-line review of the legislation is beyond the scope of this study. It is nonetheless helpful to elaborate on key provisions, particularly as the government considers options to refine the law.[2] Three aspects of the bill that have been the subject of specific concerns are (1) the role of CSIS in disrupting terrorist plots, (2) the new authorities for intragovernmental information sharing, and (3) expanding the scope of preventative detentions as opposed to more conventional arrest.

The disruption provisions in C-51 are arguably the most important from the perspective of expanding the government's pre-emptive toolkit and yet the most misunderstood. The purpose of new disruption powers is to bolster the initial *Anti-Terrorism Act*'s focus on pre-emption. The goal is not to just protect Canadians from an imminent attack, it is also to protect a would-be terrorist from an act that will forever shape his or

her life and their relationship with the broader society. It would be neither in the best interest of society nor the individual to preclude law enforcement from intervening before either happens.

Consider, for instance, that prior to C-51, a strict interpretation of CSIS's enabling legislation suggests that agents could not inform Canadian parents that their son or daughter may be planning to travel abroad to join ISIS. We know this to be a problem because parents and family members have criticized the agency for not warning them or stopping their loved ones from leaving the country (Huncar 2015). CSIS did not have the authority to cancel a suspected traveler's plane ticket. All it could do was collect, analyse, and retain information, advise government, provide security screening (for new citizens and passport applicants, for instance), and engage in limited foreign intelligence. Put simply: CSIS could keep track of potential extremist travelers, but had no authority to do anything about it. This was not serving the interests of parents, would-be travelers, or general society.

C-51's threat-mitigation mandate makes it possible for CSIS to disrupt suspect financial flows, operations, and personnel to protect Canadians and would-be assailants. If any rights are compromised in the process, CSIS must seek judicial authorization based on "reasonable grounds to believe" that a threat is imminent, and only after obtaining concurrence from the minister of public safety. That is, CSIS requires several approvals: from within the agency, from a special committee of deputy ministers that vets a warrant, from the minister, and ultimately from a judge. Moreover, the judge can (and does): request greater detail about the evidence, the operation, or both; impose restrictions on the operation; and/or ask CSIS to report back on the operation.

As for the range of disruptive techniques, the *Act* imposes narrow limits.[3] The benefit of effective pre-emption is high and outweighs the potential for abuse, which is no greater than with any other warranted activity in which CSIS engages. Critics often bring up the McDonald Commission and abusive practices by the RCMP that prompted security intelligence to be separated from criminal intelligence. However, that comparison is hardly fair: we live in different times and CSIS is a different organization than the RCMP was in the 1970s.

It is also important to note that no agency in Canada, including the RCMP, has a disruption mandate per se. The RCMP can take pre-emptive unwarranted action under "extenuating circumstances", but that would only apply under circumstances of a clear and present danger to public safety, for instance. Moreover, critics who would rather leave "disruption" activities to the RCMP fail to grasp the fundamental difference between a security intelligence organization – which reports directly to the political executive – and that of a law enforcement organization. Since all of CSIS's warranted activity – including disruption – is authorized by the minister, it is the minister who, under the constitutional principle of responsible government, is ultimately accountable. By contrast, law enforcement operates autonomously and independently from political oversight.

Another misunderstood part of the bill is the provisions related to sharing information among government departments and agencies. The Privacy Commissioner criticized it, for instance, as "unprecedented" and "excessive" (Therrien 2015). Yet the new information-sharing provisions, which create greater authority for different departments and agencies to share information about individuals and activities that "undermine" Canadian security, are limited to the intentional premise of enabling security. It is not a broad-based power. Departments and agencies are only allowed to share information about a specific case that meets a threshold of concern and even then they are only allowed to share information immediately relevant to this concern.

There were previous legal barriers to common-sense information sharing among federal departments and agencies, and the failure to share information could have significant national security implications. Consider, for instance, the circumstance of a Canadian citizen arriving at an embassy in Beirut without a passport and with a bullet wound that raises red flags. Previous privacy rules would have prevented the consular officer from warning CSIS (or any other government entity) of the individual's circumstances and impending arrival. More concretely, we know that the Parliament Hill attacker was denied a passport (though we do not know

the specific reason for the denial). C-51's information-sharing provisions would have authorized Passport Canada to share the facts with the RCMP if passport officials believed that there was a nexus with national security. This type of targeted information sharing could have real utility when dealing with this new, more nimble and decentralized terrorist threat.

Extending greater flexibility to law enforcement to impose recognizance or a peace bond was also a controversial part of C-51. The provisions were criticized by civil libertarians for lowering the evidentiary threshold (one described it as a "blurring of the lines between intelligence and evidence") and creating the prospects of unlawful detention or surveillance (Boutillier and Campion-Smith 2015).

The changes reflected the limited set of options available to law enforcement and national security agencies that are tracking terror suspects. Pre-C-51 the range of options were basically limited to maintaining surveillance, or arrest. Arrest is often not an option because of the high evidentiary bar prior to an actual incidence, and it may compromise ongoing intelligence efforts. Peace bonds were not much of option because the evidentiary threshold was about the equivalent to arrest. The fact that prior to October 2014, peace bonds had only been used in the case of the Toronto 18 in 2006 is evidence of the limitations faced in their application (Leuprecht, Forcese, and Roach 2015). It is worth noting that the RCMP sought to obtain a peace bond for Warrant Officer Vincent's attacker in weeks leading up to his murder, and was denied – because, in the eyes of the judge, the application did not meet the requisite standard of evidence (Hall 2015).

C-51 lowers the threshold to impose recognizance or a peace bond on a suspect and extends the period of judicial remand for recognizance and the duration of peace bonds. Consent from the Attorney General must be retained before an application can proceed. These measures then allow limitations to be imposed on individuals, such as on their mobility or Internet use, without having to charge them, and keeping them out of jail, so long as they abide by their conditions. As for the critique that the new rules are too expansive, it must be remembered that the regime is limited to terrorism and natural security issues and the Crown must demonstrate intent.

It is not to say that C-51 is without flaws or that these policy and legal issues are straightforward. They involve legitimate questions about security and freedom, the role of oversight and judicial authority, and the rights of a democracy to protect itself and its citizens from internal and foreign threats. Indeed, as we will discuss in the next section, the new government seems poised to introduce some thoughtful changes to our national security regime.

But these changes need to be considered in the context of the underlying thinking behind C-51's focus on pre-emption and how it builds upon past legislation that has had broad political support in Canada. The ultimate goal remains the same: an approach to national security that enables authorities to detect signs that put an individual at disproportionate risk of radicalization from thought and expression to action, and to intercede and disrupt before individuals engage in violence.

Therein, as Shakespeare's bard might say, lies the rub: when security intelligence fails – as in Paris or on 9-11 – people wonder why "the government did not do more"; but the moment someone is detained, there are immediate concerns about violating that person's rights and due process. C-51 improves that balance: it allows security intelligence to do more, and to do so without immediately resorting to the "nuclear option" of placing someone under arrest.

THE NEW GOVERNMENT'S PLAN

Incumbent members of the new government voted in favour of C-51 but expressed concerns about certain aspects of the bill at the time. Mr. Trudeau (2015) said at the time that the bill "takes some proper steps" to protect Canadians but also that the Liberal Party wanted to see amendments to limit its scope in certain areas and extend greater oversight in others.

The party's election platform reaffirmed this position and, as discussed at the outset, the minister's mandate letter instructs him to bring forward a new bill that addresses these concerns. The minister has since committed to public consultations to inform legislation prior to its eventual passage (Bronskill 2016).

Amendments introduced by Liberal MPs during the Parliamentary review of C-51 offer a clue as to the government's thinking. The platform also set out some basic principles.

Key changes are likely to include:

- a narrowing of the possible usage of the disruption authority available to CSIS;
- an expansion of the Security Intelligence Review Committee's (SIRC) purview over the government's security activities and a requirement that the committee provides an annual report to Parliament;
- the establishment of a new Parliamentary committee with a mandate for security oversight;
- a tighter definition of "terrorist propaganda" and other legal clauses;
- the enactment of a three-year sunset clause; and
- the creation of the Office of the Community Outreach and Counter-radicalization Co-ordinator.

Most of these require legislative changes; the last item, however, does not and preparations to establish it are well underway. Many of these changes will strengthen the legislation and national security policy overall. The prospect of greater review, oversight, or both, for instance, shores up accountability and public confidence.

However, the government and some of the legislation's critics sometimes have a tendency to reduce the policy question to a zero-sum game between security and freedom. Such populist characterizations risk eroding useful parts of the national security regime. Counter-terrorism is different from traditional criminal justice. The measure of success is prevention rather than prosecution. Here the government's emphasis on community outreach and counter-radicalization may prove useful but cannot be a substitute for effective pre-emptive measures.

After all, radicalization – contrary to the passive phrasing in which it is commonly used – is a conscious, active decision which neither community outreach nor counter-radicalization are likely to avert. For just that reason, it is not clear that Canada has a large-scale problem with radicalization: if it did, we would expect to see a lot more plots and extremist travellers. Rather, some isolated individuals make a decision to resort to violence or engage in other unlawful terrorist activity. Only judicious pre-emption can protect Canadian democracy and Canadians from these few isolates – let alone protecting them from themselves. Community outreach is an essential component to pre-emption. By contrast, counter-radicalization needlessly obfuscates the issue: most radicals never move to action, and not all who engage in violence are radicalized beforehand.

RECOMMENDATIONS TO STRENGTHEN NATIONAL SECURITY POLICY

The government plans to conduct broad public consultations as part of its plan to change aspects of C-51 and enact new measures that reflect its key objectives with respect to national security. In the spirit of contributing to the discussion on this vital public policy issue, we offer five key ideas to help the government inform its policy thinking.

The first is to recognize the threat that violent extremism poses to Canada's security and our democracy. We are confronted with a novel type of threat that presents new challenges for law enforcement and security intelligence. As we saw in Paris, San Bernardino, and Jakarta, so-called "soft targets" – including restaurants, shopping centres, sports stadiums, and music venues – are now fair game. Too often the democratic way of life is taken for granted; it needs to be defended. Ergo, we must ensure that the democratic state has the requisite toolkit to manage this new diffuse challenge and maintain the safety and social order critical to the exercise of democratic freedoms.

Far from abandoning democratic principles or wantonly eroding individual rights and freedoms, we should be prepared to take careful, deliberate action to maintain public confidence, protect our collective security, and preserve our democratic values and institutions. If our freedoms are not to become a suicide pact in which we are unable or afraid to protect ourselves from our enemies, it means that we must be ready to make tough legal and operational choices that will ultimately help us avoid much tougher ones in the aftermath of an attack.

Second, no one argues with the call to ensure accountability of national security activities and operations. Expanding SIRC's mandate and giving Parliamentarians a role may improve accountability and transparency, and establish greater public confidence and trust. But the devil is in the details: review or oversight? How far to expand the remit of SIRC? Is SIRC the proper vehicle for an expanded remit of this sort? Should its accountability be to the executive or legislative branch? Do Parliamentarians whose dance cards are already full really have time to develop the expertise to offer effective review? Do we really want to follow the American model and have the legislative branch involved in oversight? What about the many departments and agencies that are currently involved in intelligence activities but who are not currently subject to review? The point is the government needs to think through the logic of review, oversight, and accountability, and the ends it ultimately seeks to achieve, rather than making cosmetic changes that may placate the public but do little to improve the national security and operations within the Canadian constitutional democratic framework.

Third, government should tread carefully before diminishing the utility of the new disruption powers as part of its legislative reforms. There may be scope to refine the range of disruptive techniques in regulation or some type of guidance document. But it would remove a potentially useful pre-emptive tool if the government narrows it too much or repeals it altogether. These measures are not just intended to counter the current threat; rather, they are agile and adaptable to a rapidly evolving security environment. The litmus test here is simple: could a prime minister reasonably defend diminishing or rescinding CSIS's threat-mitigation mandate if that mandate could be shown to have pre-empted an attack?

Remember: the purpose of counter-terrorism policy is to prevent terrorist attacks rather than necessarily prosecute the perpetrators after-the-fact. The new disruption powers help CSIS detect, deter, and ultimately disrupt violent action or other activities associated with terrorism. The upshot of such a disruption of violent activities is not only to protect the Canadian public, but to protect a would-be terrorist from an act that will forever shape his or her life and their relationship with the broader society.

Fourth, effective security must mean local engagement – as one of us has said, "all security is local, just like all politics is local" (Leuprecht 2015). The RCMP and CSIS are not the most effective means of countering violent extremism in local communities. It is the equivalent of the federal government assuming responsibility for garbage disposal. The federal government should focus on its core competencies – including national security investigations, security intelligence, international cooperation, the legal and security framework (such as terrorist financing and the listing of terrorist organizations), and coordination with provincial and local authorities. There is also scope to help with capacity building at the local level such as training and professional development.

But much of the relationship building with community leaders and the prevention efforts will need to be carried out by local officials. The RCMP is experimenting with a new "hub" program in conjunction with local enforcement as part of a federal Terrorist Prevention Program (Robertson 2015). Whether these initiatives are effective is a matter of performance review and auditing, at which the federal government generally tends to do poorly when it comes to national security. We spend billions of dollars but have a limited sense of whether taxpayers are getting value for money. Would we be twice as safe if we spent twice as much; half as safe if we spent half as much?

The key is that the government's Office of the Community Outreach and Counter-radicalization Co-ordinator does not centralize or micro-manage local efforts. It can share best practices and provide seed funding for new local initiatives. But how well is a Mountie with "minimum qualifications at entry" who has spent much of his or her career involved in rural contract policing really prepared to do effective local engagement – from RMCP headquarters in Ottawa? (How prepared that Mountie – and a federal police organization that spends 85 percent of its effort on contract policing – is to carry out national security investigations is a wholly different question that we shall take up in a future study.)

Fifth, the government might contemplate how better to promote basic Canadian values and greater integration and inclusiveness. Much time is spent fingering ideological extremism, but little effort is undertaken to make Canadian democracy more resilient. There are core values that underpin our constitutional democracy and we should not be reluctant – due to relativism or other factors – to articulate and promote them. A pluralistic democracy works precisely because it has basic expectations of its citizens. It does not mean that the state can tell citizens how to think. As MLI's managing director writes: "what goes on in our minds is private and not the province of legislators or police" (Crowley 2013). But it comes with two caveats.

Individuals can indeed think what they want. But we should not succumb to relativism to the extent that we are not prepared to say that some ideas are better than others. Our common law tradition is more liberal, more just, and better than Sharia law. We should not be afraid to engage ideas that are contrary to our constitutional democracy and a free society. The previous government's changes to the citizenship guide is a good example of the type of values-based engagement from which we should not recoil.

We also must make clear that the freedom to think does not entitle one to act on beliefs or ideas that impinge on the protected sphere of rights and personal security of which all members of society deserve to be assured. The Canadian state has an obligation to call out cultural or religious practices that are incompatible with Canadian values and legal rights. The protection of rights and freedoms does not extend to those who counsel criminal acts with the safety and sanctity of a religious or educational institution or who invoke "rights and freedoms" to promote views that are fundamentally at odds with those same rights and freedoms. It is illegal and endangers our free society. Those who do not buy into Canada's fundamental values and laws have the option of seeking to reconcile these contradictions through our democratic legislative institutions. Simply "opting out" is not an option.

Religious protection and freedom of expression should never be a guise for the promotion of values that are

fundamentally at odds with those of Canadian society, particularly when it involves ideas that run afoul of Canadian laws. The problem is the instrumentalization of religion for the purpose of advancing, rationalizing, and justifying illiberal, intolerant cultural practices, including political violence. Many immigrants come to Canada to escape political violence, so the fundamental rejection of political violence as part of Canada's social contract is widely shared by citizens new and old.

CONCLUSION

The Paris attacks occurred mere weeks after Canada's federal election. It was a poignant reminder of the threat posed by violent extremism and its ability to reach into Western societies to target symbols of free and democratic societies and kill innocent people.

The new Liberal government has committed to new national security legislation that balances security imperatives with individual rights and freedoms. This formulation between security and freedom has been at heart of the government's thinking about counter-terrorism policy.

This essay has argued that, while many of the new government's specific policy ideas will improve our counter-terrorism regime and enhance accountability and public trust, there are limitations to its framing of the issue.

This paper makes the case that a well-calibrated counter-terrorism toolkit is better than the alternatives – better for public safety, and better for the preservation of fundamental democratic values. A robust democracy is able to defend itself and its values, not stand impotent while it, its citizens, and its fundamental precepts come under attack.

Careful, deliberate pre-emptive policies to detect, deter, and prevent terrorism can help us forestall more draconian ones in the aftermath of a terrorist incident. This principle has been a key part of Canada's national security policy dating back to the past Liberal government. Freedom without order is a chimera. The reality is that security and freedom can, and must, co-exist and, in fact, each, when properly balanced, are the best guarantors of the other.

We have thus provided recommendations to help the government as it prepares to table legislation to keep Canadians safe and our rights and freedoms firmly intact, as the Speech from the Throne has set out.

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REFERENCES

Anti-Terrorism Act, S.C. 2001, c. 41.

Application under s. 83.28 of the *Criminal Code* (Re), [2004] 2 S.C.R. 248, 2004 SCC 42. Available at https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2156/index.do.

Bill C-36, An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registrations of charities, in order to combat terrorism. First session, thirty-seventh Parliament, 49-50 Elizabeth II, 2001. Available at http://www.parl.gc.ca/content/hoc/Bills/371/Government/C-36/c-36_4/c-36_4.pdf.

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. Second Session, Forty-first Parliament, 62-63 Elizabeth II, 2013-2014-2015. Available at http://www.parl.gc.ca/content/hoc/Bills/412/Government/C-51/C-51_1/C-51_1.PDF.

Boutillier, Alex, and Bruce Campion-Smith. 2015. "Conservative Government's Terror bill Increases Spy Agency Powers." *Toronto Star*, January 30. Available at http://www.thestar.com/news/canada/2015/01/30/terror-bill-dramatically-increases-police-power.html.

Bronskill, Jim. 2016. "Liberals Aim to Balance National Security with Rights and Freedoms in Bill C-51 Revamp." *Toronto Star*, January 10. Available at http://www.thestar.com/news/canada/2016/01/10/liberals-aim-to-balance-national-security-with-rights-and-freedoms-in-bill-c-51-revamp.html.

Cavoukian, Ann. 2001. "A Letter from Commissioner Ann Cavoukian to federal Attorney General Anne McLellan on Bill C-36, the proposed anti-terrorism legislation." Information and Privacy Commissioner of Ontario. Available at https://www.ipc.on.ca/english/Resources/Reports-and-Submissions/Reports-and-Submissions-Summary/?id=221.

Crowley, Brian Lee. 2013. "Islam vs Islamism: Confronting the terrorist threat while preserving the free society." Macdonald-Laurier Institute *Commentary*, June. Available at http://www.macdonaldlaurier.ca/files/pdf/2013.06.04-Commentary-Islam_vs_Islamism-vFINAL.pdf.

Hall, Chris. 2015. "Martin Couture-Rouleau Peace Bond Denied Weeks Before Fatal Attack." *CBC News*, January 15. Available at http://www.cbc.ca/news/politics/martin-couture-rouleau-peace-bond-denied-weeks-before-fatal-attack-1.2911867.

Hansard (ed). 2013. House of Commons Debates, 41st Parliament, 1st Session. Volume 146, number 239, April 24. Available at http://www.parl.gc.ca/HousePublications/Publication.aspx?Pub=Hansard&Doc=239&Parl=41&Ses=1&Language=E&Mode=1.

Huncar, Andrea. 2015. "CSIS Has Little Power to Stop Terrorist Recruitment, Experts Say." *CBC News*, February 27. Available at http://www.cbc.ca/news/canada/edmonton/csis-has-little-power-to-stop-terrorist-recruitment-experts-say-1.2975875.

Leuprecht, Christian. 2015. "Facing the Challenge of Violent Extremism in Canada." Macdonald-Laurier Institute *Commentary*, May. Available at http://www.macdonaldlaurier.ca/files/pdf/MLICommentaryLeuprecht05-15-webready.pdf.

Leuprecht, Christian, Craig Forcese, and Kent Roach. 2015. "Read and Vote: Will Bill C-51 protect or imperil Canadians?" *Globe and Mail*, March 11. Available at http://www.theglobeandmail.com/opinion/read-and-vote-will-bill-c-51-protect-or-imperil-canadians/article23402818/.

Liberal Party of Canada. 2015. "A New Plan for a Strong Middle Class." Liberal Party of Canada. Available at https://www.liberal.ca/files/2015/10/New-plan-for-a-strong-middle-class.pdf.

Newark, Scott. 2015. "C-51: An analysis without the hype or hysteria." Macdonald-Laurier Institute *Commentary*, March. Available at http://www.macdonaldlaurier.ca/files/pdf/MLICommentaryNewark03-15WebReadyV4.pdf.

Robertson, Dylan. 2015. "RCMP May Struggle to Recreate the Success of Community Groups in Stopping Extremism." *Calgary Herald*, October 2. Available at http://calgaryherald.com/news/national/rcmp-may-struggle-to-recreate-the-success-of-community-groups-in-stopping-extremism.

Therrien, Daniel. 2015. "Bill C-51, the *Anti-Terrorism Act, 2015*: Submission to the Standing Committee on Public Safety and National Security of the House of Commons." Office of the Privacy Commissioner of Canada. Available at https://www.priv.gc.ca/parl/2015/parl_sub_150305_e.asp.

Tibbets, Janice. 2011. "A Decade On." *Canadian Lawyer*, September 5. Available at http://www.canadianlawyermag.com/3853/A-decade-on.html.

Trudeau, Justin. n.d "Minister of Public Safety and Emergency Preparedness Mandate Letter." Office of the Prime Minister. Available at http://pm.gc.ca/eng/minister-public-safety-and-emergency-preparedness-mandate-letter.

———. 2015. "Remarks by Justin Trudeau on the Anti-Terrorism Act." Liberal Party of Canada, February 19. Available at https://www.liberal.ca/remarks-by-justin-trudeau-on-anti-terrorism-act/.

Wilner, Alex. 2015. "Islamist Terrorism on the March: The Paris attacks and the implications for Canada." Macdonald-Laurier Institute *Commentary*, November. Available at http://macdonaldlaurier.ca/files/pdf/MLICommentaryWilner11-15b_web.pdf.

ENDNOTES

1 The bill's preamble observed that Canadians and people everywhere are entitled to live their lives in peace, but that terrorism constitutes a substantial threat to international peace and security as well as to Canada and Canadian institutions. It recognized that Canada must act in concert with other nations in combating the scourge of terrorism, but acknowledged that terrorism is also a matter of national concern. It emphasized the need to take action to protect against while abiding by the Charter of Rights and Freedoms. See *Anti-terrorism Act*, S.C. 2001, c. 41.

2 For a more detailed analysis of the legislation's strengths and weaknesses, see Scott Newark, 2015, "C-51: An analysis without hype or hysteria."

3 Bill C-51 states that: "In taking measures to reduce a threat to the security of Canada, the Service shall not (a) cause, intentionally or by criminal negligence, death or bodily harm to an individual; (b) wilfully attempt in any manner to obstruct, pervert or defeat the course of justice; or (c) violate the sexual integrity of an individual."

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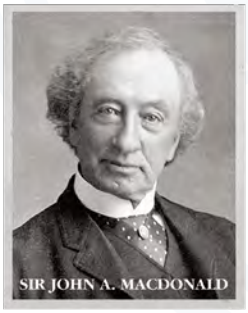
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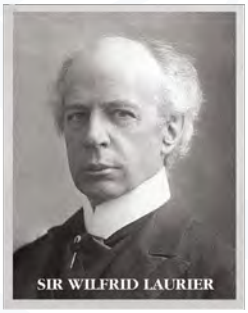
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