The Problems with the New CSIS Human Source Privilege in Bill C-44

Kent W. Roach, Henry S. Brown, Martha Shaffer, Gilles Renaud

I. — Introduction

The government’s response to the terrible terrorist acts on October 20, 2014 in St-Jean-sur-Richelieu and two days later in Ottawa has so far been restrained. This is especially so compared to the more massive responses to the problem of radicalized terrorist fighters and Security Council Resolution 2178 taken in Australia and proposed in the United Kingdom. In part, the government’s restraint can be explained and justified by the fact that it had the foresight to enact four new terrorism offences in 2013 that apply to foreign terrorist fighters who leave Canada to participate in the activity of a terrorist group, to facilitate terrorist activity, to commit indictable offences for a terrorist group or to commit a terrorist activity. These new offences placed Canada ahead of the foreign terrorist fighter curve. They provide a sound basis to punish, incapacitate and denounce those who are radicalized enough that they are prepared to leave with the intent to join the brutal forces of the Islamic State and similar groups.

Unfortunately, however, the government’s first response to the attacks, Bill C-44, may have the unintended effect of making it more difficult to apply these valuable new offences to potential foreign terrorist fighters. Bill C-44 does this by overturning the Supreme Court’s recent decision in Harkat and rejecting the recommendations of the Commission of Inquiry into the Bombing of Air India Flight 182 that informants or human sources of the Canadian Security Intelligence Service (CSIS) not be given the same informant privilege as police informants. Both the Supreme Court and the Air India Commission stressed the dangers that given CSIS’s intelligence gathering mandate, it might make premature promises of anonymity to informants that could thwart subsequent prosecutions. Bill C-44 rejects such warnings. As will be examined in the first part of this short article, it gives CSIS human sources a broad privilege from the disclosure of identifying information whenever they have been promised confidentiality by CSIS. It will be suggested that this is the wrong policy choice and one that could give virtually all of CSIS’s human sources as well as the CSIS Director vetoes against the disclosure of subsequent identifying information in criminal proceedings.

The second part will suggest that while Bill C-44 appropriately recognizes the innocence at stake exception for the new privilege this limited exception is constitutionally underinclusive given the role that CSIS human sources play in security certificates and other administrative proceedings. Indeed to the extent that C-44 may prevent Federal Court judges from disclosing identifying information of CSIS informants to even special advocates, it invites Charter challenge under s. 7 of the Charter and may prevent courts from continuing to craft effective remedies to deal with concerns about the reliability of CSIS sources.

The final part of this article will examine some of the implications of Bill C-44’s authorization of CSIS to conduct investigations outside of Canada including those conducted under warrants issued under s. 21 of the CSIS Act. Bill C-44’s decision to authorize
CSIS to conduct investigations outside of Canada and even to violate the laws of foreign states when doing so is understandable given the frequently foreign nature of threats to Canadian security. Nevertheless, CSIS’s enhanced foreign powers are not matched by enhanced and integrated accountability mechanisms such as those recommended by Arar Commission. In addition, CSIS’s explicit new statutory powers to conduct investigations outside of Canada should be matched with enhanced Ministerial (including Prime Ministerial) and Parliamentary oversight. The Air India Commission proposed enhancement with respect to the former and Bill C-622 proposed enhancement with respect to the latter. Both proposals have been rejected by the government with Bill C-622 being defeated in Parliament on November 5, 2014. The government’s opposition to enhanced review and oversight make the recognition of CSIS’s extra-territorial powers more problematic than it need be.

II. — The New CSIS Human Source Privilege

(a) — The New Broad and Powerful Privilege

Section 6 of Bill C-44 adding s. 18.1 to the CSIS Act proposes to recognize a new class privilege for CSIS human sources subject, as the police informant privilege, to only a limited innocence at stake exception. Section 18.1(3) provides that the identity of a “human source”, defined as someone who has provided or is likely to provide information to CSIS “after having received a promise of confidentiality” or information from which the identity of the source may be inferred should only be disclosed “if the human source and the Director consent to the disclosure of the information.”

Section 18.1(3) reflects the dual nature of police informer privilege as reflected in the jurisprudence. As with police informer privilege, “the privilege is ‘owned’ by both the Crown and the informer himself, so the Crown has no right to disclose the informer’s identity . . . Moreover, the informer himself or herself cannot unilaterally decide to ‘waive’ the privilege.” In effect, both the human source and the CSIS Director will now have a veto over whether any identifying information about the source will be revealed. Not only CSIS, but police, prosecutors and the courts will have a duty not to disclose any identifying information about human sources of CSIS that have been promised confidentiality. Indeed, s. 18.1(2) may go even farther than the police informer privilege by providing that no accused or any other other adverse party in interest can disclose identifying information without consent or a judicial order applying the limited innocence at stake exception.

(b) — The Harmful Effects of the New Privilege on Terrorism Prosecutions

The creation of a class privilege for CSIS informants in the proposed s. 18.1 of the CSIS Act goes against the Air India Commission’s recommendation. After four years of study, the Commission concluded that on balance, CSIS should not be able to bestow the privilege on informers. Justice Major stressed: “CSIS promises of anonymity to human sources might often be premature and could, if the promises were enforceable, jeopardize subsequent terrorism prosecutions.” The Supreme Court in Harkat similarly recognized that “the police have an incentive not to promise confidentiality except where truly necessary, because doing so can make it harder to use an informer as a witness. CSIS, on the other hand, is not so constrained. It is concerned primarily with obtaining security intelligence, rather than finding evidence for use in court.”

The threat of the privilege to terrorism prosecutions is not hypothetical. The 1987 prosecution of Talwinder Singh Parmar, the suspected mastermind of the Air India bombings, collapsed when an informer did not consent to having his identity disclosed in preliminary proceedings involving a Criminal Code search warrant for a wiretap. The informer was offered witness re-location and protection, but refused to have identifying information disclosed. The Crown Attorney in the case told the court: “No one knows what potential harm could befall the informant should their identity become publicly known . . . If I were placed in a similar situation, I would not be prepared to consent to the information identifying me.”
Proposed s. 18.1(3) of Bill C-44 would give present day informers — including the informers that were critical in the Toronto terrorism prosecutions — the same veto power over the disclosure of their identity. The case law on police informer privilege illustrates the potential that a witness will assert the new privilege because they are not satisfied with the compensation and witness protection arrangements that the Crown is prepared to provide. 17

CSIS with their responsibilities for intelligence but not evidence gathering have every incentive to make explicit or implicit promises of confidentiality to human sources. As the CSIS Director told the commons committee that spent two days studying Bill C-44, CSIS is not “in the business of collecting evidence”. 18 CSIS is adjusting to new realities and evidentiary responsibilities, but at the end of the day, it will likely promise informants confidentiality when necessary to do their job of collecting intelligence. Under Bill C-44, police and prosecutors and indeed the Canadian public will have to live with the promises that CSIS makes at an early stage of investigation even if those promises make subsequent terrorism prosecutions difficult or even impossible.

The new privilege silently privileges CSIS’ ability to collect intelligence over the evidential and disclosure requirements of terrorism prosecutions. This is a questionable choice of priorities and policy. Intelligence is important in preventing terrorism, but so too are prosecutions. We know from the Air India report that intelligence was available but not used to prevent what was the world’s most deadly act of aviation terrorism prior to 9/11. 19 Tragically, it appears that intelligence warnings about an attack on Parliament was also available but not used to prevent the attack on Parliament Hill. 20

The new ability of CSIS human sources under Bill C-44 to veto the disclosure of any identifying information will make terrorism prosecutions more difficult in Canada. Terrorism prosecutions are already more difficult in Canada than other democracies because of the Crown’s broad constitutional disclosure options under Stinchcombe 21 and McNeil 22 and because of Canada’s uniquely cumbersome system of only allowing Federal Court judges to make non- or partial- disclosure orders for reasons of national security confidentiality under s. 38 of the Canada Evidence Act. The Supreme Court has upheld the constitutionality of the two court process but at the price of encouraging trial judges to use their powers under s. 38.14 of the Canada Evidence Act to stay proceedings if they conclude that a fair trial may not be possible because of non-disclosure. 23 The non-disclosure of information as required under the new CSIS human source privilege may be another reason in favour of such a stay, a drastic remedy that could undermine public and foreign confidence in Canada’s ability to conduct terrorism prosecutions. 24 Unlike under s. 38, the Attorney General of Canada will not have an exit strategy from this dangerous game because the CSIS human source would under Bill C-44 have a veto over whether identifying information is disclosed. 25

(c) — Minimizing the Damage that the New Privilege Will Cause to Terrorism Prosecutions

Accepting that the government and Parliament has made a policy decision to protect CSIS sources with a police informer privilege, what can be done to minimize the damage that the privilege will do to terrorism prosecutions? Bill C-44 should be amended so that the privilege is only triggered by explicit promises of anonymity by CSIS to sources, CSIS should adopt transparent policies on when and from whom sources will receive such promises and the Minister, Parliament and SIRC should all review how CSIS implements such policies and the effects of the policy on subsequent criminal investigations and prosecutions.

Police informer privilege can be triggered by implicit as well as explicit promises of confidentiality. Indeed, the Supreme Court in a recent divided decision allowed an appeal and ordered a re-hearing on the basis that a judge who had found that police informer privilege did not exist had not adequately considered the possibility that a second police force dealing with a transferred informer may have made an implicit promise of confidentiality to the reluctant witness. 26 The ultimate question under the police informer privilege is whether there is a reasonable expectation of confidentiality. 27
Given CSIS’s role in collecting secret intelligence, there are concerns that almost all CSIS interviews with human sources could be seen as involving at least an implicit promise of confidentiality. This could create an extremely broad immunity trail that could give both the CSIS Director and the source a veto over disclosure. Bill C-44 should be amended so that the new privilege is only triggered by “an explicit promise of anonymity” as opposed to the present language which triggers the privilege whenever a source has received “a promise of confidentiality”. Such an amendment should preclude the possibility of courts finding implicit promises of confidentiality in virtually all of CSIS’s interactions with human sources. This would mean that the CSIS human source privilege would not be identical to police informer privilege, but the difference can be justified by the different roles of CSIS and the police.

The Air India Commission cautioned that promises of anonymity should not generally be made:

by individual officers or agents . . . Procedures should be established to allow consideration of all the available evidence. There must be sound decision making and respect for the chain of command within organizations . . . Legal advice should be obtained, whenever possible, both about the legal effects of promises made to informers and about the impact on subsequent prosecutions of granting informer privilege. Legal advice will also be necessary to determine whether an informer may have already lost, or is likely to lose, the benefit of informer privilege because he or she has become an agent or a material witness.

When Bill C-44 becomes law, CSIS should respond with a transparent policy that ensures that individual agents do not make promises to sources in a casual or routine manner that will trigger the privilege. It may be appropriate for the policy to take the form of a Ministerial directive. CSIS’s implementation of the policy should be carefully monitored by the Minister of Public Safety, SIRC and perhaps by a Parliamentary committee. As will be discussed in the last part of this article, however, there are unfortunate signs that such reviews are unlikely to occur.

The Air India Commission recommended that should a CSIS privilege be created, there was a need for closer co-operation between CSIS and the RCMP subject to oversight and direction by a specialized director of terrorism prosecutions and through an enhanced role for the Prime Minister’s National Security Advisor. In order to ensure that the most informed decisions could be made between the competing interests in collecting secret intelligence and collecting evidence that could be used in prosecution, the Commission recommended that the deliberations by the Prime Minister’s National Security Advisor (but not CSIS) be covered by a new class-based national security privilege. The government’s rejection of these recommendations means that some of the mechanisms for managing the difficult relationship between intelligence and evidence are not present. The problem here is not so much that CSIS will deliberately misuse the new privilege, but that its operational demands and mandates will compel it to offer most of its human sources confidentiality and perhaps even anonymity. Later in the investigation, however, these promises may make it more difficult to use CSIS sources as witnesses in criminal trials or to disclose identifying information about the sources that may be required to sustain warrants from challenges.

Much will depend on the ability of CSIS and the RCMP to persuade human sources to consent to disclosure. The transfer of sources who have been promised confidentiality by CSIS to the RCMP is an especially delicate issue. CSIS has the power to refer sources for protection under the 2013 Safer Witness Act but the program remains in the control of the RCMP. In any event, CSIS may be less willing to employ such programs given that both the CSIS Director and the CSIS human source will both have vetos against disclosure.

Because of its mandate and the preliminary nature of its terrorism investigations, CSIS will generally prefer intelligence gathering to evidence collection. Sometimes this will be the right decision that should be made in the public interest. The problem is that the new privilege in Bill C-44 allows CSIS to make promises of confidentiality that may thwart subsequent prosecutions on its own and without consulting the police or the Minister. Prosecution will not always be the answer to security threats, but it remains the preferred and most powerful option. The rise of foreign terrorist fighters attracted to violent ideologies re-affirms the need to use the criminal sanction. Bill C-44’s new CSIS privilege unfortunately places the viability of terrorism prosecutions, including those under the valuable new offences enacted in 2013 to deal with foreign terrorist fighters, at risk.
III. — The Innocence at Stake Exception to the CSIS Privilege

(a) — The Innocence at Stake Exception

Police informer privilege is one of the most powerful privileges in the legal arsenal. But it is not absolute. The privilege can be lost if the accused’s innocence is at stake. This includes cases where the informer becomes a material witness or an agent or acts as an agent provocateur. Bill C-44 recognizes the innocence at stake exception in s. 18.1(4)(b) of the CSIS Act. This appropriately recognizes that priority of fair criminal trials.

Innocence at stake exceptions may more commonly arise in the context of terrorism investigations because of the broad nature of terrorist crimes. The limits of the innocence at stake exception means that the benefits of the new privilege may not be as great as anticipated. CSIS cannot really guarantee human sources who may be material witnesses to the broad array of terrorism crimes that their identity never will be revealed. The Air India Commission found that one of the reasons why so many witnesses did not co-operate in the prosecution was that they had initially been promised complete confidentiality by CSIS only to be subsequently mistreated and inadequately protected by the RCMP.

(b) — The Unconstitutionally Underinclusive Nature of the Exception

The innocence at stake exception in Bill C-44 is constitutionally underinclusive in the national security context. CSIS human sources provide evidence in security certificate and other administrative proceedings that unlike criminal trials allow the use of secret evidence including evidence from the unnamed human source. The Supreme Court in Charkaoui, Re rejected the Attorney General’s argument that s. 7 did not apply in the immigration context. It stressed that “we must look at the interests at stake rather than the legal label attached to the impugned legislation”. Bill C-44 takes an inappropriate legal label approach that restricts its innocence at stake privilege to criminal trials.

There are concerns that CSIS human sources are not always reliable. For example, the Federal Court has found that information provided by some CSIS sources was not credible because it was contradicted by CSIS’s own intercepts and surveillance. The dissenting judges in Harkat who were prepared to recognize CSIS informer privilege recognized that the new privilege should not be absolute in the security certificate context. Unfortunately, Bill C-44 makes the privilege absolute in the non-criminal context. As such, it could prevent judges from fashioning various remedies to respond to concerns in the security certificate cases about the reliability of CSIS’s human sources. These remedies may include disclosing identifying information about CSIS human sources to special advocates or even in extraordinary circumstances allowing the special advocates to cross-examine the sources, as was requested but denied in Harkat.

Section 18.1(4)(b) should be amended to allow judges to devise orders that allow the disclosure of identifying information of CSIS human sources not only when it is “essential to establish the accused’s innocence” but also when it is “essential to ensure that a proceeding is fair and respects s. 7 of the Charter.” The failure to make such an amendment invites a successful Charter challenge to the legislation. Indeed, it could even unsettle the Supreme Court’s recent conclusion that the security certificate regime is consistent with the Charter.

(c) — Minimizing the Use of In Camera and Ex Parte Hearings

Concerns have been raised about s. 18.1(7) which provides that any hearing to determine whether CSIS human source privilege or the innocence at stake exception applies “shall be held in private and in the absence of the applicant and their counsel, unless the judge orders otherwise.” These concerns are understandable given the extraordinary nature of both in camera and ex parte proceedings.
Nevertheless, the Supreme Court has recently and clearly indicated that such measures may be required at least during initial proceedings in order to ensure that identifying information is not disclosed in the course of determining whether police informer privilege or the innocence at stake privilege applies. At the same time, the Court has urged judges to include those challenging the privilege and the public to the extent that this can be achieved without undermining the purpose of the privilege in protecting informers. In some cases, amicus, special advocates and counsel for the media should be included in the proceedings while at the same time steps are taken to minimize any potential damage to the privilege. This jurisprudence will shape how judges exercise their discretion under s. 18.1(7) to depart from the in camera nature of proceedings challenging the new privilege.

IV. — CSIS’s Powers to Conduct Investigations Outside of Canada

(a) — CSIS’s Enhanced Powers under Bill C-44

A number of provisions in Bill C-44 provide that CSIS can conduct investigations “within or outside of Canada”. It is clear that the threats to security of Canada may require investigations outside of Canada. As such, these amendments are desirable and can fill a gap that could require CSIS to rely on foreign agencies who may not have the same priorities or values as Canadian agencies. At the same time, investigations outside of Canada are more likely to raise difficult foreign policy issues as well as complex issues about how the Charter and other forms of Canadian law apply to CSIS officials abroad.

Bill C-44 settles ongoing uncertainties about s. 21 warrants authorizing extra-territorial searches by providing in s. 21(3.1) that a judge may issue a warrant “without regard to any other law, including that of any foreign state” to “authorize activities outside Canada to enable the Service to investigate a threat to the security of Canada”. Section 21(3) of the CSIS Act already contemplates that CSIS can under warrant violate Canadian laws relating to breaking and entering in the course of conducting searches. Judges are expert on Canadian laws and can tailor proportionate and justified law breaking, but foreign law breaking raises novel issues for the judiciary. Justice Mosley’s decision in the X, Re case demonstrates how judges can exercise a continuing jurisdiction if they learn that CSIS took actions, in that case enlisting the help of foreign partners, that were not authorized by the warrant. Nevertheless, Justice Mosley first learned about what happened through public reports of watchdog agencies. There is no guarantee that all judges will be as vigilant or creative.

(b) — The Need for Enhanced Ministerial and Parliamentary Oversight

Foreign law breaking raises sensitive issues that should in some cases come to the attention of Ministers. The Minister of Public Safety is responsible for CSIS but CSIS’s foreign activities can raise matters that might concern the Minister of Foreign Affairs, the Minister of Defence and even the Prime Minister. Unfortunately, there is nothing in Bill C-44 that requires any Minister to be notified with respect to searches or other investigative powers that are conducted outside of Canada. The Inspector General who served as the Minister of Public Safety’s eyes in CSIS has been abolished. SIRC’s most recent report details its concerns that CSIS is not bringing sensitive matters to the Minister’s attention.

Parliament attempted to review the activities of the Canadian military in relation to its Afghan detainees but encountered difficulties and delays in gaining access to secret material. Secrecy, including overclaiming of secrecy, hinders accountability. Secrecy is likely to apply when CSIS acts outside of Canada. Bill C-44 follows in the wake of the defeat of a private member’s bill, Bill C-622, on November 5, 2014 that would have created a statutory committee of Parliamentarians who could have access to secret material under the controls of the Security of Information Act. The decision to defeat this bill, in the immediate aftermath of the terrorist attack in Ottawa, is regrettable. It means that the much of CSIS’s activities, especially its powers under Bill C-44 to conduct investigations outside of Canada, will likely escape Parliamentary review. The government’s approach to this issue seems based on the idea that increased review and oversight is a hindrance to the important work of our security agencies. In reality, oversight and review has the potential to improve performance and enhance public confidence in our security agencies.
(c) — The Need for Enhanced Independent Review

The Arar Commission’s neglected second report was based on the simple and sound principle that review and oversight of national security activities should mirror and match the increased intensity and integration of those activities. CSIS needs to be able to conduct foreign investigations, but SIRC must have adequate powers and resources to review their activities including their increasingly integrated activities with CSEC, DND, CBSA and DFAIT. Unfortunately there is nothing in Bill C-44 to ensure that SIRC is alerted to CSIS’s foreign investigations or warrants or that SIRC can gain a full picture of how CSIS interacts with other federal departments with foreign security responsibilities. SIRC has raised concerns in its most recent report about how CSIS conducts investigations outside of Canada. It has also called attention to the poor state of relations between CSIS and DFAIT, one that may be strained even further given CSIS’s increased international powers.

A particular concern with respect to CSIS’s foreign powers is the inability of SIRC to share secret information with the CSEC commissioner. A particular concern with respect to the possible harmful effects of the new CSIS human source privilege on criminal investigations and prosecutions of terrorism is the inability of SIRC to share secret information with the RCMP complaints body. Contrary to the Arar Commission’s recommendations, the RCMP complaints agency does not even have guaranteed access to secret information.

Bill C-44 authorizes risky foreign activities and a sweeping human source privilege that may harm terrorism prosecutions. It is unfortunate that the government did not use Bill C-44 as an opportunity to modernize and enhance review and oversight mechanisms in order to monitor how CSIS uses its new powers and its effects on other agencies including the police, military and foreign affairs departments.

V. — Conclusion

The threat of foreign terrorist fighters and those inspired by the brutal Islamic State is real as the terrorist attacks of October 2014 in St-Jean-sur-Richelieu and Ottawa make clear. These attacks affirm the need for the new offences created in 2013 that apply to foreign terrorist fighters. Few Canadians would doubt that prison is the best disposition for such persons. Unfortunately Bill C-44 by creating a CSIS human source privilege will likely have the unintended effect of making it more difficult to conduct terrorism prosecutions by giving CSIS human sources and the Director of CSIS a veto on whether any identifying information will be disclosed. Bill C-44 appropriately recognizes that the new privilege should be subject to an innocence at stake exception, but this exception is constitutionally underinclusive given the use of CSIS sources to provide evidence in the security certificate and perhaps other administrative regimes. CSIS’s use of its new human source privilege and its new statutory powers to conduct investigations outside of Canada should be carefully monitored. Unfortunately, however, Bill C-44 does not contain much needed enhancement of Ministerial, Parliamentary and independent review of CSIS’s policies and practices and its interactions with other federal agencies and departments.

Footnotes

* Professor of Law and Prichard Wilson Chair in Law and Public Policy, University of Toronto. I served on the research advisory committee of the Inquiry into the Activities of Canadian Officials in Relation to Maher Arar from 2004 to 2006 and as Director of Research (Legal Studies) of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 from 2006 to 2010. I thank Mel Cappe, Carmen Cheung, Paul Copeland, Anil Kapoor and Sukanya Pillay for helpful discussions and comments on an early draft that improved this article.

1 Criminal Code, s. 83.181 as enacted S.C. 2013 c. 9 s. 6.
2 Ibid., s. 83.191.
3 Ibid., s. 83.201.
The Problems with the New CSIS Human Source Privilege in Bill C-44

26

R. v. B.


25


24


Bill C-622, 41st Sess., 41st Parl., as introduced for First Reading October 27, 2014.


Bill C-44, s. 2 amending s. 2 of the CSIS Act.

Ibid., s. 6.


Ibid., at p. 139.

Supra, footnote 6, at para. 85.

As quoted in Kent Roach, The Unique Challenges of Terrorism Prosecutions: Towards a Workable Relation Between Intelligence and Evidence, Vol. 4 of the Research Papers of the Air India Commission (Ottawa: Public Works, 2010), at p. 112.


The Air India Commission found that intelligence in the form of CSIS wiretaps and information obtained from what is now CSEC provided intelligence about the threat to the few Air India flights leaving Canada and concluded “there was enough information in the hands of various Canadian authorities to make it inexcusable that the system was unable to process that information correctly and ensure that there were adequate security measures in place to deal with the threat.” Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, A Canadian Tragedy Vol I: The Overview (Ottawa: Public Works, 2010), at p. 27.


There are many cases where Canada allows extradition of persons to face terrorism charges in other countries, but this is not a viable option with respect to “home grown” terrorism.


R. v. B., supra, footnote 17.

Ibid., footnote 6, at para. 85.
Ibid., at para. 18. Justice Abella added that the person’s “obvious opportunism” and lack of credibility do not . . . close the door to finding an implicit promise of confidentiality”. Ibid., at para. 21 (emphasis in the original).

Bill C-44, s. 2 amending s. 2 of the CSIS Act.

Ibid., at p. 132.

Ibid., at p. 143.

S.C. 2013, c. 29.


The Court concluded in Application to proceed in camera, Re, supra, footnote 12, at para. 29, that “the only real exception to the informer privilege rule is the innocence at stake exception . . . situations in which the informer is a material witness to a crime fall within the innocence at stake exception . . . The privilege does not apply to an individual whose role extends beyond that of an informer to being an agent provocateur . . . Similarly situations in which s. 8 of the Charter is invoked to argue that a search was not undertaken on reasonable grounds may fall within the innocence at stake exception.”

A Canadian Tragedy Vol. 1: The Overview, supra, footnote 19, at pp. 29-30.


Ibid., at para. 137.

Ibid.

Ibid.

Bill C-44, s. 7.


Bill C-44, ss. 3, 4 and 8 amending ss. 12, 15 and 21 of the CSIS Act respectively.

Air India Commission, A Canadian Tragedy, Vol. 3 (Ottawa: Supply and Services, 2010), at p. 103.


