



House of Commons
CANADA

**Subcommittee on Public Safety and National
Security of the Standing Committee on Justice,
Human Rights, Public Safety and Emergency
Preparedness**

SNSN • NUMBER 024 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Wednesday, October 5, 2005

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Chair

Mr. Paul Zed

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• (1540)

[English]

The Chair (Mr. Paul Zed (Saint John, Lib.)): Good afternoon, colleagues.

This is the Subcommittee on Public Safety and National Security. Pursuant to our order of reference, we are studying the Anti-terrorism Act today.

I'm happy to welcome Professor Gavin Cameron from the department of political science at the University of Calgary. I understand a gentleman from the MacKenzie Institute may or may not be joining you on the panel. I understand you have an opening statement.

Welcome.

Professor Gavin Cameron (Department of Political Science, University of Calgary) Thank you for the opportunity to address the committee on this important topic. As has already been stated, I'm a professor in political science at the University of Calgary. I've been writing on issues relating to terrorism, and in particular to the threat posed by such violence, since 1994.

If you'll permit me, I'd like to make a number of fairly general comments in my opening statement, and then perhaps move on to more specifics in the questions.

First of all, I think it's very clear that terrorism remains a threat to Canada. Obviously this committee will already have heard testimony to that effect, and it needs little reiteration from me here. But in the wake of the London bombings this summer, Anne McLellan warned against complacency within Canada. This is simply the latest in a succession of well-informed public figures who have indicated that Canada remains a target for terrorism. In fact, Canada is the last major state on al-Qaeda's list of enemies that remains unattacked.

If Canada is attacked it will be because of what it represents—a western secular and open society—rather than for specific actions such as the involvement in Afghanistan. Private Canadian citizens have not been immune from attack in Iraq, and that must be seen as not only a deliberate strategy of brutalization by the insurgents there, but also a deliberate strategy that there is no good westerner, and Canadian citizens are clearly representative of the west.

However, the scope of the threat to Canada remains uncertain. The nature of the al-Qaeda network has changed significantly since September 11, 2001. The recent attacks in London and last year's attacks in Madrid showed an entity that was flexible, sophisticated,

and almost entirely detached from any central control. In both London and Madrid the planners of the attacks had some international experience, but the perpetrators were citizens and long-term residents of Britain and Spain respectively. The direction from which any threat to Canada might come therefore remains uncertain.

Canada is host to a large number of dissident groups that have generally and historically, with critical exceptions such as the Air India disaster, not directed their violence against Canadian targets. Given the clear but unspecific threat to Canada, law enforcement and intelligence agencies face a tremendous challenge, and robust legislative measures are vital to assist them in this task.

I know some have argued before this committee that all proceedings covered under the Anti-terrorism Act could equally well have been brought under criminal laws that existed before the Anti-terrorism Act was passed. I'm not a lawyer, I'm a political scientist, so I'm unable to judge the validity of those arguments. But I would say that Canada's anti-terrorism forces are far from alone in saying that such measures are essential to combat the challenge posed by contemporary terrorism. Similar claims have consistently been made by forces in other jurisdictions, such as the United States, Britain, and Australia. As such, I personally believe the Anti-terrorism Act is necessary legislation.

There is a temptation to assume that anti-terrorism legislation is temporary and an expedient response to a relatively short-term imperative. The historical record across a number of countries is unambiguous. Needing to prove a negative—the absence of a threat—emergency measures tend to develop into permanent legislation. For example, in Britain, the 1974 Prevention of Terrorism Act required and received annual renewal until it was replaced by the 2000 Terrorism Act. It should therefore be assumed that the Anti-terrorism Act or its successor will be long-term legislation that has to continue to deal with the evolving and increasingly complex nature of international terrorism.

There are reasons to dislike anti-terrorism legislation in general, and the Anti-terrorism Act currently under consideration is no exception. Terrorism is impossible to define precisely, even if one attempts to be as objective as possible. Terrorism is a politically motivated tactic that encompasses a broad range of activities as well as the direct employment of violence as a means of coercion. This has led critics of such legislation to charge that a wide variety of groups, such as environmental or anti-globalization protesters, may be dealt with using anti-terrorism legislation. I believe the historical records across a number of countries show that this undeniable, but it is also unavoidable.

Much anti-terrorism legislation permits extraordinary procedural and evidentiary rules to be used in countering terrorism. In the case of the Anti-terrorism Act this includes extended powers of detention, a lowered standard of evidence to permit invasive police investigations, secret hearings in the name of national security, and even the possibility of non-citizens being deported to face torture “in extraordinary circumstances”. Much of this appears to run contrary to the traditions of Canada's legal system generally, and to the Charter of Rights and Freedoms more specifically.

If I may conclude, it seems to me that Canada faces a clear but undefined threat. The Anti-terrorism Act, in common with other anti-terrorism legislation, provides assistance in countering the threat. But such help comes at the price of an overly inclusive definition of terrorism and providing for measures that challenge fundamental principles of liberty.

I believe that a reasonable balance between the issues of security and civil liberties is essential. The overwhelming consensus among security officials is that measures such as the Anti-terrorism Act are necessary to combat terrorism effectively. However, there is equally no doubt in my mind that provisions of such legislation are open to arbitrary application and overuse. The international parallels are clear on this point as well: anti-terrorism legislation, once it is available, is used for purposes other than that for which it was intended. Inevitably, it disproportionately targets some sections of society over others. Incidentally, that is actually counter-productive in dealing with terrorism and raises problems about civil liberties because it increases the likelihood of soft support growing for groups supporting terrorism, or groups perpetrating terrorism.

Therefore, I would strongly urge this committee to examine the possibilities for robust review mechanisms, not only of the legislation itself but of its implementation in individual cases. Anti-terrorism legislation is a necessary evil, but it must be used only *in extremis* and can never be allowed to become a quicker or more convenient means for obtaining evidence or a conviction than regular criminal law, which ought to be the presumed first option.

Thank you.

•(1545)

The Chair: Thank you very much, Mr. Cameron.

I understand, Mr. MacKay, you are next.

Mr. Peter MacKay (Central Nova, CPC): Thank you, Mr. Chair.

Thank you so much, Professor Cameron, for sharing your views on this important subject.

I just want to pick up on your last point, that in the regular course of either an investigative hearing, a preventative arrest, or some of the extraordinary powers that are granted in the anti-terrorism legislation, it may come to light that the investigators, security agents, are confronted by a situation where they find evidence of a criminal offence of a perhaps more domestic nature, or something normally covered by the Criminal Code, outside of the extraordinary remedies that this legislation permits. You pointed out the obvious, but how do investigators then deal with that if in the course of conducting their investigation, using these powers, it comes to light that a bank robbery is in process? I would suggest to you that there is a recent example in Belfast where a huge heist took place, and it was conducted by an alleged terrorist organization, the IRA.

Are you suggesting that evidence should not be permitted and should not be included in a criminal trial because it was obtained in the exercise of investigations aimed at terrorists?

Prof. Gavin Cameron : I think in that particular case it required a hoist for the heist, so yes—I mean, the volume was excessive.

Mr. Peter MacKay: It accomplished both.

Prof. Gavin Cameron : Yes.

Obviously in that particular case, in the fulfilment of anti-terrorism legislation it's actually impossible to separate the two actions. I was positing an ideal rather than anything else.

I would also add, as a further point, that one of the problems in defining terrorism is the very fundamental question.... We can all agree that the person who does the shooting, plants the bomb, or whatever is a terrorist and that it's an act of terrorism; there's very little dispute about that. But as you move further and further away from that clearcut action, the line becomes fuzzier and fuzzier about where terrorism ends and regular criminal activity begins. The Northern Ireland paramilitaries are a particular problem in that regard, in that you have essentially gangsterism being conducted by these organizations and it's not clear at what point the motivation is political and at what point it becomes purely economic. That's a particularly critical example of that phenomenon.

The bank robbery to which you specifically refer, in my understanding, has been used to finance the Protestant paramilitary's armament program.

•(1550)

Mr. Peter MacKay: The Protestant paramilitary's?

Prof. Gavin Cameron : We may be talking about different bank robberies, then. Which one are you talking about?

Mr. Peter MacKay: I'm talking about the hoist in Belfast carried out by the IRA, the Continuity IRA. I was unaware that.... Maybe there was another heist in Belfast.

Prof. Gavin Cameron : I was talking about a separate heist. Both sides have engaged.

In that case, when we talk about the Continuity IRA, they haven't abandoned their campaign; it's a continuation of the military campaign.

Mr. Peter MacKay: With the greatest respect, what I'm trying to glean from your testimony is how we filter out that type of investigation. As you quite rightly pointed out, sometimes the domestic crime, in this case a bank robbery, is very much associated with the goals, philosophy, and motivation of the terrorist organization. I suspect there are numerous other examples around the world.

But maybe I can move to another issue. It is one that I think is at the very crux of what we're trying to do in finding ways to improve upon the legislation and inject, as you've suggested, more balance. The answer seems to lie somewhere in the inclusion of greater oversight and the inclusion of a system that allows for the adversarial process we use in our domestic criminal practice, for either judges, prosecutors, or lawyers with special designation to examine the evidence.

As you're aware, this legislation is extraordinary in that, as you pointed out, people can be held not only without being informed of the reasons for their detention but even without any evidence being presented to themselves or their lawyer, which under normal circumstances would clearly be a charter violation, clearly be an infringement of human rights.

What is your sense of the ability to do just that: to have specially trained lawyers—judges, perhaps—who provide greater input into the examination of the evidence justifying the detention, on the clear understanding that it is not to be disclosed? And if we have to swear them or give them that special security clearance, so be it.

I guess the corollary question is whether there is a mechanism that would allow for this type of rigorous examination and still not imperil ongoing investigations that would tip the balance against public security, because that is clearly the risk. If information is disclosed from informants, if ongoing investigations that very much are aimed at protecting the public are jeopardized.... That is the balance we're constantly struggling with.

What's your opinion on that type of oversight?

Then I want to ask you another question about oversight. I'm sorry for the length of the question.

Prof. Gavin Cameron : I think the type of proceeding you're describing is the least bad option. I think you have a number of problems, a number of balances you have to try to reach. The first, as you suggest, is that you need to provide security to ongoing investigations; potentially you may even need to protect sources. This is a very common argument that's made in favour of that sort of proceeding.

The key problem, as it seems to me, is that you would also presumably want to ensure that defence lawyers were similarly vetted, so you would presumably have a panel of defence lawyers who were permitted to see some or all of the evidence and to conduct the defence on that basis.

I think it would be desirable, if you have a panel of such vetted defence lawyers, that they be able to see almost all the evidence. That would be my argument, because the ability to conduct a meaningful defence depends on being able to confront the evidence, however it's constructed.

Mr. Peter MacKay: Based on that comment, do you believe this would jeopardize or imperil other countries' willingness to share evidence with Canada? Is your sense of it that other countries that currently don't have this type of injection of an adversarial process...? Would this cause reticence on their part to share information?

• (1555)

Prof. Gavin Cameron : Of course, this is a particular problem because so much of Canada's intelligence is derived from foreign sources.

I think in all likelihood, if you had this sort of semi-closed proceedings, with clearly vetted, clearly screened participants, whether the lawyers or the judge—I presume it's a given here that this is a judge-only trial, which again raises some questions, but I think it has to be the assumption for this sort of proceedings—having these clearly screened personnel engaging in this type of proceeding doesn't pose an insurmountable problem to intelligence sharing. We have some problems with intelligence sharing as it is, and I don't see that this is a substantial additional burden upon that.

Mr. Peter MacKay: Mr. Chair, I guess the next step in the progression of an attempt by this committee to find or strike this balance leads to the question of parliamentary oversight.

You would be aware that Canada is the only country of the G-8 that doesn't have a system of parliamentary oversight. We have a system of oversight by a body, with SIRC for CSIS and the public complaints committee for our RCMP forces—and there's similar military oversight—but as far as parliamentarians are concerned, short of the minister and officials there is nothing that injects a non-partisan element into it.

Do you envision a system—and there are obvious examples, such as Great Britain, Australia, the United States, and we've had the chance in this committee to study some of those other examples...? Would this also be an improvement, in your mind, in allowing for a further vetting, a further insurance that everything is being done to strike the balance between public security and individual rights? These specially appointed judges or counsel provide an escape valve or outlet, I would suggest, if in fact it comes to light that there has been impropriety or a falling down on the part of security agents in the gathering and the presentation of evidence.

Is that committee critical, in your view, to the exercise of striking that proper balance?

Prof. Gavin Cameron : I would say not. The perception that the people, via the legislature, have an oversight on intelligence agencies or these sorts of proceedings is certainly desirable. The reality is that the level of operational detail that a parliamentary committee can provide is limited. That's certainly been the experience in Britain. Therefore, I think you realistically have to accept that a parliamentary committee is not the ideal entity to orchestrate that sort of oversight.

What I think is more important is that you have a credible oversight body that is clearly separate from the organizations it seeks to oversee—and that applies whether you're talking about intelligence agencies or about special hearings of the sort we were discussing earlier—and that there is a genuine review process that is sufficiently robust that it is actually possible that the reviewing body is not simply going to say, given the choice between trusting the word of our friends in CSIS, or whatever, and the interests of the individual, we're always going to choose CSIS.

That's what you can't have as an oversight body, and I actually believe Canada has that in place already. That's my assessment.

• (1600)

The Chair: The other witness isn't here, so we'll give everybody a little bit more time, if that's okay.

Mr. Peter MacKay: I'm very interested in your response to this, and I'm going to press you a little bit further on it. I'm curious as to why you would suggest that the creation of a third, or I guess a fourth, body that is independent from the individual security agencies would be more effective than an elected body, who, albeit, may come from different backgrounds, but I would suggest to you would come with some particular knowledge and some particular experience that would be useful...or at least that was the indication I seemed to get when we looked at some of the other parliamentary or democratically elected oversight bodies.

Albeit there wasn't a perfect example...and I completely accept your suggestion that it depends almost entirely on the level of operational details in which the committee is permitted to examine. However, when you talk about a credible oversight body, I would suggest—and again, I would be interested in your comment—that a parliamentary body is going to have more credibility because of its independence and because of the fact that there is also parliamentary accountability that will be brought to bear. To that end, I suggest that it would also cause a little bit more diligence on the part of the security agents themselves, just knowing that this oversight body was in place.

With the British example, which I think may come closest to the avenue we might pursue, in off-the-record discussions it was indicated that it took time, quite a substantial amount of time, for trust to develop. Similarly here, the tightness and the ability to withhold and there being no leaks is so critically important to that trust developing.

Why would you prefer the option of another appointed body as opposed to an elected body of parliamentarians, who have the ability to take the matter to the highest court in the land, the Parliament of Canada, if these incidents of abuse occur? And hopefully these instances would be rare.

Prof. Gavin Cameron : I think the first answer to that is simply time: the amount of time that the parliamentary committee can spend genuinely scrutinizing an intelligence agency is limited. That's one answer. If there were a way around that, it would certainly substantially alter my view.

If we had a committee system in this particular case that was more akin, for example, to the U.S. committee system, with investigative powers, again I think that would add credibility to the sort of oversight that we're discussing.

I think my point was not so much that a parliamentary committee was a poor organization to operate oversight of the intelligence community, but that you need an organization with access to that level of operational detail—and if you can build that up over time and you establish the trust, that's perfectly reasonable. My point was that we already have such an organization, and I'm relatively content with the oversight of CSIS and the other intelligence agencies as it currently exists.

The Chair: May I jump in and close off this round, and ask my colleague Mr. Ménard to go next, please.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Mr. Cameron, let me first tell you in a few words that you have...

• (1605)

[*English*]

For seven minutes?

The Chair: More or less.

Mr. MacKay was 17 minutes, but...

Mr. Peter MacKay: I'm sorry about that.

The Chair: That's okay. We're not keeping track.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): He's going to take 10 minutes off you on the next one.

[*Translation*]

Mr. Serge Ménard: Mr. Cameron, let me first tell you in a few words that I have been impressed by your desire — and we share that desire — to find the right balance between the security that is necessary for us to exercise our freedom, on the one hand, and the defense of the freedoms that could be jeopardized by these very measures, on the other hand. This is why I would like you to briefly describe to us your experience and your background.

[*English*]

Prof. Gavin Cameron : Forgive me. One of the problems with being British is that we have very poor—

Mr. Serge Ménard: I am passably bilingual; I can listen to you, but I lack vocabulary when I speak English.

Prof. Gavin Cameron : Okay. My experience includes writing a master's thesis in security studies that focused on terrorism generally. I wrote a Ph.D. thesis in Britain looking at the way terrorist organizations escalate the level of violence they employ, and the psychological factors that go into that; I wrote that in St. Andrews in Scotland. From there I held post-docs in the U.S., one in Monterey, California, dealing predominantly with proliferation of weapons of mass destruction and terrorism, and one at Harvard, dealing with domestic preparedness and civil responses to terrorism, mainly in the context of emergency planning rather than legislative responses. Then I held teaching posts in Britain for three years, and now in Canada at Calgary for the last 18 months.

In the course of my writing and research on terrorism, I've interviewed a number of government law enforcement and intelligence officials, mainly within the U.K. and the United States, and to a lesser extent within Canada. I've also conducted interviews with a number of representatives of paramilitary organizations, although those have been, for the most part, off the record, for obvious reasons.

[Translation]

Mr. Serge Ménard: Since we do not have a lot of time, my questions will be brief and I believe will call for brief answers.

Could you give us an example of a terrorist act that is not already provided for in criminal laws?

•(1610)

[English]

Prof. Gavin Cameron : As I said in my opening statement, I'm not a lawyer, so I have to be honest and say that I'm uncomfortable trying to make these legal distinctions for you.

My understanding, however, is that some of these are issues relating to conspiracy, which are covered under the Criminal Code, but also relating to things like incitement of violence. It's at the lower end of the spectrum that it becomes very difficult to bring a prosecution, and that's partly to do with evidence, I suspect.

[Translation]

Mr. Serge Ménard: I fully understand that you would hesitate regarding conspiracy or incitement of violence. But before that, when we talk about planting bombs, attacking public buildings, etc., all this is already covered by criminal laws.

In your estimation, will the kind of terrorism we will be faced with likely come from within Muslim communities?

[English]

Prof. Gavin Cameron : That's certainly the way it appears at the moment. I think the caveat, though, is that any anti-terrorism legislation has to be enacted to envision a broad range of threats and scenarios; it can't be as specific as saying we need to consider a predominantly Muslim threat.

[Translation]

Mr. Serge Ménard: I have had some experience in the fight against organized crime in Quebec and I have learned that we have made a lot of progress regarding cooperation from the public.

Could we make a lot of progress in the same way? In fact, do we not need the cooperation from the whole Muslim community, from Muslims who are not terrorists and who generally consider that terrorist acts bring discredit against them?

[English]

Prof. Gavin Cameron : Yes, of course. If we're arguing that the nature of terrorism—and this is what we have to argue—means that we are very heavily dependent on human intelligence, we are very dependent on people helping us. The people who have the sort of knowledge that is likely to be useful are the people who are closest to the terrorists. In this particular case, they are the members of the Muslim community.

[Translation]

Mr. Serge Ménard: If the Muslim community as a whole—perhaps not their leaders—perceives that legislations or activities by security organizations are aimed against them, don't you believe that this could deny us an important source of cooperation?

[English]

Prof. Gavin Cameron : That was the point I made in my opening statement about the need to prevent the overuse or the apparently arbitrary application of the new provisions. So yes, I would agree with that.

[Translation]

Mr. Serge Ménard: There again, regarding this very complex issue of terrorism, it is yet another reason why we must seek a balance between the effectiveness that is demanded by terrorism fighting organizations and the need to maintain cooperation from the public or at least a part of the population. That is necessary in order to lead an effective fight against terrorism, is it not?

[English]

Prof. Gavin Cameron : Again, I would agree with that. I would even go beyond that. I think that liberal democracies have basically two key weapons in the fight against terrorism: first, the practical measures, legislation, law enforcement and intelligence; second, the norms of a liberal democratic society. We have to be very careful in strengthening one at the expense of the other.

•(1615)

[Translation]

Mr. Serge Ménard: To come back to a concern voiced by my colleague Mr. MacKay, and I fully share his concern, in order to be effective, are surveillance and oversight agencies required to employ full time personnel?

[English]

Prof. Gavin Cameron : I would basically say that in order to have effective oversight, you need (a) to have access to operational details, and (b) the time to actually investigate and oversee the activities of the intelligence agency, where appropriate. If you have an oversight entity that meets periodically and deals with generalities, that's not meaningful oversight.

[Translation]

Mr. Serge Ménard: I understand that this requires a rather considerable strength and you need people who have the expertise necessary to examine documents from security organizations.

Are you aware of the number of people working for oversight organizations in Canada? Do you believe they have enough personnel?

[English]

Prof. Gavin Cameron : I'm not aware of the numbers that would fulfill that criterion. However, I would suspect the majority of them have a background in law enforcement and that they are former intelligence agents. That in itself might be problematic. What I think you would therefore need to look at are people, probably with legal experience, from a range of different backgrounds. There, I think, you do have a sufficient body of people within Canada.

[Translation]

Mr. Serge Ménard: In the speech that he delivered in Madrid on March 10, 2005, the United Nations Secretary General, Kofi Annan, gave a definition of terrorism that had been suggested to him by a group of key public figures. I quote:

any action constitutes terrorism if it is intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from doing any act.

Is this definition not sufficient?

[English]

Prof. Gavin Cameron : Do I think that's sufficient? No.

[Translation]

Mr. Serge Ménard: Okay. But why?

[English]

Prof. Gavin Cameron : Because it encompasses a very broad range of activities. Genocide would be included under that definition, as I understand it, or ethnic cleansing.

[Translation]

Mr. Serge Ménard: It talks about causing death or serious bodily harm to civilians. It seems to me that genocide comes under this definition. Don't you think so?

•(1620)

[English]

Prof. Gavin Cameron : Yes, and I would suggest that we certainly should object to genocide, we certainly should object to ethnic cleansing, but there's a qualitative difference between genocide and the sort of terrorism we seem to be talking about here. I mean, they're both abhorrent acts, but if we're talking about trying to come up with a workable definition of terrorism for legislative purposes, we want to have a definition that is reasonably narrow, that it doesn't include everything. This is precisely the problem that many civil liberties activists have concerns about: the broader you make the definition of terrorism, the more groups, the more individuals can be prosecuted under this legislation. That seems to me to be an undesirable outcome, rather than a desirable outcome.

[Translation]

Mr. Serge Ménard: I am not entirely sure that I fully understand your answer. You are telling me that this definition is not sufficient. Is that correct?

[English]

Prof. Gavin Cameron : I'm saying it's too broad.

Mr. Serge Ménard: It's too broad?

Prof. Gavin Cameron : Kofi Annan's definition is too broad. It's a compromise from numerous members of the UN. It's not a—

Mr. Serge Ménard: Well, if it's too broad, what do you think of our own definition of terrorism in the present law? Don't you think it affects more civil rights?

Prof. Gavin Cameron : I think our definition is extremely broad, as well. As I said in my opening statement, I think there is an inevitability in the breadth of any definition of terrorism for legislative purposes. But I'm certainly not willing to say that this is an ideal model, or that Kofi Annan's model is an ideal model, of how we should try to define terrorism. I think we have to say this is a problem, we recognize that it's a problem, and we try to mitigate the impact of those consequences.

The Chair: I'm going to jump in.

Merci, Monsieur Ménard.

Mr. Comartin, please.

Mr. Joe Comartin: Professor Cameron, have you studied the history of the use of emergency legislation, specifically how the War Measures Act was used and some of its successive legislation in Canada?

Prof. Gavin Cameron : I'm broadly familiar with the War Measures Act. I haven't studied it in any detail. I'm familiar with the concept of the use of the army for passive security measures and that kind of thing.

Mr. Joe Comartin: In that regard, since your knowledge is general, as we reviewed what occurred at that time, who was targeted, how it was used, and how decisions were made, it seems to me that a number of the commentators through the late 1970s and 1980s would certainly go along with your comments about the real risks of this legislation.

Has it been used inappropriately by governments that were in a state where they did not have sufficient intelligence, even in a state of panic? Would you agree with that as a general statement?

Prof. Gavin Cameron : Yes.

Mr. Joe Comartin: I'm going to go back to the legislation that we now have, the Anti-terrorism Act that we have as of now. You've indicated to us that you're not a lawyer. Are you a member of the Canadian Association of University Teachers?

Prof. Gavin Cameron : Yes.

•(1625)

Mr. Joe Comartin: Have you looked at their brief?

Prof. Gavin Cameron : I have it in front of me.

Mr. Joe Comartin: They have gone into some detail to show that in fact all of the crimes that are being created in the ATA already exist in the Criminal Code, with the exception of one.

Prof. Gavin Cameron : Yes.

Mr. Joe Comartin: Do you have any disagreement with that analysis?

Prof. Gavin Cameron : I don't regard myself as equipped to disagree with them on the basis of their interpretation of Canada's laws.

Mr. Joe Comartin: It obviously begs the question, but I'll ask it anyway: why are you such a supporter of the ATA as it is?

Prof. Gavin Cameron : We intrinsically have a conflict in assessment among organizations such as the CAUT. I note that Maureen Webb gave very detailed testimony about her view of this situation. We have a conflict between that viewpoint and the perspectives of intelligence and law enforcement officials I've talked to. I'm obviously not aware of some of the testimony that you may have received in this committee, but the people I have talked to very say clearly that the current situation is insufficient. They've used that in fairly general terms, I'm afraid, rather than in more specific terms.

Mr. Joe Comartin: Would you have expected anything else from them?

Prof. Gavin Cameron : I guess not, in that I have never talked to any policemen who didn't say that they needed more powers.

Mr. Joe Comartin: Nor have I.

Prof. Gavin Cameron : What strikes me is the harmony, if you like, among law enforcement and intelligence officials in different jurisdictions on this point, whereby they basically need more tools to combat terrorism. Terrorism is becoming increasingly complicated and increasingly difficult to counteract.

Mr. Joe Comartin: Accepting that we're going to get those opinions, the fact that all the intelligence services are unanimous doesn't persuade me to any degree, particularly when I see, both here and in the U.K., and to a lesser degree in the U.S., that the judiciary should bring an independent analysis to this type of legislation. They are expressing grave reservations about it here in Canada, actually striking it down in a significant way in the U.K., and appearing to do so in some of the cases in the U.S. as well. Should we not be looking to that element of our society, as they're independent? Is their analysis the one we should accept?

Prof. Gavin Cameron : By all means. And if we're talking in the U.K. case, for example, of some legislation that has been struck down because it contravened the European Convention on Human Rights, then absolutely.

Mr. Joe Comartin: Right.

If that same case were applied in Canada, though, Professor Cameron, a good deal of the ATA would not withstand—

Prof. Gavin Cameron : Okay, I bow to your knowledge on that.

Mr. Joe Comartin: Let me switch to another area before we go.

You've expressed some significant degree of confidence in SIRC in particular, but we've just gone through the Air India case, where the trial judge was, quite frankly, quite critical of CSIS's role as they conducted themselves, SIRC having a number of years before—I was going to say whitewashed, but I am not going to use that term—cleared them and said their performance was appropriate. And we've just got through the Bhupinder Liddar case, where again SIRC had cleared them and in retrospect, obviously, should not have done so.

Why do you have such confidence in SIRC?

Prof. Gavin Cameron : I think my point was that you need a robust organization that has the trust of the agencies it seeks to oversee, and that's a conundrum in itself.

Mr. Joe Comartin: But isn't it a question of the trust crossing over into being co-opted?

Prof. Gavin Cameron : That's the danger, and that's why I was suggesting in the previous round of questioning that you couldn't, for example, have formal intelligence officials being the ones responsible for oversight. It does have to be a genuinely independent entity.

The reason I favoured an entity such as SIRC over a parliamentary committee was because that level of trust existed already—for no other reason than that, really.

● (1630)

Mr. Joe Comartin: That's all, Mr. Chair. Thank you.

The Chair: Thank you, Mr. Comartin.

Mr. Cullen.

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chair.

Thank you, Professor Cameron, for being here.

You have done a lot of work in the area of nuclear terrorism, the threat of nuclear terrorism, and I'm wondering if you could comment on what form that might take or could take, particularly in the context of Canada.

And I wonder if you could comment on the concern I have that we often think of nuclear capabilities in the hands of so-called rogue states, but we also know there are countries that have nuclear capabilities that might not be so inclined to act in a way that a rogue state might. Within their bureaucracy, within their military, there might be corrupt or misguided individuals who may be tempted to share some of this technology with terrorists or potential terrorists. Perhaps you would talk about the threat of nuclear terrorism for Canada and comment specifically on those aspects.

Prof. Gavin Cameron : I'll take the last point first, if I may. From what you're saying, it sounds as though you're particularly interested, for example, in the connections between the Pakistani ISI and the nuclear community and al-Qaeda or al-Qaeda-linked groups. That's an argument that's been—

Hon. Roy Cullen: Well, Pakistan is one example, but I wouldn't want to limit it to Pakistan.

Prof. Gavin Cameron : No, but the direction of your question is one that has been very prevalent, with that key.... I think the evidence suggests that although there was some level of individual cooperation within both the ISI and the Pakistani nuclear community, it was at a relatively low level. That's the best evidence, the best open-source evidence anyway, that I'm aware of in that particular case.

There have obviously been concerns over the last 15 years about nuclear weapons and nuclear technology leaking from the former Soviet states to terrorist organizations. The evidence for that is limited. We still have this critical conundrum of perceiving that nuclear leakage has occurred. We have almost no evidence of weapons-usable material, let alone a weapon itself, reaching the hands of a terrorist organization. I'm relatively confident about that as an avenue for nuclear terrorism.

If we talk about nuclear-yield weapons, the key factor is the access to nuclear material, and that, realistically I think, for most terrorist organizations would require that they either buy it on the black market or they have a state sponsor. I think the likelihood of enrichment or something like that from a terrorist organization is very remote. Therefore, the bigger threat, the more likely threat anyway, particularly in the context of Canada, is things like radiological terrorism, the use of a radiological dispersal device—it is very easy to do, it uses nuclear material that's widely available—or an attack on a nuclear facility, of which obviously Canada has a number.

The security at nuclear facilities has improved. Realistically, you can't prevent every possible scenario, but it has improved. The containment capabilities at nuclear facilities, particularly in countries such as Canada, is relatively good. It's relatively difficult to break in by force and create an off-site nuclear leak. Therefore, I think you come back to radiological terrorism as the most likely scenario for Canada.

•(1635)

Hon. Roy Cullen: Have you done much work in the area of biological or chemical threats and what form they might take? And on the radiological, what form might that take if it were to appear in Canada?

Prof. Gavin Cameron : On the radiological issue, what you're basically looking at there would be conventional explosives coated with any number of relatively readily available radiological isotopes, and cesium-137 is the one that is most talked about in that context. It's available fairly widely. It's used in X-ray machines, for example. That's the one I would worry about most.

Realistically, it's low casualty compared to, say, a nuclear yield device. It's a high-impact, low-casualty weapon in all likelihood. It's a means of disruption; it's a means of making an area such as Bay Street, for example, off limits for a prolonged period. It's possible to clean up that sort of thing, but it takes time, and you have a substantial loss of confidence, obviously. There are clearly consequences from that.

I have done some work on chemical and biological weapons. Again, I think one of the questions you have to ask about chemical weapons is this: compared to the relative difficulty of creating a meaningful chemical weapon, is it really likely that terrorists would not seek to use a massive conventional device? That's one of the key questions that I have with chemical weapons. It's much easier to have massive conventional devices, and the consequences, with the exception of the psychological consequences, are probably pretty equivalent.

In terms of biological weapons, that's a concern, and that has clear attractions for some terrorist organizations. The covert attack is one obvious attraction; if you are using a virus that increases the scope for an extended impact. So yes, that's clearly something to worry about.

Hon. Roy Cullen: How well trained are terrorist groups, if I can call them that? Is there a lot of capacity or capability out there to deploy this type of threat in Canada?

Prof. Gavin Cameron : In Canada? I'm not aware—

Hon. Roy Cullen: No, I'm not saying to deploy that threat in Canada. Maybe not by locals, but around the world, are there the capabilities? Is there a large body of people who can implement that kind of terror in Canada?

Prof. Gavin Cameron : There's a large body of people who have the technical expertise to create those sorts of weapons, yes. Whether many of them are employed by terrorist organizations is an entirely different question. My view is that this is a much smaller set.

In terms of meaningful programs, there are a number of groups that have engaged in relatively low-grade production, particularly chemical and biological, and that dates back to the 1980s. You have a range of groups operating for actually quite a range of idiosyncratic reasons. In terms of a serious capability, you really are only looking at Aum Shinrikyo and al-Qaeda.

Aum Shinrikyo failed because they were detected, but also because they made a number of very poor choices scientifically.

Al-Qaeda appears to have been investigating a range of chemical and biological weapon possibilities in Afghanistan, and those efforts were substantially disrupted by the invasion of Afghanistan in the fall of 2001.

The common factor, I think, between Aum Shinrikyo and al-Qaeda is that they have a large-scale membership, or they had a large-scale membership, and they are very well financed. We're really talking about very substantial amounts of money that can be devoted to research and development. The number of terrorist organizations at the moment that are in a position to provide that sort of research and development funding is very limited indeed.

•(1640)

Hon. Roy Cullen: Thank you.

Have you had a chance in your work to compare the anti-terrorism legislative regimes in Canada versus, let's say, other developed countries like the U.K. or the U.S.A.? Have you ever done any work in that area?

Prof. Gavin Cameron : No, that's actually not one of the areas I've worked in.

Hon. Roy Cullen: Okay, but I notice that you've done some work in the area of working with terrorist groups, with governments, negotiating and that sort of thing.

This is a bad analogy, but in the United Kingdom, and more recently here in Canada, the imams came out and denounced violence and terrorism. In fact, the Prime Minister of this country met with a good cross-section of imams in Canada to thank them for taking that stance and then to work on next steps. I think there were similar parallel initiatives in the United Kingdom. I'm not familiar with all the details.

I'm wondering what is the significance of the mainstream Muslim community coming out and making that sort of condemnation and how the Government of Canada could work closely with mainstream Muslims to try to avoid any terrorist acts, or terrorist acts in Canada.

One of the groups that are of concern, of course, is young people—not to single out young people—those who are below the radar. In other words, if you looked at what happened in Leeds, a lot of people who were interviewed afterward said, my gosh, this person worked at the local fish and chip shop and played cricket on the weekends. But obviously they were going to some mosque that was very radical or they were meeting with people, and in my judgment, some of them get brainwashed, although I'd probably be hung and quartered for saying that too.

What is the scope for governments working with the mainstream Muslims to try to prevent that kind of terrorist activity occurring by Muslims within Canada?

Prof. Gavin Cameron : It is considerable, and it is actually one of the most promising routes to dealing with terrorism.

One of the most hopeful aspects of the last few years, in Britain anyway, has been the rooting out of extremist imams from some mosques, particularly the Finsbury Park mosque in London. Clearly, that's one way in which you disrupt the scope for, if you want to call it, brainwashing. It's one way that you disrupt it, and it was the Muslim community themselves that did this with the desire of distancing themselves from that activity.

That, however, has clearly not prevented other radical meetings, other radical imams. You used the example of Leeds. One of the things that are very clear is that even people who thought they knew these individuals well clearly were completely unaware of this entire side of these four individuals on July 7—and the wider group, once you include the July 21 bombers, or attempted bombers. It can only get you so far. That's the problem. It's absolutely a way of lowering the sea in which the fish swim, to use a metaphor that is sometimes employed. It's not a perfect solution.

Hon. Roy Cullen: You talked about the anti-terrorism legislation and the fact that some would call for more in terms of giving the state more powers, but some have come here and said that the fact that the government actually hasn't used the provisions already there—I think there has been one case—basically argues that we don't need it. The counter to that is, of course, that we need it in case we have to use it.

I wonder if you could comment on those points of view.

•(1645)

Prof. Gavin Cameron : Personally, I'm in favour of having that sort of legislation on the books and having very selective use of it. There is a clear case there for stringent judicial interpretation, saying that's clearly not what was intended here. This would be my preferred option, that you have the means of dealing with a situation and choose not to use it rather than simply not having those means at all. That's my take on it.

The Chair: Thank you.

Colleagues, is there anything further?

Mr. Sorenson, I believe you have some questions.

Mr. Kevin Sorenson (Crowfoot, CPC): Thank you.

Thank you, Professor Cameron, for coming here today to Ottawa, leaving that beautiful place of Calgary and being here in this town.

You did say in your testimony that you researched emergency preparedness in the context of domestic response. And I think as we've turned the television on over the last month or so, we've seen Hurricane Katrina, Hurricane Rita, and the devastation in the past of a tsunami. Have you reviewed Canada's emergency preparedness? Do you think we're ready to deal with a natural disaster?

Prof. Gavin Cameron : No, I haven't specifically examined Canada's preparedness.

I think what the events of the last month or so very clearly show, however, is a problem that has been identified repeatedly in studies that I'm aware of in both the U.S. and the U.K., and I would suspect the same applies to Canada. No matter how much you plan, no matter how many tabletop exercises you engage in, when an event happens, there's a crisis on the ground. There are uncertainties about who is in charge, and the lines of communication are unclear. The means of bringing in additional resources from out of the region, out of the area, are, in the event, unclear.

I studied the U.S. response, really from the late 1990s onwards. The U.S. had exercise after exercise, and each time there would be a "who's in charge" problem. And I think to some extent we're continuing to see these sorts of problems occurring in the response to Hurricane Katrina.

Mr. Kevin Sorenson: I appreciate that question, and that brings us back to your other question of parliamentary oversight. We have watched the United States as this whole exercise has unfolded with FEMA, where they've had a disaster, where they've had hundreds of deaths, and where the head of FEMA was basically fired because they weren't ready.

When we go to our emergency preparedness, not just to the minister but to the department, they say that everything is under control. In fact, it was about a year ago that we had this jurisdictional battle. The minister in Ontario for emergency preparedness said no, our plan would be the one that prevailed, and our minister out here said no, no, it's a different plan. We had these little battles.

Perhaps in a terrorist situation where we're dealing with evidence you question the validity of the parliamentary oversight, but I would suggest that a parliamentary oversight committee where people are elected, and where they're given information and would be able to sit down...also oversight with investigative agencies. I think it's an imperative. I think it's absolutely needed. That's one of the questions I have.

This past week, I had the opportunity to be in the United States and to meet with some of the experts on security. The foreign affairs and international trade committee travelled there. One of the individuals talked about terror as a method of warfare to achieve economic damage. He said he doubted very much that there would be another terrorist attack in London on the transit system because, in all reality, that attack failed. Although it incited a little fear, he said the reason it failed was that Great Britain had that transit system up and running again in a matter of hours. People didn't stay away from the transit system. As he rationalized this, he felt they would probably not attack it again.

He then went on to talk about the importance of trade between Canada and the United States, the critical infrastructure, the transportation of goods across the border, basic economics, and also bioterrorism and the impact that it would have on the health system.

Can you elaborate a little bit on some of those points and on where you see the major threat, and also how Bill C-36 fits in, because I guess we have to work it all back to Bill C-36? You are an advocate of keeping Bill C-36 and the strong anti-terrorism legislation, so what areas of prevention would it have? We talk about preventative arrest, we talk about certificates—some of those areas that are major questions in this bill—but for each one of those things I mentioned as a threat here in Canada, how would Bill C-36 help to prevent such an attack?

• (1650)

Prof. Gavin Cameron : I think I would actually dispute, first of all, that the London attacks were a clear-cut example of economic terrorism. When I think of economic terrorism, I think of the IRA's campaign in the early nineties, where they destroyed very substantial buildings in the financial district—the Baltic Exchange and other buildings of that variety. The damage from a series of, I think, two attacks ran into the hundreds of millions of pounds. Financially, it was far more significant than the 30-year campaign of the IRA in Northern Ireland.

The World Trade Center was an example of economic terrorism, although there was a range of other motivations as well. I just don't see attacking the transit system in those terms. The economic aspect of the loss of tourism, for example, is part of the equation, but it's a relatively small part.

In terms of some of the other ways that one could be attacked, you could attack agriculturally. One of the scenarios bandied around repeatedly in the last few years is a biological attack not on humans but on the food supply as a means of generating fear. If you targeted certain sectors of the agricultural community, you could have a pretty profound economic impact as well, although the economic impact would be unevenly distributed across the country.

In terms of what Bill C-36 does, I think what it does relates to terrorism as a whole rather than to specific scenarios, specific targeting scenarios. I think what you're really talking about is the ability to.... Well, if you're talking about preemptive detention, you're essentially talking about a situation where you don't have sufficient evidence, or you have evidence that's not of the nature that you're able to bring a regular prosecution.

I think I see Bill C-36 as fulfilling a role as it applies to terrorism as a whole rather than to specific scenarios, such as targeting Alberta's beef industry or something like that. So I don't think I could tie Bill C-36 to the sorts of scenarios you're suggesting.

• (1655)

Mr. Kevin Sorenson: I have one quick further point. A couple of years ago, we had a solicitor general who stood up in the House in response to a question in question period and talked about how Canada saved the day for the United States with a certain attack that might have taken place.

He really got his fingers slapped as a disciplinary thing because he released the information to whoever was listening that Canada had saved the day. As it was written up in some of the papers, the fear was that terrorist cell groups might be able to understand that they had received this information; it might put the person who was listening in jeopardy. The information, first of all, that was coming... maybe it had been coming for a month or two, but it could put the life of people who had integrated into cell groups and things like that in jeopardy.

I really am troubled by the part of Bill C-36 that says we can hold people without the disclosure of the evidence against them. To me, it is a basic human right, or a civil right anyway, that certainly if we're being held we should understand the reasons and the evidence that's there for it.

But on the other hand, certainly we have this responsibility to protect our people. And Mr. MacKay's point is one that we've raised here before: which international intelligence-gathering agency is going to disclose anything to you if you have to disclose to the defence team what evidence you have?

If a minister is going to stand and say, "We saved the day; we intercepted a cellphone call", and it can jeopardize lives and information coming, what international foreign intelligence-gathering agency will disclose it if we have to turn around and disclose it? We will basically kill any type of information coming to us.

I think you understand, too, that we heavily—and you've stated it—rely on those other agencies overseas, whether it's the United States or Great Britain or Australia, or you name it.

Prof. Gavin Cameron : Which is why I think you're compelled in that scenario to have pre-screened, pre-vetted defence lawyers. You have a panel of eligible—

Mr. Kevin Sorenson: But it's not the defence lawyers who are being advocated here. It's a group of judges or lawyers perhaps who are not part of the defence. They are a separate group who would look at the evidence and give assurances that there is evidence, or who might even suggest that there isn't enough evidence to hold them.

So it's not the defence team or the defence lawyer who would see the evidence against his client. It's a separate group, a separate panel, a separate entity of lawyers or retired judges or whoever, who have clearance to take in classified information. They have that clearance and they've taken the oath of secrecy. Perhaps then, these other agencies would have a degree of confidence in us. But you were suggesting that the defence team should get it.

• (1700)

Prof. Gavin Cameron : I'm suggesting that there should be a panel of screened defence lawyers.

Mr. Kevin Sorenson: But then they're going to argue....

Prof. Gavin Cameron : I think you do have a critical problem there in that the accused cannot be party to the evidence, and that again runs contrary to some of the most basic premises of criminal justice.

I think it's also problematic that in that scenario you would have not only judges and prosecutors but also defence teams who intrinsically are insiders. It's far from an ideal situation, but it strikes me as preferable to having proceedings that are comprised entirely of the judge and the prosecution, essentially.

The Chair: Okay. I'm going to thank you, Professor Cameron, on behalf of the committee. We appreciate your interesting work and fascinating contribution to this area of study.

Colleagues, we're going to suspend for two minutes to go in camera on future business. Thank you.

[Proceedings continue in camera]

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

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