



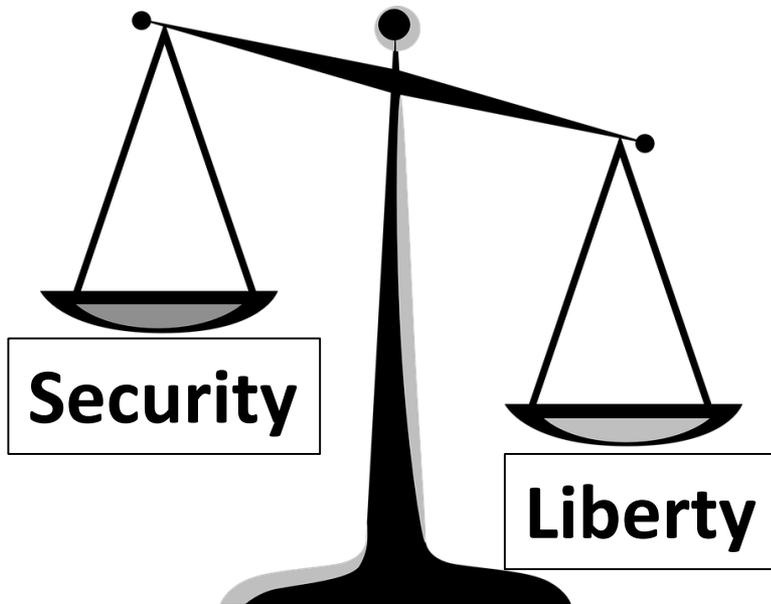
Faculty of Law

Terrorism, Bill C-51, and Canada's Ongoing Efforts to Remake our National Security Laws

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- Does the below seem right to you?



- How about?

Liberty  Security

How often do we see a 24-style “ticking time bomb” scenario?



CSIS threat assessment (2014-2016)

- (1) Terrorism, terrorism, terrorism (Al-Qaida inspired)
- (2) Cyber-attacks
- (3) Chemical, biological, radiological and nuclear weapons (CNBR)

CIA threat assessment (2016)

- (1) Terrorism
- (2) Cyber-attacks
- (3) CNBR/Weapons of mass destruction
- (4) Counter-intelligence
- (5) Space and counter-space
- (6) Transnational organized crime
- (7) Economics and natural resources
- (8) Human security

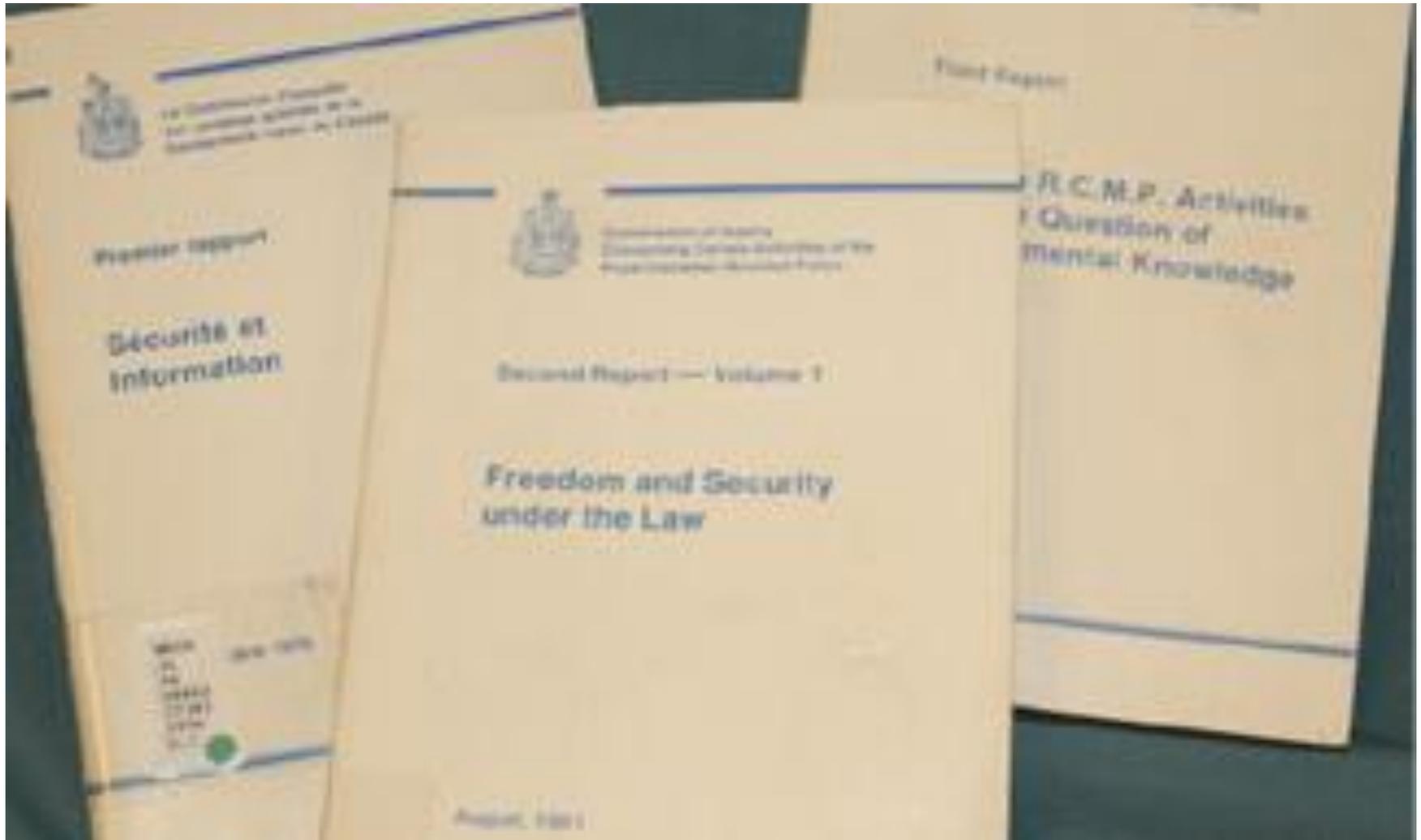


Major Events in Canadian National Security History



RCMP Security Service Illegality in the 1970's



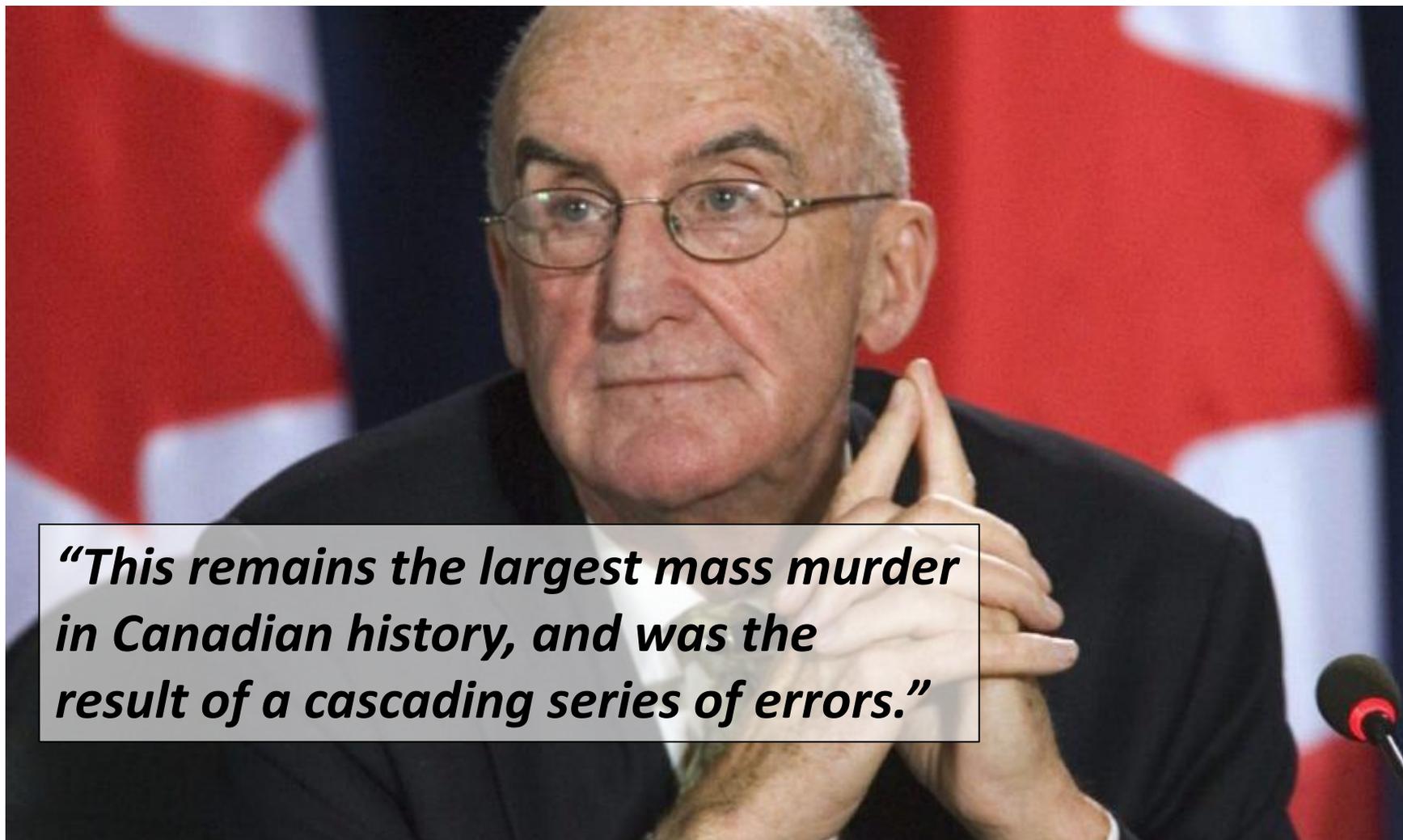


CSIS Act and the formation of CSIS (June 1984)



Bombing of Air India Flight 182 (June 1985)





“This remains the largest mass murder in Canadian history, and was the result of a cascading series of errors.”



83.01 (1) [...] *terrorist activity* means [...] (b) an act or omission, in or outside Canada,

(i) that is committed

(A) in whole or in part for a **political, religious or ideological purpose, objective or cause**, and

(B) in whole or in part with the **intention of intimidating the public**, or a segment of the public [...],

and

(ii) that intentionally

(A) causes **death or serious bodily harm** to a person by the use of violence,

(B) endangers a person’s life,

(C) causes a serious **risk to the health or safety of the public** or any segment of the public,

(D) causes substantial **property damage**, [...] or

(E) causes serious interference with or serious disruption of an **essential service** [...]

Anti-Terrorism Act (2015)



- Often called Bill C-51
- Bill C-44 (2015) usually lumped into it (amended *CSIS Act*)



- ***Protecting Canadians and their Rights: A New Road Map for Canada's National Security (May 2017)***
 - Report by the *Standing Committee on Public Safety & National Security* (SECU) reviewing Canada's national security framework
 - Will lead to...?



- *Criminal Code*
- *CSIS Act*
- *Security of Canada Information Sharing Act*
- *Secure Air Travel Act*
- *Prevention of Terrorist Travel Act, etc.*

1. International component (national defence, drones, cooperation agreements, etc.)
- 2. Oversight and Review**
- 3. Countering Violent Extremism (“CVE”)**
4. Money (sanctions, FINTRAC & terrorist financing, etc)!!!
5. RCMP powers
- 6. Who oversees counter-terrorism in Canada?
Where's our Homeland Security? Our NSC Advisor?**

1. Lack of oversight/review – individual departments (GAC, CBSA)
 - **Review** = post-hoc review of actions (by a body, Parliament, special advisor...)
 - **Oversight** = some level of operational input/control/veto
2. Lack of oversight/review – whole of government;
3. Lack of parliamentary review (only “Five Eyes” intelligence alliance partner without it)

- Did SECU Report take action?
- Yes – but very non-specific
 - Statutory Gateways (Arar Commission);
 - Super “SIRC” (Security Intelligence Review Committee);
 - New review bodies (for CBSA);
 - Danger in going from ignored issue to too much untested bureaucracy?
 - Lack of detail in recommendation...

1. The new “promoting terrorism” offence (*Criminal Code*)
2. Pre-emptive arrests and bail bonds (*Criminal Code*)
3. CSIS threat “disruption” – a new kinetic power
 - Actually done under Bill C-44 & amended *CSIS Act*, not *Criminal Code*.

83.221 (1) Every person who, by communicating statements, **knowingly advocates or promotes the commission of terrorism offences in general** — other than an offence under this section — while knowing that any of those offences will be committed or being reckless as to whether any of those offences may be committed, as a result of such communication, is guilty of an indictable offence and is liable to imprisonment for a term of not more than **five years**.

- Goldilocks syndrome: Too broad ... and too preventive?
- Relevant crimes already covered by hate speech, counselling, aiding & abetting, and other laws?
- Constitutionally-mandated defences conspicuously absent?

- **Liberals:** Keep, but make it less broad:
 - Remove “in general” from “terrorism offences”;
 - Include defences as per hate crime, s. 319.
- **NDP:** Get rid of it entirely;
- **Conservatives:** In favour of keeping provision as is.

- S. 810.011 of the *Criminal Code* (Peace bonds)
- Section 83.3: “Recognizance with conditions” or, “preventive arrests”.
 - Reasonable grounds a terrorist activity may be carried out
 - Is likely to prevent the carrying out of the terrorist activity
 - Can be detained for up to a week

83.3 (2) [...] a peace officer may lay an information before a provincial court judge if the peace officer

(a) **believes on reasonable grounds** that a terrorist activity **may** be carried out; and

(b) **suspects on reasonable grounds** that the imposition of a recognizance with conditions on a person, or the arrest of a person, is **likely to prevent** the carrying out of the terrorist activity.

- Yes! But not ideal...
- S. 83.3(2): Will down to ‘may’ back (way) up to “on the balance of probabilities” – a very high standard
- Increased preventive detention from 3 to 7 days, then back down again?

12.1 (1) If there are **reasonable grounds to believe** that a particular activity constitutes a threat to the security of Canada, the Service may take measures, within or outside Canada, to reduce the threat.

[...]

(3) The Service shall not take measures to reduce a threat to the security of Canada if those measures will contravene a right or freedom guaranteed by the *Canadian Charter of Rights and Freedoms* or will be contrary to other Canadian law, **unless the Service is authorized to take them by a warrant** issued under section 21.1.

12.2 (1) [...] the Service shall not

- (a) cause [...] 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.

So what's the controversy?

1. Exercise of powers in breach of the *Charter*
2. Oversight & very few limitations
3. Exercise of powers in “unlawful” manner

- Remove – authority to breach the *Charter*;
- Unclear what doing with authority to commit unlawful acts, though looks like it'd stay;
- “Exhaust all other non-disruptive means of reducing threats” before CSIS engages in disruption;
- Quarterly report on disruptive activities (too much?)

Threats not addressed by Bill C-51 OR subsequent initiatives:

- **Climate change**
 - Mass migration
 - Water and food insecurity
- **Money laundering**, sanctions-busting and terrorist financing
- **State-based threats**, including:
 - Russia (democratic interference and kleptocracy); North Korea (IBMs)
- **Economic collapse** (Argentina? Greece? Brazil?)
- **Cyber threats**
 - Artificial Intelligence; “Internet of Things” (eg. “Smart” devices); Foreign data analytics/science
- **Pandemics**
- Proliferation of **Weapons of Mass Destruction** and Chemical, Biological, and Nuclear/Radiological Weapons



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Questions?!