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Chair

Mr. Paul Zed

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• (1535)

[English]

The Chair (Mr. Paul Zed (Saint John, Lib.)): I see a quorum.

Good afternoon, colleagues, and welcome to the Subcommittee on Public Safety and National Security of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness.

As you know, we are conducting a review of the Anti-terrorism Act.

We're pleased today to be joined by the Canadian Association of Chiefs of Police. We have Chief Bevan from the City of Ottawa, who I believe is the vice-president of that association; Chief Blair from Toronto; and Vince Westwick from the law amendments committee. Did I get that right?

Welcome, colleagues.

I understand you have an opening statement.

[Translation]

Chief Vince Bevan (Vice-President, Chief, Ottawa Police Service, Canadian Association of Chiefs of Police): Hello, Mr. Chairman. Members of the Subcommittee on Public Safety and National Security, good afternoon.

My name is Vince Bevan and I am the chief of the Ottawa Police Service and Vice-President of the Canadian Association of Chiefs of Police. I am here today with William Blair, chief of the Toronto Police Service and member of our Counter-Terrorism and National Security Committee, as well as Vince Westwick, Co-Chair of the Law Amendments Committee of the Canadian Association of Chiefs of Police.

The association is made up of very nearly 950 chiefs, deputy chiefs and senior police officers. Our members are from more than 130 police departments in every part of Canada.

One of the association's goals is to provide the government with advice and recommendations on laws, crime and community safety.

We are happy to be here as part of your comprehensive review of the provisions and the enforcement of the *Anti-terrorism Act*.

[English]

In an integrated policing model, law enforcement agencies at the municipal, provincial, and federal levels each have unique and important contributions to make to achieve operational objectives.

This model of policing has been utilized successfully time and time again in organized crime, drug, and other major investigations. The use of an integrated policing model is critical in all aspects of counterterrorism—a national security response.

The RCMP is the lead agency with respect to the Security Offences Act investigations, but provincial and municipal police services necessarily play a vital role in such cases. These police services provide the local insight necessary for the RCMP to conduct such investigations. Those engaged in activities counter to the national security of Canada often engage in criminal activities to pay for their other, more menacing undertakings. For example, Ahmad Rassam and colleagues in the Algerian militant movements appear to have engaged in petty theft, such as stealing vehicle audio equipment in the Montreal area, to fund their militant activities.

No one knows their community like the local police service. They know and work with their communities and offer insight and contacts that would otherwise be unavailable or would take a great deal of time for the RCMP to develop.

The primary objective of national security investigations is prevention and community safety, not merely to respond after the fact. Post-9/11, it became evident that special legal tools, beyond what already exist, were required to deal with such investigations.

The Canadian Association of Chiefs of Police supported Bill C-36 in 2001 when it first came before Parliament, and we continue to support it today. Testimony by various groups before parliamentary committees in 2001 raised the spectre that police would abuse these powers. It's quite the contrary. Police have demonstrated great restraint in the use of these provisions, thus dispelling that notion.

Since the sunset clauses actually apply to sections 83.28, 83.29, and 83.3, investigative hearings, and recognizance with conditions, the Canadian Association of Chiefs of Police would like to specifically address the importance of these sections.

I'm of the view, and that view is shared by my colleagues, that Canadians would agree that preventing terrorism on Canadian soil is a most worthwhile goal. The questions is how that objective can be met legislatively. We know that in order to meet the high standards that Canadians and their courts demand, such legislative prevention must meet several important goals: it must be consistent with the Canadian Charter of Rights and Freedoms, it must be respectful of human rights, it must be proportional to the threat being prevented, it must involve a judicial officers, and it must have procedural safeguards.

It is our submission that the investigative hearing and the recognizance with conditions are the proper and appropriate legislative response and meet the high standards that Canadians demand.

I would like to call upon my colleague Chief Blair, from Toronto, to make comments.

• (1540)

Chief Bill Blair (Toronto Police Service, Canadian Association of Chiefs of Police): Thank you, Chief.

Good afternoon.

If I may continue, the provisions for recognizance with conditions are not new to Canadian criminal law. The power of a judge to require a person to enter into a recognizance, formerly called a peace bond, is long-standing.

In the mid-1990s, following extensive controversy over the release of high-risk offenders from custody at warrant expiry, Parliament introduced section 810.1, "Where fear of sexual offence", and section 810.2, "Where fear of serious personal injury offence". Canadian police have used these sections for several years to supervise high-risk offenders, ensuring community safety and attempting to prevent serious crime from being committed. They are effective and logical legislative tools approved by Canadian courts.

This preventive tool has now been modified to apply to possible terrorist situations.

There are two ways for the police to use this section. After obtaining consent of the federal or provincial attorney general, depending on the jurisdiction, they must lay an information and then bring the person to court. These steps are not required only when, although there are grounds for the information, by reason of exigent circumstance it would be impractical to lay an information, or if an information has already been laid and the peace officer suspects, on reasonable grounds, that the detention of the person in custody is necessary to prevent terrorist activity.

The concept of exigent circumstances is already used extensively in Canadian criminal law; I refer you to the Feeney warrant. Police officers understand, and courts enforce, the concept of reasonable grounds. Investigative hearings, on the other hand, have already passed the scrutiny of the Supreme Court of Canada. These hearings are not punishment, but an opportunity to obtain information that can be used to prevent a terrorist offence.

Including the requirements of the consent of the attorney general, the section contains a range of procedural protections. Both of these provisions are preventive by design. In each case, the intention is to bring the person in question before a court under the supervision of a judge to effect the preventive statutory purpose.

Police have been very restrained in the use of these new powers, the Khawaja case being the only instance. We will continue to exercise this restraint because our ethics demand it and legal safeguards require it.

Some would argue that the law is unnecessary because it is so seldom required, and as such, we should eliminate the contentious

provisions. That would be akin to getting rid of your fire extinguisher because your house never catches on fire. Both notions are sophistries. In a similar vein, it has been a long time since anyone in Canada has been charged with hijacking or treason, and yet it is unthinkable to remove these offences from the Criminal Code, since we may need them in the future. The same holds true for the investigative hearing and recognizance with conditions provisions of the Anti-terrorism Act.

The Anti-terrorism Act provides Canadian law enforcement with the tools necessary to protect Canadians against terrorism, while safeguarding civil liberties. There are two good reasons to keep these provisions. First, investigative hearings have withstood the scrutiny of the Supreme Court, and second, as world events have demonstrated since 2001, there continue to be compelling reasons for these provisions to be available to law enforcement agencies.

Before closing, I would like to touch briefly upon the issue of racial profiling. The Toronto Police Service and our colleagues with the Ottawa Police Service are very well aware of community concerns that bias in all of its forms, and in particular racial bias, can have an impact on the exercise of police discretion.

Both of our services have developed clear and unequivocal policies creating a zero tolerance for racial profiling. We have developed procedures. We have trained our officers by tackling the cultural sensitivities and cultural competencies required to serve our diverse communities head-on. We have made concerted efforts to diversify our police services and to reach out to our diverse communities, particularly those that have been victimized by cultural and racial bias; we actively recruit and promote officers from within our diverse communities in order to better serve all of our citizens; and we have developed systems of supervision and accountability to ensure that our policies and our procedures are met.

Thank you.

We are ready to take your questions.

• (1545)

The Chair: Thank you very much.

Mr. Sorenson, we'll start with you, please.

Mr. Kevin Sorenson (Crowfoot, CPC): Thank you for coming today. We appreciate hearing from the Canadian Association of Chiefs of Police.

I was sitting here trying to get a clearer understanding of how this bill specifically has affected the local municipal police. We hear from the RCMP—and we've certainly recognized the expanded involvement of the RCMP in gathering intelligence information—CSIS, and some of those other agencies that gather intelligence, and I thank you, because you've, in some way, explained it a bit, I guess.

Do you keep records of what percentage of your officers' time, in the local municipal areas where you serve, is spent on terrorism?

Chief Vince Bevan: Mr. Sorenson, we don't track that time. Much of the time of our officers who are working on this issue is spent in collaboration with the RCMP and other partners.

I can tell you specifically that in the case named, the Ottawa Police worked with our partners at the RCMP on it. So they have worked specifically with this law.

Mr. Kevin Sorenson: The Commissioner of the RCMP said that in the wake of 9/11 the RCMP were having to put many of their investigations, especially those directed towards organized crime, on the back burner because they were lacking resources. He was very up front in saying they had to prioritize—or “risk manage”, I think, was his wording. They had to risk manage the files they were given because of the extra time that was demanded of them on the terrorism file.

You haven't really found that to be the case, have you? Yours is much more of a criminal investigation than the division of terrorism.

• (1550)

Chief Vince Bevan: To some extent we have had the same experience. In order to plug some of the gaps the RCMP commissioner spoke about, we sent resources to the RCMP. In so doing, we experienced some of the same workload issues that they had on a national level, because we sent officers to participate in national security investigations, thereby leaving some holes in our operational sections. We suffered some workload pressures as well and have found ways to manage around them.

I'd like to offer Chief Blair...

Chief Bill Blair: Mr. Sorenson, as I believe you're probably aware, municipal police services such as the Ottawa Police Service and the Toronto Police Service participate with the RCMP in integrated investigative units dealing with issues of terrorism. So we make a contribution to those investigative units as well, but our more significant role is in municipal police services. We work within our communities, within the diverse communities of large urban centres. In my experience in Toronto, I have officers out in all of our diverse communities, and we dedicate significant resources in the course of our normal duties, not simply as an anti-terrorism measure, to developing relationships with community leaders from all of our diverse communities.

That enables us to be in a position to gather intelligence from our communities, but it also—I think far more significantly—enables us to take some very proactive preventative measures encouraging and supporting positive community leaders within our diverse communities, and to develop a relationship with those communities so that we might be aware of and be able to prevent any threat to national or public security that might emanate from those marginalized communities.

Mr. Vincent Westwick (Co-Chair, Law Amendments Committee, Canadian Association of Chiefs of Police): Mr. Sorenson, let me add to that. You have to remember as well, when you're talking about terrorist investigations, that a lot of investigations start out as criminal investigations; the true nature of the particular crime may not be apparent or evident in the first instance. The primary responsibility, in major cities across Canada, for criminal investiga-

tions rests with municipal police services and of course provincial police services as well. It's sometimes hard to identify what is a terrorist investigation and what is a criminal investigation that may have terrorist or national security potential. It can become a bit definitional.

Mr. Kevin Sorenson: Let me word it this way. A number of years ago it came up in the House that the minister in Ontario, the minister for emergency preparedness, had said the provincial plan would be the plan that would take precedence if an action were needed here. The Solicitor General at the time strongly disagreed with this and said the national plan always has precedence, and they work with their provincial counterparts and with the municipalities.

We've watched in the United States, not terrorist attacks but emergencies, in the case of Hurricane Katrina. Your members are the first responders to all these types, whether it's an emergency, a disaster, or a terrorist incident. Are you sure, in your mind, whose plan takes priority? Are you sure of the process you guys would go through should one of those disasters or terrorism attacks take place?

Chief Vince Bevan: Mr. Sorenson, certainly in the national capital region we have done an awful lot of work with our partners. We created about two years ago—actually, a little longer than two years ago—a national capital strategic security council that includes the RCMP, the Ottawa Police Service, Sûreté du Québec, Service de Police de Gatineau, and the Ontario Provincial Police, as well as other partners such as CSIS, the military, Canada Border Services Agency, and immigration—other key partners. We've taken the national plan to make sure there was a cascade effect, so that the responsibilities and the work that needed to be done under the national plan, the provincial plan, and the local plans were all taken into account.

So here in the national capital region we continue to work with the Ontario provincial emergency services coordinator and with PSEPC on the national level to make sure all of the needs are met under those various plans. We feel that if we can make it work in this jurisdiction, where there are so many overlapping issues to be taken into consideration because of the jurisdictions at play, we can make it work anywhere in Canada. We've been thus far very successful in developing the plans, we continue to work on those plans, and we're working towards a time when we can have complete sign-off on that.

• (1555)

Mr. Kevin Sorenson: I have one final question.

I thank you for recognizing some of the more contentious parts of the bill and also recognizing the fact that because you didn't misuse some of the ability that you had within the guidelines here—there hasn't been a gross misuse of preventative arrests, for example—you do not want to see them taken out of any terrorism plan.

I appreciate your putting that in. I agree with you on that. I think we have some other very controversial parts of the bill that are not directly involved in how the police respond—that being ministerial certificates where people are held without information or evidence being disclosed to them. Those are some areas of the bill that we really have to solve.

Is there anything in the preventative arrests that could be changed? Do you see anything there? You know you're going to get questions here today on preventative arrest. Is there any part of that bill, dealing with preventative arrests, that could be changed—greater sanctions if it's misused? Is there anything we should identify as being an issue that the police would want to see changed anyway?

Mr. Vincent Westwick: I've had the privilege of appearing before the main justice committee on several occasions, and I have from time to time not been reserved in my criticism of justice department drafters. So perhaps it's incumbent upon me today to praise them. I think it's an example of good legislative draftsmanship. They have struck a very delicate balance between respect for human rights, respect for the application of the charter, and yet, at the same time, creating a legislative provision that is preventative.

If you stop and think of things, there are very few legislative provisions, particularly in the Criminal Code, that are preventative in their focus. That's what this section is intended to do, and I think it's done very carefully. So I would not be here making submissions to you—which is quite uncharacteristic—suggesting changes to it.

Mr. Kevin Sorenson: Are you suggesting that the bill in its entirety is preventative in nature, or specific to what I was referring to with preventative arrests? You aren't suggesting that because preventative arrest is in there, you've prevented...

Mr. Vincent Westwick: No, my comment was directed specifically at preventative arrest, the investigative hearing, and the recognizance with conditions, those provisions that are specifically the subject of the sunset clause. I wouldn't want to speak as generally about the whole bill.

Mr. Kevin Sorenson: Thank you very much.

Thank you, Mr. Chair.

The Chair: Thank you.

Mr. Ménard, please.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Previous witnesses have told us that to combat terrorism we need a law that is different from existing laws. Well, I think that it's already impossible to commit a terrorist act without breaking ordinary laws. However, we are told that we need such a law for two reasons.

The first is that, unlike common crimes or the activities of organized crime organizations, the police don't have the option of waiting until they have proof beyond reasonable doubt before they arrest terrorists. Terrorists have to be stopped before they can carry out their plans.

The second reason is that it is not in the interest of the nation and the international community to divulge information collected under the disclosure requirements to which you are subject.

I recognize that these are two valid reasons. Are there any other reasons why you need laws that are different from the usual laws?

• (1600)

[*English*]

Mr. Vincent Westwick: If I understand your question, Mr. Ménard, the one area of law we would very much encourage—and we hope an opportunity will present itself in the near future when we'll be able to speak to it—is the area of lawful access. The police community is very concerned about the state of the law insofar as part VI of the Criminal Code is concerned. When you speak about preventive steps, when you speak about different types of legislation, when you speak about the development of intelligence, when you speak about prevention, it is lawful access and the ability of the criminal law, and therefore law enforcement, to remain contemporary with current technology.

That's a huge area of the law, and we hope the government will be introducing legislation in that regard. We hope we'll have a chance to speak to it.

I don't know whether that addresses your question, but that's as I understood it.

[*Translation*]

Mr. Serge Ménard: Not really. I don't understand what you mean exactly by "*lawful access*". You certainly mean something more specific than the usual definition of the expression "*lawful access*".

[*English*]

Mr. Vincent Westwick: Sure. Thank you.

Lawful access is a term of art to describe the ability of police under part VI of the Criminal Code, often known as the wiretap provision, to intercept communications, new technology, and so on, pursuant to a judicial authorization.

[*Translation*]

Mr. Serge Ménard: All right.

And you consider that the usual laws prevent you from carrying out proper investigations? Do you think judges don't really understand your concerns when you explain to them why you are keeping people suspected of belonging to terrorist groups under electronic surveillance?

[*English*]

Mr. Vincent Westwick: Yes and no. Generally speaking, judges are receptive to authorizations from law enforcement. The difficulty is the current laws that form part VI of the Criminal Code were passed in the mid-1970s when most of us were using rotary telephones. Things like BlackBerrys, cell phones, interactive pages, and what not were not even thought of—as with e-mail and the Internet.

To be quite candid with you, sir, it's a difficult submission for us to make because we don't want to speak publicly about where the gaps are. But we do want you to know there are gaps. As legislators, it's important you know there are gaps.

One area where we spoke recently about gaps was in the child pornography bill, Bill C-2, which I believe was before Parliament. Mr. Comartin, I believe you were part of that committee. We used that as an example, and we gave some very dramatic examples of where some of those gaps existed.

At that time, I took the opportunity to say I would like to remind the committee members of that particular submission and the strong feelings that emerged from the committee members themselves on that topic when we had that sort of legislation to deal with.

• (1605)

[Translation]

Mr. Serge Ménard: All right. I obviously understand that if you give the example of child pornography, it's not an area terrorists commonly operate in. Anyway, I understand your point of view when you say you need laws authorizing you to intercept messages of all kinds using modern methods.

In your opinion, are there other factors that might justify amending the present laws?

[English]

Mr. Vincent Westwick: We don't have any recommendations for you today on specific changes to the Anti-terrorism Act.

[Translation]

Mr. Serge Ménard: So, should the three reasons we have just mentioned guide our appraisal of the measures found in the *Anti-terrorism Act* and allow us to determine whether or not these provisions are useful or necessary?

[English]

Mr. Vincent Westwick: I'm sorry, I didn't follow your question.

[Translation]

Mr. Serge Ménard: We have already mentioned three reasons, which are that terrorists must be stopped before they commit their crimes, unlike organized criminal gangs, which can be allowed to operate for a certain time; it is not in the national or even international interest to reveal investigation methods; we must adapt to modern means of communication.

Should we be asking ourselves whether each provision of the *Anti-terrorism Act* is required in order to attain one of these goals in the light of these three reasons?

[English]

Mr. Vincent Westwick: To be honest with you, sir, I'm not sure how to respond to that. I'm not sure I really understand the gravamen of your question.

[Translation]

Mr. Serge Ménard: I understand that you may be afraid to answer. Anyway, I am going to ask you another question.

Could you give us an example where you used laws that were brought in to prevent terrorists from acting? I'd like you to give me an example where you used the new provisions of the *Anti-terrorism Act* because no action could be taken under the laws already in existence.

[English]

Mr. Vincent Westwick: I think the importance of the provisions—and when I speak of the provisions, I'm speaking of the investigative hearing or the recognizance with conditions.... There are all sorts of examples in Canadian criminal law of the use of recognizance with conditions. As I understand the theory, that is simply being transferred from the general criminal law to a terrorist context.

I'm not aware—

[Translation]

Mr. Serge Ménard: Excuse me for interrupting you. I don't know if the translation has misled you regarding the meaning of my question, but that's not what I'm asking you. I recognize that you could have understood that, but that's not at all what I asked you.

In fact, I want to know whether you can give us an example of a case where the *Anti-terrorism Act* allowed you to intervene before a terrorist action was committed, but ordinary laws would not have allowed you to.

[English]

Mr. Vincent Westwick: When I speak of my experience, I'm speaking of the experience in the Ottawa Police Service. In my experience—and I have to be careful now—we have, I think, on two occasions given very careful consideration to the use of them. As the investigation and the events unfolded, it was not necessary to use them. But situations developed that, as the information emerged, we felt might be applicable, but as they unfolded, fortunately, the situations turned out not to be as serious as we had first thought.

• (1610)

The Chair: Thank you.

Merci, Monsieur Ménard.

Mr. Comartin, please.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thank you, gentlemen, for being here.

My historical analysis—I guess of the U.S. more than Canada—was that organized crime got a major foothold in the United States because the FBI at that time was overly concerned—I think that's being generous; it was not obsessed—with the fear of communism and deployed a huge amount of additional resources, as did a number of other police forces.

Chief Blair, I'll throw this one at you. We saw, for the first time last year, an increase in our murder rate in this country. Of course your city, this year in particular, has been a major recipient, for lack of a better term, but so have Regina, Winnipeg, Calgary, and Edmonton seen a really serious increase in the murder rate. I'm worried that we are deploying resources in the fight against terrorism instead of using those same resources for traditional street crime.

Let me just finish this question with this comment. I'm from Windsor. Our police force there has been taxed because of additional services they've had to deploy because our border is so busy. I know that's been a problem for them. We've been fortunate. Our chief would say it's because he's a good chief and we get good service—and we do, and he is. I think we've also been lucky, because our murder rate did not go up.

I'm just asking maybe all three of you, but Chief Blair in particular, if you have any sense that we just don't have enough resources to be able to do the traditional job you've done historically in keeping the murder rate down over the last two decades.

Chief Bill Blair: Thank you, Mr. Comartin.

First of all, over the past two or three years I have experienced an increase in the murder rate in Toronto and increasing incidence of gun-related homicides in our city. Although the chief in Windsor is truly a fine chief, I'm not sure I'm going to acknowledge that the murder rate has increased because I'm a bad chief.

Mr. Joe Comartin: I wasn't suggesting that.

Chief Bill Blair: I know that, sir.

I would suggest, first of all, that in what we have seen emerging in our urban centres right across this country—and I've conversed extensively with my colleagues, the chiefs of large, major cities in Canada—we are all experiencing an increase in gang-related violence, the proliferation of handguns, and the public use and reckless use of those handguns within some of our most marginalized and poor communities right across this country. Certainly in the city of Toronto we have experienced a significant spike, an increase, in gang-related violence this year. We have gone through similar increases in the past, but perhaps most acutely this past summer.

I do not believe this increase is a result of any lessening in the commitment of municipal policing across this country, and certainly not in the city of Toronto, to develop good relationships within our marginalized communities and to enforce the law. We have been very active in our gang investigations. We have used the legislation provided to us by Parliament for dealing with organized crime and criminal organizations to tackle these gangs, and we have used it effectively.

What we are seeing is a significant increase in the availability of handguns in our community and a significant increase in the willingness of urban street gangs to use those guns. There has been no reduction in the police efforts to tackle that in any city I am aware of. Certainly it is the greatest priority facing my service. We have committed substantial resources to it.

We are very actively involved in organized crime investigations. The overwhelming majority of organized crime investigations conducted in the city of Toronto are now targeted at the most significant threat to public safety we face, which is our street gangs. I have considerable resources committed to that.

We have resources working with the RCMP and the provincial police and other GTA services to address the threat to national security that terrorism represents, but those are not a significant commitment of resources. What we have had to commit resources to is preparation and prevention, within our communities, to respond to

such threats. This has been something of a drain on resources, but our work in integrated teams on those investigations has not significantly, in my opinion, detracted from our ability to conduct organized crime investigations.

• (1615)

Chief Vince Bevan: Mr. Comartin, let me just speak for a moment about the situation here in Ottawa.

In the past 12 months we've had two homicides directly related to the activities of organized crime. We continue to deploy resources to deal with organized crime as well as to deal with the guns and gangs situation on our streets. We're very fortunate in this community that, considering our size and the activities that go on in this community, we have one of the lowest murder rates in the country. Much of the challenge we face on a daily basis is to strike the right balance with the resources we have, with all of our responsibilities vis-à-vis counterterrorism, the VIPs, and the international missions that are here, making sure we have sufficient officers deployed in our neighbourhoods and across the city to deal with not only organized crime in the traditional sense, but new organized crime that has come here to prey upon new immigrants who call Ottawa home.

It is a challenge for us. We've received no additional help in the form of resources, as far as the post-9/11 anti-terrorism world is concerned. What we have done is restructure our workload and rebalance so that we can pick up these additional responsibilities. Some things have fallen off the table, but those are things we manage within our community.

Mr. Joe Comartin: Mr. Westwick, to your point about the need for this legislation—and I'm on record as saying we don't need it—the reality is that the ATA is of no benefit to you unless you identify the potential terrorists. Would you agree with that statement? You couldn't have used this legislation against Ressam unless you had identified Ressam. Is that fair?

Mr. Vincent Westwick: No, I don't think it is fair. I want to be careful, because I don't want to speak about the whole legislation; I want to speak about the provisions for investigative hearings and—

Mr. Joe Comartin: I'm sorry, that's what I'm referring to.

Mr. Vincent Westwick: No, I don't agree with you, Mr. Comartin.

With the greatest respect, I think the huge investigative advantage available in an investigative hearing is that in the right circumstances, a person can be brought in and asked questions in a judicial format, and information can be received. The advantage of that—and I don't mean to be flippant when I say it—is that it's not going to be Mr. Big you're after. An investigative hearing, from an investigative standpoint, is likely going to be used with a peripheral character who could be brought in and used to provide information that would open up new investigative leads to go forward. It would be a huge assistance in the proper case.

It's obviously a provision that's not now used in Canadian law—I think that's why the legislators, the parliamentarians, have circumscribed it very carefully and limited it to terrorist situations—but I don't agree that it would only be used when you've identified. It would be the kind of investigative step you would use to help you identify a threat or a person who has designs on being a threat to the community, so I think it has huge preventive aspects.

Mr. Joe Comartin: I have another area I want to go into. I actually want to argue with Mr. Westwick, but I don't have time.

The Chair: It's a short intervention.

Mr. Joe Comartin: I'm quite concerned about the new legislation coming, which we haven't seen. We keep hearing some bland assurances from the Minister of Justice. I'm concerned about—again, this is about resources for your departments—extending what, in effect, CSE now does internationally for us to you. Again, I'm assuming you haven't seen the draft legislation either, but what we hear is that we are going to extend surveillance, to a significant degree, to areas in the domestic scene where we have those gaps—gaps that don't exist, from what I'm told, in our international surveillance.

There are two things. One obviously is that additional resources are going to have to go in. I'm wondering about the technology, and if you've done any assessment of what that's going to cost you individually, as department heads. Second, how much additional human resource will you have to deploy?

• (1620)

The Chair: I'm going to ask you to keep your answers short, because we have other questioners.

Chief Vince Bevan: Mr. Comartin, we've been looking at some of these issues because of the expertise we've developed in the high-tech area in particular. We know we have the capacity. There will be some additional cost, but because of the way policing, particularly in Ontario, shares that capacity, it wouldn't be overly burdensome.

In terms of some of the newer technologies, I can tell you that our people, in working specifically with service providers, are getting more educated, so they know to ask the right questions. We're very hopeful that we're going to get the new legislation to allow us to come up to speed—to use judicially supervised methods to intercept in areas where we currently cannot.

The Chair: Thank you, Mr. Comartin and Chief Bevan.

We're now going to move to Mr. Cullen, please.

Hon. Roy Cullen: Thank you, Mr. Chair.

Thank you, Chief Bevan, Chief Blair, and Mr. Westwick.

We got into the topic of guns and gun violence. I'm sure terrorists have guns as well. Although it's somewhat off topic, I think it's an important topic; it's certainly one that's near and dear to my heart, although that might be the wrong term as well.

In my riding, Etobicoke North, we've had a lot of gang-related gun violence—far too much. I want to congratulate you, Chief Blair, for using the powers that you have to go in there and do a sweep and make a massive number of arrests of gang members. We still have violence, but that was a huge step.

Correct me if I'm wrong, but in terms of anti-gang legislation, was the legislation this government introduced a few years ago a tool you used to make those arrests, or was there just the normal Criminal Code provision?

Chief Bill Blair: No, in fact we have used the provisions available—I believe it's section 467.1—for identifying these organizations.

Often, because of the term “street gang”, people think it's a bunch of misguided youths with time on their hands. That is not the case at all. These are urban organized crime groups. They're heavily involved in a variety of criminal activities. Their primary source of income is drug trafficking, but they also engage in a number of other criminal activities in order to support the criminal organization, the gang.

We have very successfully, on a number of occasions, utilized that legislation to conduct investigations and to disrupt and dismantle the entire gang. Most recently, on September 15, we arrested about 50 individuals, charging a number of them with being members and participating in a criminal organization. We have also done it previously in other investigations, primarily in the Scarborough area of the city, last year in Project Pathfinder and prior to that in Project Impact. Those investigations have had a significant and I believe a chilling impact on the violence our gangs engage in.

In fact, immediately following the project on September 15, we went five weeks without a gun-related homicide in the city of Toronto. Although I would like to go the entire year—every one of them is a tragic event—considering the pace of gun violence we had been experiencing, it was a significant decline in that violence, as a result of not just conducting investigations into individual shootings or even individual murders, but taking out the entire organization responsible for that violence.

So that legislation has been a very effective tool for us.

There are challenges, though, that I should alert you to. Our ability to conduct those investigations is somewhat limited by the criminal justice system's ability to prosecute them. We are running into a lack of capacity within the administration of justice in Ontario to support those prosecutions. We're working very hard to overcome those limitations. We believe these investigations can be very effective and can prevent much of the violence taking place, but they're not effective if we're unable to prosecute the people we apprehend.

• (1625)

Hon. Roy Cullen: Thank you.

That point is not lost on the federal government either. It's a good point.

I guess, too, it argues that the use of the anti-gang legislation that came along a few years ago was to deal with that specific threat. The point I'm trying to make as well is that sometimes we need to adapt or add to the Criminal Code to deal with specific issues. The fight against terrorists, I would submit, is one of those.

We had interesting testimony yesterday from Lord Carlile, who has been appointed to oversee the anti-terrorism legislation of the government in the United Kingdom. The question was put to him, if these provisions of the Anti-terrorism Act have not been used in Canada, do we really need them? I think you've made the point that it's like a fire alarm or smoke alarms: the fact that you haven't had a fire doesn't mean you don't need them.

Actually, just to paraphrase his testimony, he said you don't need these kind of measures on the books if you're looking to deal with something that might only occur within 20 years—he used that, I think, just by way of example. If the threat is so remote, it's better to get rid of them in your legislation, to give more credibility to the code or to the laws.

I'm wondering how you see the threat of terrorism in Canada fitting within that sort of framework or model.

Chief Bill Blair: In my experience in the city of Toronto, there are elements within the city that I believe have the capacity to bring terror into my city. I believe I have a responsibility to do everything within my power to maintain a safe environment for all of the people in Toronto. I believe international terrorism and domestic terrorism—perhaps foreign in inspiration but domestically generated terror—has a capacity to take place in my city. I believe we have to do everything we can to prevent that from happening. We work very hard to ensure that we are ready in the event that it does take place, but we know we have to commit resources and dedicate ourselves to ensuring that it doesn't happen in our cities. That's our responsibility.

Hon. Roy Cullen: He had some other interesting observations. Maybe it gets at Mr. Ménard's question, although I don't want to try to paraphrase what he was getting at—but the question of why law enforcement needs special powers, in addition to what's already in the Criminal Code, to deal with terrorist threats often comes up in the context of reviewing our anti-terrorism legislation. The case he cited was a story, an example, in which the police could see a burglary developing. They allowed the burglary to transpire and then made arrests, and then, of course, they had all the evidence they needed in order to prosecute.

He said that in the case of a terrorist threat you can't afford to do that, because it's too late. I suppose why you'd want to differentiate comes down to the evidence and the burden of proof. For example—I'm being the devil's advocate, and I'm not a lawyer, so this might be a dumb question—if the police have information that would seem to lead to the fact that someone is about to commit a murder, what kind of evidence do you need, and how would that be different, let's say, from a situation in which you've wiretapped, with a warrant, someone who was talking about maps of areas or buildings that could be the targets of a terrorist attack? What are the evidentiary and burden of proof differences between that and a normal Criminal Code offence?

Chief Vince Bevan: Mr. Cullen, we have experience with those kinds of situations, situations in which we have information and

evidence that someone is going to be murdered. Typically, what you do first is protect the victim. Then you'll go about gathering your evidence and trying to interdict the situation. The difficulty with a terror situation, in which mass casualties may be planned, is how to warn all those victims, how to protect all those victims, and begin to gather evidence up to a standard that will allow you to use it to prosecute.

What the Anti-terrorism Act gives you is the opportunity to bring people in for an investigative hearing under a judicially supervised process to get additional information that will help you gather the evidence you need to arrest all the parties. As we've seen around the world, just because you have one element of a group planning something doesn't mean you've interdicted the whole situation, and that's what this law is designed to help with. Certainly it gives the authorities power to deal with those kinds of situations, to identify the people involved.

● (1630)

Hon. Roy Cullen: Thank you.

Do I have time for one quick one?

The Chair: Chief Blair has to go, and I want Mr. Wappel to have his time, so I'm going to jump in.

Mr. Tom Wappel (Scarborough Southwest, Lib.): Thank you, Mr. Chairman.

Mr. Chairman, I'm going to make an opening statement, if I may. It will be brief. This is addressed not only to the witnesses, but to my colleagues.

The only reason this committee is in existence is section 145 of the act, and it is for the sole purpose of a comprehensive review of the provisions and operation of this act. While talking about organized crime and murder rates and part VI of the Criminal Code is very interesting, I find it very frustrating that we're off topic, so I want to try to keep my remarks and my questions on topic.

I believe you have already told us that you have no recommendations to change this act. Is that correct?

Mr. Vincent Westwick: Correct.

Mr. Tom Wappel: All right.

The Canadian Association of Chiefs of Police, in the form of Mr. Edgar MacLeod and Mr. Westwick, appeared before the predecessor of the justice committee at the time this bill was originally brought forward. At that time, it was the view of the Canadian Association of Chiefs of Police that the act should require a small central agency to ensure cooperation, communication, and coordination of activities among different levels.

That was your recommendation then. You have no recommendations today. Does that mean you've given up on that recommendation?

Mr. Vincent Westwick: No, not at all. In fact, when we appeared before your colleagues in the Senate, we commenced our remarks by addressing that point specifically.

When we made that recommendation in the fall of 2001, when Bill C-36 was being discussed, we had contemplated a mechanism that would be a small body, perhaps, that would coordinate some of the efforts—the investigative efforts and the enforcement efforts, but also the first responder efforts—so that there would be coordination, particularly between municipal, provincial, and federal levels. The government at that time didn't respond to it, but what they did do—for which we complimented them in our submissions before the Senate—was create the Department of Public Safety and Emergency Preparedness Canada, which is a mouthful. We think it has captured the spirit of the recommendation we made back in the fall of 2001, in that it is addressing it—albeit in a different manner and in a larger capacity—in that fashion.

We haven't abandoned it at all. We think the government—

Mr. Tom Wappel: Mr. Westwick, excuse me. I'm sorry, I don't have much time.

I find it curious that you made these comments to the Senate committee but not to our committee. Is there some reason for that?

Mr. Vincent Westwick: Not really. What we always want to be careful of, Mr. Wappel, is that we tailor our remarks to the committee. We don't want any appearance to appear as though it is just a photocopy of the other one. We always take our remarks out and look at them, and we try to look at the issues that have been raised by the committee and respond to them. There's no significance to that, sir.

Mr. Tom Wappel: Thank you.

We're required to do a comprehensive review of the operation of the act. If I understood the evidence of Chief Bevan correctly, and yours, Mr. Westwick, there were two instances, I think you said—or maybe I'm wrong here—where the act was used or contemplated to be used in the operation of the police services in the Ottawa area since this act has become law. Is that true—two?

• (1635)

Mr. Vincent Westwick: I believe so. Yes, I think so.

Mr. Tom Wappel: And in both cases it was in fact not used? It was contemplated to be used.

Mr. Vincent Westwick: That's correct.

Mr. Tom Wappel: I know Chief Blair had to leave, which is most unfortunate, because the question I was going to ask him was, what about Toronto? Mr. Westwick, do you have any knowledge of that?

Mr. Vincent Westwick: I can't answer that; I'm sorry.

Mr. Tom Wappel: Thank you, Mr. Chairman.

The Chair: Mr. MacKay, you had a last quick question, because we have a—

Mr. Peter MacKay (Central Nova, CPC): No, I didn't have a last quick question; I have a round of questions that I'm entitled to. Thank you.

The Chair: All right. I'm just reminding you that we have another panel waiting to come—

Mr. Peter MacKay: Fair enough.

The Chair: —and we have votes at 5:30 p.m.

Mr. Tom Wappel: I have a point of order, Mr. Chairman. On that point, there's supposed to be a first round of seven minutes per questioner, and it's my belief that the questioning is going on far longer than seven minutes.

The Chair: That's the chair's fault.

Mr. Tom Wappel: I timed it yesterday, and it was way over. So if everybody wants to get their time in, we have to keep it to seven minutes.

The Chair: The chair has heard your admonition, sir.

Mr. Peter MacKay: Thank you, Mr. Chair.

Mr. Westwick and Chief Bevan, we appreciate your presence.

Very quickly, picking up on my colleague Mr. Wappel's point about coordination and the cooperation that goes on, I want to ask you, from both your perspectives, whether you feel it is happening sufficiently; whether there is sharing of information between the municipal, provincial, and our federal police services and security services.

More to the point, it was somewhat shocking, I would suggest, when we heard this summer from the federal minister that there had been no coordinated effort—that there had been a single meeting—between provincial and federal governments with respect to coordinating security and emergency preparedness.

Further to that, has there been a dress rehearsal? Has there ever been, to your knowledge, an effort made to have an emergency response or a policing services response dress rehearsal that would fit into the category of having gone through a live exercise in response to a terrorist attack? Has that taken place in this country, to your knowledge?

Chief Vince Bevan: Mr. MacKay, it has taken place. There are table-top exercises done on situations that are the aftermath of the situation. There has not been an exercise done using the provisions of ATA, as far as a protective or preventative aspect is concerned—certainly not to my knowledge.

The language that was used previously regarding coordination, cooperation, and communication has largely come out of a philosophy we've adopted with our partners. The cooperation and the communication of information is certainly getting better. We're constantly learning. In the relationships we have with the Royal Canadian Mounted Police, with the Ontario Provincial Police, and with our partners in Quebec, we demonstrate that on a regular basis. We run it.

Getting back to the National Capital Region Strategic Security Council, we have gotten to the point where we have made an agreement jointly to have a single intelligence unit responsible for doing various things. So we've pooled our resources. I just use that as an example to show you how the cooperation between police agencies is growing.

Mr. Peter MacKay: Thank you.

Your jurisdiction obviously pertains only to the city, but are you aware—and perhaps this is for you, Mr. Westwick—of similar efforts to expand this coordination and exchange of information, particularly on the intelligence side, with our international partners in this regard?

Mr. Vincent Westwick: Rather than trust my weak memory, what I would rather do is canvass amongst my colleagues on the law amendments committee and undertake to get back to you, sir, with specifics. I have a recollection, but I'd rather not go on record until I can speak with some certainty. But I will canvass that and see whether we can get an answer for you.

Mr. Peter MacKay: Terrific.

You mentioned, I believe, in your exchange with one of my colleagues with respect to legislative gaps, whether it be in regard to child pornography.... Would you agree as well that there is a gap—and I believe it is attempted to be filled right now with legislation—regarding technology, wireless communications, to expand the ability to have warrants going into that area? Do you have any specific comments or recommendations in that regard to underscore the importance of that?

The Chair: We're going to have to make that your last question, Mr. MacKay.

Mr. Peter MacKay: That's fine, Mr. Chair.

Mr. Vincent Westwick: We are very hopeful that there will be legislation introduced into Parliament this fall that will address what we see as the practical gaps and the legal gaps and the technological gaps. We are very anxious to see that—very anxious.

• (1640)

Mr. Peter MacKay: Chief Bevan, I'd like to hear from you too.

Chief Vince Bevan: We know from investigations that have been done that terrorists are using very sophisticated technology to pass messages and we need the tools domestically to be able to compete with their interests in this market.

Mr. Peter MacKay: Thank you.

The Chair: Thank you.

Are there any other questions or last comments? We do have another panel of witnesses waiting, and I am trying to respect everyone's time.

Thank you very much, on behalf of our committee. We'd like to thank the Canadian Association of Chiefs of Police for your presentation.

We are going to take a very short recess to add the next panel. We're suspended.

The Chair: I'll call the meeting back to order.

I'd like to welcome Dr. Ganor and Dr. Rudner to our committee. I believe you both have opening presentations.

Dr. Ganor, shall we start with you, sir?

Dr. Boaz Ganor (Executive Director, International Policy Institute for Counter-terrorism, As an Individual): I understand I have at most 10 minutes. This is a mission impossible; this is a course of a year. But I will limit myself to these 10 minutes you've given me.

The Chair: Keep it to eight.

Dr. Boaz Ganor: That's a challenge.

In my view, the question of the ATA is referring to one of the most important subjects of counterterrorism today, something I wrote my PhD dissertation on, which deals with the Israeli counterterrorism strategy: efficiency versus liberal democratic values.

What we see here is maybe one of the best examples of the democratic dilemma in counterterrorism. What is the democratic dilemma in counterterrorism? It's how one can be effective in counterterrorism on the one hand and guard liberal democratic values on the other hand. Whether we like it or not, my friends, there is a contradiction between the two.

You can be totally effective in counterterrorism if you are a dictatorship, and you can be totally liberal and democratic if you don't suffer from terrorism, don't expect to suffer from terrorism, and don't want to take part in the international efforts to counter this phenomenon. Once this is not the case—and I believe that today it's not the case of any state in the world, because anyone is a prospective target of terrorism, Canada included—you actually have to balance between two things: the necessity you have to fight terrorism, and the proportionality of the measures you take and how those measures fit with and how much they limit liberal democratic values.

I would like in my short presentation to deal with three issues. Hopefully I will get to all of them.

In order to describe the necessity, I would like to go over very briefly, in a nutshell, the main characteristics of international global jihad terrorism today and what the threat is that this international terrorism poses to the safety of the world, including Canada. I would like to give some sentences about the specific threat to Canada itself, in my view, and my evaluation about the law as such.

For the first part, I would say that global radical Islamic terrorism today poses such a grave threat to the safety of the civilized world and the safety of humanity as has maybe never been posed before. In order to support that harsh statement, I have to go over the main characteristics of this threat.

The first characteristic of the threat is the global reach these guys have. This global reach stems from their nucleus group being the mercenaries who came to Afghanistan between 1979 and 1989 as volunteers. When the war ended, they were divided into three groups. One group stayed in Afghanistan and were recruited by bin Laden to create the nucleus group of al-Qaeda. The second group, after the war ended, wanted to go back to their homelands, and they did so in Arab and Muslim countries. They joined the original Islamic radical movements there. As for the third group, since they were so notorious, the regime didn't let them come. Based on this refusal, they asked for political asylum with western societies—in the United States, in Canada, in Europe, and in other states—and we see how this phenomenon has spread all over the world.

The second characteristic of the threat is that these guys are experienced in being terrorists, because they actually spent 10 years of their lives at least using all the tactics of guerilla warfare and terrorist tactics; therefore, they are experienced in that. There is no comparison between them and the bourgeois, middle-class students who popped up in the seventies and committed the attacks propagated by the Red Brigade, Bader-Meinhof, and so on.

The third characteristic is the extreme ideology they have. We see different types of terrorists in modern times, but today international terrorism is not a problem coming from the Basques or the IRA—or, by the way, from the Palestinians. It comes from this extreme radical group that actually believe they are being motivated by a divine command. God is sending them to their mission.

If you have a terrorist organization that is being motivated by a nationalistic motivation or a socio-economic motivation or an extreme ideology such as communism or anarchism, you can deal with it. You can compromise; you can negotiate; you can do several things. Not with these guys, because if you would like to negotiate, go and negotiate with God. He is the one who sends them to their mission. That's what they believe.

• (1645)

Their goal is a very extreme goal. You don't need to be a counterterrorism expert. They say it over and over again; they would like to spread their version of Islam all over the world. They divide the world into a war zone and the area that Islam controls—but it's their own version of Islam.

Being a Jew, being an Israeli, being a counterterrorism expert, I have to emphasize that this is not a war between Islam against the rest of the world; this is a war between Islamic radicalism and the rest of the world, which means against the vast majority of the Muslims themselves. There is nothing wrong with this religion or the other religion, or with this holy book or the other one; the question is how you interpret it. These guys have this extreme ideology.

The next thing that makes them so dangerous is the tactics they use. They use different tactics, but the main tactic, the main modus operandi, is suicide attack. I don't have enough time to explain how dangerous and how effective suicide attack is for the terrorists, but I would say—and this is very relevant to the ATA—suicide attack poses specific threats that no other terrorist attack poses, which means you have to be proactive. If the terrorist organization knows that success is guaranteed the minute they send the terrorist on the mission, even if you try to stop the attacker on the way to the target, it almost means there is no sense of defence—no sense of security, for that matter. You have to thwart the attack before it occurs. For that you need very good intelligence. As far as I see it, as I'll explain in a minute, the ATA is the platform that has to bring this intelligence to the Canadian security services.

The next tactic that makes them so dangerous, at least by my analysis, is that these guys would not be reluctant to use, and will use in the future—and, I would dare to say, in the near future—non-conventional terrorism as well. It may not be nuclear or biological terrorism, but clinical terrorism is actually knocking on our doors in all civilized states all over the world. I do believe they might use it as one of the next steps. I can show why—the motivation, their personal capability—but we don't have time for that.

The last factor that makes them so dangerous is that these guys have a different set of values, and therefore a different set of rational decision-making processes. It's not that they are not rational; they are rational. They calculate cost and benefit in choosing the more beneficial alternative, but they actually have a different set of values and therefore a different set of rationality. Why is it so important? It is because if your counterpart—your enemy, for that matter—does

not have the same kind of rationality you have, you cannot communicate with him, you cannot persuade him, you cannot deter him, and you cannot threaten him. Actually, you don't have any means of communication with these guys.

That brings me to the second part, and this is what the threat is to Canada, in my view. Some people in Canada, it seems to me—at least from reading and some meetings that I held—believe that the ideas of diversity in Canada, on the one hand—which is very important—and neutrality of Canada, on the other hand, hold some kind of security and immunize the country from terrorist attack. I beg to differ. From the point of view of these guys and from their rationality, there is no meaning of neutrality; it's either you are with us or you are against us.

They see Canada as one of the pillars of western society, and therefore as one of the enemy. Some Canadians maybe would not like this idea, but they see Canada as one of the allies of the United States—definitely a close neighbour of the United States. Attacking Canada is a symbolic way of attacking the United States as well.

Canada is involved, and rightly so, in peacekeeping activity, and involved in the activity in Afghanistan. This is, of course, a reason to target Canada. We should bear in mind that bin Laden himself nominated Canada as one of the five states that are listed to be attacked, if I'm not wrong—maybe the only state that has not been attacked until now—and he's not the only one of the speakers of al-Qaeda who mentions Canada in this respect.

Canada, despite the importance and the value of what the Canadian security services are doing, is still being regarded as a soft belly, at least because Canada is less experienced than many other western countries, and this of course might tempt an attack on Canada.

• (1650)

I would dare to say that although almost all the Muslim community in Canada has nothing to do with terrorism and probably will never have anything to do with terrorism, from the point of view of the terrorist organizations—these Islamic radical activists—it's a very good place to infiltrate incitement, infiltrate propaganda, and by that to intrigue some of them; very few cooperate to launch terrorist attacks.

We should bear in mind in this respect that most attacks in western countries—Madrid, of course, and London, and others—in the last few years came from communities of second-generation refugees who were incited through the Internet and other means altogether.

• (1655)

The Chair: I'm going to jump in. I'm sorry, but we want to hear from Dr. Rudner, and colleagues want to have a chance to question, and we have a vote in half an hour.

Thank you. Merci.

Dr. Rudner.

Prof. Martin Rudner (Director, Canadian Centre of Intelligence and Security Studies, As an Individual): Thank you very much, Mr. Chairman.

It's an honour and privilege to be here today.

In the few minutes that are available, I'd like to address three questions with the committee. First, why do we need the Anti-terrorism Act? Second is the operational review question: what needs to be enhanced in the Anti-terrorism Act? Third, what's missing and needs to be added?

Why do we need the Anti-terrorism Act? First and foremost—and this has been addressed by Dr. Ganor and others—terrorism is different from conventional crime. It's different in several respects, and let me briefly summarize those respects.

First, anti-terrorism involves prevention. You don't wait to prosecute after the event; you want to prevent and disrupt the attack before it happens. You want to begin investigations on reasonable grounds to suspect; you don't want to wait for probable cause, because that's after the event.

Also, and very importantly, we have to recognize that terrorism is a mosaic of activities, and not just attacks. Up until now we've been looking at terrorism as attacks only, but in fact terrorism involves a mosaic of activities—recruitment; fundraising; incitement; procurement of materiel, including explosives and chemicals; glorification of terror; tactical planning; establishment of safe houses; reconnaissance of targets; and then attacks.

Some of these are only offences when they're linked with terrorism. They're not offences standing alone. Some of them are not offences in certain international jurisdictions at all, and yet when one connects the dots, one can see that incitement is in fact an activity leading to recruitment for activities that involve political violence. Recruitment has happened in Canada more than attacks have happened in Canada.

There are also some organizations that are very difficult to define as terrorist at face value. Hizb ut-Tahrir is defined as a terrorist organization in the U.K.; the Australians are grappling with it as we sit and speak here today; in Canada we don't deal with it. Freedom House, a leading American human rights organization, one of the oldest in the world, this February published a report called *Saudi Publications on Hate Ideology Fill American Mosques*. There wasn't any resonance here in Canada about whether those publications also fill Canadian mosques and educational institutions. Again, incitement is activity leading to recruitment, which is an activity leading ultimately to terrorist attacks.

Anti-terrorism is, in my opinion, a domain of law different from criminal law. It has a role, I think, similar to other areas of law that stand alone—such as admiralty law, laws of war, and even tax law—as areas of legislation that require special application and special skills in order to defend national security and public safety.

What needs to be enhanced in the law? In my opinion, there's a tension in the Canadian context between secrecy, privacy, and the

Anti-terrorism Act. Individuals have rights to privacy, preferences to privacy; we all do. Governments and intelligence agencies have a predilection towards secrecy—sometimes for other purposes, but I suggest that the committee might want to consider, in terms of the anti-terrorism law, making an important distinction between the rights to privacy and the rights to anonymity. One has a right to privacy; one does not, in the age of terrorism, have a right to anonymity. They are different things. Privacy does not intrude on national security; anonymity must be accessed in order to protect national security.

We have a problem with information sharing—the need to know versus the need to share. In fact, I think the Anti-terrorism Act has to look at ways and means of enhancing information sharing within the law enforcement and intelligence community as such. A brief example, because we're short of time, is FINTRAC. Our financial intelligence agency has very strictly limited rights of disclosure of evidence it gathers on terrorism financing to law enforcement agencies. I think we have to enhance that capacity for disclosure. The Canada Revenue Agency has very strict limitations on the use of tax information for operations designed to deny terrorist organizations charitable status and charitable funding, a major source of terrorism finance.

● (1700)

Lord Carlile mentioned yesterday the problems of disclosure in prosecution. Rarely do national security cases go to the courts, precisely because intelligence and law enforcement agencies do not wish to share or disclose information about sources and methods. Britain and other jurisdictions are now introducing methods of pursuing prosecution wherein sources and methods are not necessarily brought before open court; this in fact permits the prosecution of terrorist offences.

There is also concern, in my personal view, regarding public confidence. The public does not have much information about the anti-terrorism measures of our security and law enforcement community. The information that is available is often suppressed by legal counsel in putting a seal on the evidence. I believe it's very important to seek a balance between the rights of the individual to a fair trial and the rights of the public to be made aware of the threats to this country that have in fact been thwarted by our security and intelligence community. In Britain, the Home Office has introduced the notion of anonymous descriptions identifying threats, whereby you do not disclose the names of the people who are suspect, but you certainly are able to provide descriptions of the threats they pose to the defence of the realm.

The third and last area I'd like to address is what's missing. What's missing, in my opinion, are provisions in the act for the protection of critical national infrastructure. What are the characteristics of critical national infrastructure? First, there's a range of sectors. In Canada, there are 10, including energy and transportation. Second, the ownership and governance of these sectors is split between the federal government, provincial governments, and municipal governments, and these sectors, of course, are mostly owned by the private sector. Third, even within the federal jurisdiction, there's a split between the mandate of Public Safety and Emergency Preparedness Canada, as a central agency, and line departments such as Transport Canada and Natural Resources Canada, who have direct responsibility for particular sectors.

I think we need clarification here, in the national interest, via at least four principles, which I would be glad to put forward.

Principle one is to clarify the mandates, duties, and responsibilities of who does what, and who pays for what when it comes to the protection of critical national infrastructure.

Second, and very important, is a proper consultative mechanism to involve the private sector directly in the regulatory system, because the assets, after all, are owned by the private sector but are within the national interest as critical national infrastructure.

Third is creating a system and legal protections for information sharing. First is to be able to disseminate security threat information from the intelligence and law enforcement community to security-cleared people who own the infrastructure. Second is to enable the owners of critical national infrastructure to share information with the Government of Canada about their vulnerabilities. That information shouldn't be easily accessible under the Access to Information Act, because you don't want to tell the world what your vulnerabilities are; in that sense, we need a mechanism for sharing and protection. And third, in my opinion, is a system of defined standards and enforcement authority involving both the private sector and various tiers of the public sector, so that we can in fact have standards for the protection of critical national infrastructure and a method to ensure the implementation of those standards.

Thank you very much.

The Chair: Thank you very much.

Mr. Sorenson, please.

Mr. Kevin Sorenson: Thank you.

I can tell you I very much appreciated both of your testimonies.

I know, Mr. Rudner, you will be getting some questions from some of my colleagues. I hope they expand on this idea of anonymity compared with privacy, especially with some of the issues we're dealing with.

But Mr. Ganor, I want to give you a little extra time, as I know you were cut a little short. What's your opinion of the most effective tool for fighting terrorism? Is it legislation? Is it the legislation we're dealing with? Is it intelligence? You talked a little about being proactive and the need to be prepared. Or is there something else?

You can take my time to expand on that, and on whatever else you may want to say. You've come the longest distance.

● (1705)

Dr. Boaz Ganor: Thank you very much. I appreciate that very much.

There are different tiers of counterterrorism activity. You have intelligence; you have offensive activity, punitive measures, legislation, international cooperation, deterrence, and so on and so forth.

The most important tier of counterterrorism activity is intelligence, first of all, because it's needed for the ongoing activity of all the other tiers of counterterrorism activity. Without intelligence, you are totally lost. But to be able to do all of the above in the best way you can, you need proper legislation.

Therefore, I would say that the legislation is the platform for collecting all tiers of counterterrorism activity in the right order and effectively, and whatever they need to do. That's why I see the ATA as so important. I have to say that I read the ATA, I think, thoroughly and was very surprised that it actually is a very good law in finding the balance between effectiveness of counterterrorism and guarding liberal values at the same time.

The law, on the one hand, defines what terrorist activity is. One of its deficiencies, in my view, is that it should fine-tune this definition. Maybe I will get to that. The law also forbids all stages of launching terrorist attacks, from incitement, to recruiting, to fund-raising, to concealing terrorists, to perpetrating the attack, and so on and so forth. The law gives the needed prerogatives to the security services to get information from the public and to collect intelligence. The law gives security to fragile intelligence sources by privileged evidence, and so on and so forth, and the law gives the ability to be proactive in counter-terrorism. Therefore, I basically think it's a good law.

I do support everything we heard from Professor Rudner today, but in my view, most of these questions are not necessarily connected to the law itself, but to what you are going to do with the platform. How are you going to use this platform of this ATA in order to create real coordination between different security services, such as coordination between private security of political infrastructure installations and the government? All of these questions are very good questions that need to be dealt with. I don't know if they have to be dealt with in the law, or in new procedures that the government is to take in this respect.

What makes it a balanced law in terms of liberal values is three rules.

The first rule, in my view, is that everything in counterterrorism has to be lawful, or has to be written in the law. I think that the most important things are in fact written in this law. Nothing should be done by the government that is not mentioned in the law; if it's not mentioned, it should be forbidden. That's the first thing.

The second thing is that everything should be justiciable. Everything has to be under the control of the court, so that anybody who feels that he was hurt by anything the security services or government has done can always approach the court, which can defend him and give him what he needs.

And the last thing is parliamentary control, which is what you do here. This is crucial, because this law, like any other counterterrorism law, is an emergency law. And emergency law should not last forever; it actually has to be checked and balanced all the time by the parliament, and I think that is what you are doing here.

Mr. Kevin Sorenson: I'll pass on my time, so that everyone will get a chance.

The Chair: Thank you.

Mr. Ménard, please.

[*Translation*]

Mr. Serge Ménard: I had an opportunity to hear you yesterday, and you are very consistent. You say the law is excellent because it covers all activities linked to terrorism. I can't really see what else we could add. In general, those who criticize it think it goes much farther.

One of the reasons you gave is that you cannot do anything not permitted by law. Isn't this an indication that the law is too broad?

• (1710)

[*English*]

Dr. Boaz Ganor: I believe that the law...as I said, "excellent" is not a word I would use, but it's a very good act. I believe the act gives the platform, and that's what the law needs to do. Then comes the exercise of all these activities, and I do believe that you can find in the law anything that the security services would need in order to practise that and exercise it in the right way.

Of course, it doesn't refer to all the tactics that can and should be used by security services, by the police, and so on. The question is whether there's a tactic or a *modus operandi* that does not fall under the barriers of this law, and in my view, as far as I know, anything that they need right now, they have. What they do with it is another question.

[*Translation*]

Mr. Serge Ménard: I am going to ask a specific question on this topic.

Don't you think the definition of terrorism in the law is so broad that it can cover all kinds of activities by peaceful protesters, who in general are the ones who have helped democratic society move forward? For example, we get the impression that Gandhi's activities might have been considered terrorism under this law.

[*English*]

Dr. Boaz Ganor: First of all, as far as I understood from what was written there, this cannot be considered as part of the definition.

But I do have a problem with the definition that comes from another point of view. The definition that I use for terrorism is shorter and, in my view, more precise than that. It is "the deliberate use of violence aimed against civilians in order to achieve political ends"—in the broader sense of the term political, ideological, and so on. The law, in my view, is a little bit confused, because sometimes they do not use the term "civilian", but they use the term "person" or they use the term "people who are engaged in..." and so forth.

I would differ. In my view, there's a difference between terrorism and guerilla warfare. Terrorism is the deliberate use of violence aimed against civilians; guerilla warfare is the deliberate use of violence aimed against military personnel.

I have to admit that what I'm saying now is not commonly accepted internationally, but I do believe this is more precise. Laws like that should refer to attack and threats and anything that aims to harm civilian people, civilian installations, and so on.

Mr. Serge Ménard: I know you come from Israel, and that's where you did your study. Certainly, we generally consider that the expertise is there—of necessity. But very often people point out to us that actually Israel was founded, and was defended at one point, by terrorist activities. And people who have carried out these terrorist activities have become, finally, heads of state or at least high ministers.

I'm sure you can point out a difference to what happens now. Probably you must justify these actions from the past. How do you justify that in light of what is happening now?

• (1715)

Dr. Boaz Ganor: Actually, you refer to the slogan that is very well accepted: "One man's terrorist is another man's freedom fighter". This means that anyone who fights against me is a terrorist, and anyone who is doing the same thing against somebody else is a freedom fighter. I think this is a misleading slogan, because terrorism is a tactic and freedom fighting is a goal.

Now, I'm telling you I can support every freedom fighter in the world if he proves to me that he's a freedom fighter. More than that, I believe that freedom fighters have the right to use violence in order to achieve the holy aim of freedom fighting. But there is one kind of violence that should be always forbidden, and that is the deliberate use of violence against civilians—meaning terrorism.

Let me just clarify that. In reference to the Israeli experience prior—

Mr. Serge Ménard: I understand perfectly your point of view, but would you go as far as saying that as Canadians, we shouldn't judge the Tamils the same way as we judge al-Qaeda?

Dr. Boaz Ganor: Just the opposite. I'm saying you have to judge everybody not by what they are trying to achieve, but by what tactics they are going to use.

I just came from Turkey. I was asked what I thought about the PKK. I said it's not relevant what I think about the PKK. Let's say that the PKK are freedom fighters and fighting for a holy cause—and the Chechens and the Palestinians and anybody else. The question is, do they have the right to use violence aimed against civilians for that? The answer, in my view, always should be no.

The Chair: Mr. Comartin, please.

Mr. Joe Comartin: I'll pass.

The Chair: Mr. Cullen.

Hon. Roy Cullen: Thank you, Mr. Chair, and thank you, Professor Rudner and Professor Ganor.

Professor Rudner, you mentioned the question of critical infrastructure. My question is twofold. One, the government is looking at legislation in terms of emergency management. If that were dealt with in a more fulsome way in that legislation, would that satisfy your requirement that it needs to be dealt with in legislation, or do you think it would be better placed in the Anti-terrorism Act?

I have a related question in relation to critical infrastructure. You talked about the role of the private sector. It's quite topical; I just met with some industry groups today and that point did come up. If we have a private asset, let's say a plant, there's certainly a private interest. They might argue that there's a public interest to protect that asset as well, but how would you differentiate between a public good or a critical infrastructure as it relates to our national security, and what kind of formula would you use? Would you say fifty-fifty? I'm looking at it from the point of view of cost sharing.

I'm not sure the government is there, but I'm just interested in your views on that.

Prof. Martin Rudner: Thank you very much. Those are two very important questions, and in the limited amount of time, let me point to where the answers might lie.

In my opinion, emergency management and protection against terrorism are very different things. Emergency management is effectively managing in the case of natural catastrophes. Here we have deliberate intent, and the consequences are quite different. The nature of the attack on the infrastructure itself is quite different, and the requirements for protection are quite different.

One could build earthquake-proof facilities. One could fireproof things. It's rather more difficult to mortar-proof a refinery, to explosive-proof a pipeline. So in my opinion, the critical protection of assets against terrorism requires special kinds of skills of counterterrorism and protection against terrorism.

It is a very important question with respect to the asset. First, one has to remember the wartime experience. During the war, government introduced something called war damage insurance to compensate for the additional probability and risk arising from the conflict situation. It also addresses the cascading effects of damage. For example, if one damages a gas pipeline, one has upstream consequences and downstream consequences. One could cut off the supply of electricity because natural gas is not available for generation, which cuts down the supply of electricity to manufacturing, which causes unemployment, and these things cascade.

One could, in fact, analyze these costs and break them out to what is actuarial, which should be paid for by the owner of the asset, and what is an externality. That belongs to the public domain. As a public, we insure externalities. As a private person, you insure actuarial risk.

Let me conclude by saying the Americans are much further ahead on that account than we are. The Argonne National Laboratory in Illinois has done pioneering work on these cascading effects. They're coming up to Ottawa in March to a conference that my centre is organizing precisely to bring that knowledge to Canada, so that we can begin the process of analyzing the relevance to the Canadian critical infrastructure protection issue.

• (1720)

Hon. Roy Cullen: Thank you. That's helpful.

In terms of the sharing of information, let's say in terms of critical infrastructure that's controlled and operated by the private sector, like an oil or gas pipeline or something, in terms of an emergency management plan, would you support that information remaining confidential? Certainly the companies, with some validity I think, say, if we're going to share that information in terms of how we're protecting that critical asset, we certainly don't want that out in the public domain.

Prof. Martin Rudner: Absolutely. The companies know their vulnerabilities, but they have to share it with government so that appropriate public policy and programming measures can be undertaken. They won't share it if the public is going to find out, and the terrorists are going to find out, where their vulnerabilities lie. So indeed, that information has to be protected.

Incidentally, in my opinion, the other way is that the private owners of infrastructure also have to receive threat information of a classified sort, so they can take the appropriate remedial and protective measures to protect the asset. We have to create a framework around which this flow of information is protected and secured at both ends.

Hon. Roy Cullen: Thank you. That's helpful.

I have just one question for Professor Ganor.

Professor Ganor, we've touched on the question of defining terrorism, and I don't want to misquote you, but I think your definition is the deliberate use of violence aimed against civilians in order to achieve political ends. You've just elaborated on that now.

I'm just looking at the United Kingdom Terrorism Act 2000, which talks about "the use or threat...made for the purpose of advancing a political, religious or ideological cause". Yours is to achieve political ends.

Do you just want to expand on that difference?

Dr. Boaz Ganor: To save the time of the subcommittee, when I refer to political ends, they include ideological and religious ends, in my view, or the broadest sense of the term "political". The global jihadists today are fighting a religious war, but they have a very concrete political aim; they would like to create their caliphate state, first of all, in the Arab and the Muslim countries, by creating a chain reaction to change the regimes there.

So everything, in my view, is under the title of “political ends”.

Hon. Roy Cullen: Would that include ecological terrorism?

Dr. Boaz Ganor: Sure, because it's a political decision they would like to achieve at the end of the day.

Hon. Roy Cullen: Thank you.

The Chair: Thank you.

Mr. Wappel, please.

Mr. Tom Wappel: Thank you, Mr. Chairman.

Gentlemen, I want to compliment both of you on your terrific presentations; I thoroughly enjoyed both of them.

Mr. Rudner, I want to compliment you on your explanation of why we need this act. It was very comprehensive, very thorough—just excellent.

Professor Ganor, regarding your comprehensive chart—and going back to Mr. Cullen's question—if you had an international network with battlefield experience and an extreme ideology that wanted to use a suicide attack to blow up a nuclear facility, but planned it in such a way that they would kill very few, if any, civilians, would that be a terrorist attack?

Dr. Boaz Ganor: In my definition?

Mr. Tom Wappel: Yes.

Dr. Boaz Ganor: If it's a civilian installation, an installation that was meant to create electricity, and so on and so forth, regardless of how many people were hurt, even if nobody were hurt after that, yes, it would be a terrorist attack.

Mr. Tom Wappel: So it's not just the killing of civilians, but the damaging of property that relates to civilians?

Dr. Boaz Ganor: Exactly. Everything that has to do with civilians.

Mr. Tom Wappel: Perfect. Thank you very much.

Thank you, Chair.

The Chair: Mr. Ménard, we have a little time. Did you want to finish, as I had interrupted some of your questions?

Mr. Serge Ménard: I interrupted you at the wrong moment, I noticed, and I would like you to finish. We had so little time, but I wanted to make that comparison, because you understand that the Tamil are against a dictatorship, or a dictatorial regime, but I imagine that you would justify that what the Israelis did at the beginning of their state was directed to...that they were freedom fighters.

• (1725)

Dr. Boaz Ganor: I'll be very precise and very objective, as much as I can in that respect. Freedom fighters, yes, by all means; no doubt about it. But freedom fighting does not justify deliberate killing of civilians, regardless of whether it's done by Jews, Israelis, Muslims, or Christians. That is clear-cut in my view.

Now, when you analyze Israeli history, we had three underground groups prior to the establishment of Israel. The main one was the Haganah, which had 90% of the activists in it. I can guarantee you that the Haganah never used terrorism; they used guerilla warfare against the British soldiers, but never used terrorism against the civilians or Palestinians who lived there. The ITZL, or Irgun, which

accounted for about 7% or 8% of the overall underground activity of Israel, used from time to time—depending on who was standing at the head of the organization in that specific era—terroristic attacks against Palestinian civilians, not against the British army. That's, in my view, a legitimate act. The Stern Gang, which accounted for maybe 2% of the overall activity and involvement, was a total terrorist organization.

But I would say something else: the Israeli community provoked those extremists and had a *saïson*, which was to actually capture them and extradite them to the British and punish them. I wish I would see that in other communities, like the Palestinians, and so on and so forth.

Mr. Serge Ménard: Okay, but we understand its in the tactics. If it's a tactic aimed at civilians, it's terrorism.

Dr. Boaz Ganor: Exactly, regardless of the aim or who is doing it.

Mr. Serge Ménard: Okay, but we must recognize that there have been freedom fighters—

Dr. Boaz Ganor: Yes, but one bad deed does not justify another bad deed.

Mr. Serge Ménard: Yes, I know. Right. Okay.

The Chair: I'm going to thank both of our witnesses now, very much.

On behalf of the committee, Dr. Ganor and Dr. Rudner, we appreciated your presentations and want to tell you how much we appreciated your sharing your thoughts with us today. Thank you very much.

We have a couple of quick housekeeping items.

Mr. Ménard has filed the International Covenant on Civil and Political Rights, which I've now received and will circulate. Thank you very much.

Did you want to say something?

Mr. Serge Ménard: Yes, it's points 12 to 16 that concern us, not necessarily the others—though the others make good reading.

The Chair: Okay, I'll have it circulated.

Hon. Roy Cullen: Is this a motion of some type, or is it just some material?

The Chair: No, it's just some material that we're receiving. It's filed as an exhibit, and we're going to receive it.

The other thing is just a point of information. You may recall from the last meeting that we were going to hear from Air India victims. I just want to confirm with you that on November 16 we will be receiving a panel of witnesses, including Ms. Basnicki, representing some 9/11 victims, and will receive some Air India victims' families. As well, I'm working on some schedules with ministers, who will be the last witnesses, and I'm working on trying to slide in Mr. Judd as well.

We will probably have a marathon session on November 16. I just want to give all colleagues a heads-up on that. We'll perhaps have ministers late into the evening. We're not sure yet, so you'll just have to bear with me. My office will be coordinating some scheduling with the clerk, because if we can't do it on the November 16, we might have to add an extra meeting that week.

Finally, we're still not firm yet on Washington. We'll advise you of that in due course.

Thank you.

We're adjourned.

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