



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 028 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Wednesday, November 16, 2005

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Chair

Mr. Paul Zed

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•(1535)

[English]

The Chair (Mr. Paul Zed (Saint John, Lib.)): Good afternoon, colleagues. 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're reviewing the Anti-terrorism Act, and this afternoon we're very pleased to be joined by two groups representing victims. As everyone knows, we'll be hearing from two separate panels as our review for today. Our first panel includes Maureen Basnicki and the Air India 182 Victims Families Association.

Welcome to our committee.

The second panel will be ministers McLellan and Cotler, and once we've had an opportunity to hear from the ministers, we will then be going to an in camera discussion for our upcoming report and to give drafting instructions to our research staff.

I'd like to welcome the first panel. I understand both groups will be giving opening presentations, so please proceed.

Thank you very much.

Ms. Nicola Kelly (National Spokesperson, Air India 182 Victims Families Association): My name is Nicola Kelly and I am a national spokesperson for the Air India Victims Families Association. We're going to try to stay within our ten minutes, but may go a couple of minutes over. We've had 20 years to think about what we want to say today.

Thank you so much for providing me with this opportunity to speak to you today. The Air India Victims Families Association represents family members who died in the largest case of mass murder in Canadian history. This is an act of terrorism that Judge Josephson, in his verdict in March of this year, concluded was no doubt a terrorist act that was conceived, financed, and successfully carried out in this country. We lost more people per capita than the U.S. lost during the September 11 attacks.

We are not at all diminishing the loss of the United States or the family members of the 9/11 victims. In fact, we stand in solidarity with them today. My point is that our laws and the views of our policy-makers and politicians have never reflected this fact. Despite the fact that hundreds were lost, including 86 children, no official from either the federal or provincial level has ever stood with us on June 23 until this year. In fact, until this year flags were never lowered on the anniversary. We have failed utterly to not only

prevent this tragedy and convict the perpetrators; we have also failed to incorporate this terrorist attack into our history. This has been hurtful not only to the families but to the entire nation. As a result, we collectively act as if terrorism has never happened here; as if we are somehow immune from the current threat of global terrorism.

Terrorism in Canada is already a *fait accompli*. The sooner we learn, the better.

I would now like to discuss several different aspects of the Anti-terrorism Act in terms of what AIVFA would recommend.

The act does nothing for victims and victims' families. Victims and their family members have certain needs and requirements. For those who are injured and survive, the provision of medical, psychiatric, and financial security is paramount. In the case of Air India, no resources were offered to us. There were no Canadian officials to meet us in Ireland at the time of the bombing. Our government simply failed to act in any effective manner to aid the families in the aftermath of the disaster. We want to be assured now that there are trained professionals in place to handle the needs and respond quickly to the families in the event of a future disaster.

In terms of financial support for the families, there is none. We find it quite unfair that in our case the taxpayers were forced to pay the accused's legal bills while the victims' families faced financial struggles and hardship. Who was there to protect the rights of the victims?

We also support the private member's bill, Bill C-394. This bill would facilitate legal action for Canadian victims of terror who wish to pursue civil suits in Canada against terrorists and their foreign and local sponsors. This bill would function on two levels. First, it would provide some financial compensation to the victims and their families. On another level, in terms of designating terrorist groups, this bill could be an important tool. In other nations such as the United States and European countries, these civil suits are an important tool in designating the terrorist groups within their borders. The discovery process during these cases maps out how money flows within these organizations, and often reveals how their funding works and where these groups get their oxygen to exist.

I would like to make another point about the designation of groups whose activities meet the definition of terrorist group and who knowingly participate and knowingly collect private funds. One of the many issues we hope will come to light as a result of an inquiry into the Air India bombing, should we finally be granted one, is our politicians unknowingly aiding terrorist groups through political support and donations. We cannot let courting voting blocs from certain groups stand in the way of national security. In the years prior to the bombing there were politicians attending events where people were speaking in Punjabi about killing Hindus. You still read in the paper about Canadian politicians attending events of groups that have been banned and have received terrorist designations in other countries. I'm not suggesting this is done intentionally. I'm saying we cannot afford to be innocent about these things.

There is a definite need to strengthen our terrorism financing laws and our charitable status laws. There should be more scrutiny of where the charitable money is going and how it is being spent. There needs to be greater education of politicians on associating with certain cultural organizations.

I'd like to spend a few minutes discussing the aspects of the bill that would give greater powers to law enforcement and national security agencies, as we are very well versed now in the failings of the systems in our country. Cooperation between agencies is definitely something that needs to be addressed. New policies and regulations about inter-agency cooperation need to be drafted. The relationship between CSIS and the RCMP is one of the factors that resulted in the failure to prevent the Air India bombing and subsequently successfully convict the perpetrators. This summer, new allegations resurfaced about an ongoing turf war between CSIS and the RCMP in relation to the Arar inquiry. We cannot allow bureaucratic turf wars to stand in the way of our national security again.

• (1540)

It's also imperative that we keep up with UN international treaties to combat terrorism. International inter-agency cooperation will be the main tool in effectively combating terrorism in the modern world.

One of the factors that hindered the investigation of the Air India bombing in the months that followed the attack was the fact that RCMP officers had language and cultural barriers to interviewing witnesses and functioning within the Sikh community. We need to provide multicultural training for law enforcement officers, as well as encourage recruitment from ethnic groups.

We understand that the bill will aid in compelling individuals who have information related to terrorist groups or a terrorist offence to testify. I am completely baffled as to why Mrs. Reyat, the wife of the man convicted of making the bomb in the Air India case, who is currently being supported financially by Malik and Bagri, was not compelled to testify in the case. It seems she was afraid for her life. We need stronger tools to compel witnesses to testify.

Law enforcement agencies also need to be able to break through the culture of fear that envelopes the community in any terrorist case. They need to be seen as having actual powers to protect witnesses. We also need to make new provisions in our witness protection

programs if we intend to be successful in the prosecution of these cases.

Information gathered by intelligence agencies needs not only to be shared, but there is also a need to be able to use this information in a trial, should one occur. We need to think in concrete terms about how intelligence gathered during surveillance on persons of interest during an investigation translates into actual evidence used in a trial.

Also, in terms of actually being able to get a conviction, the Air India families strongly recommend the adoption of a three-judge system in dealing with terrorist cases of this of this magnitude. There is an international precedent for this.

We urge that any changes to the anti-terrorist legislation should aim to strengthen it by closing loopholes and lapses that now exist, and not to weaken it. We need to send a strong message to the international community that Canada is able to deal with the threat of terrorism swiftly and effectively. With our handling of the Air India bombing, we have managed to send the opposite message.

In the world we live in today, it's not shocking that there are crazy people out there who want to blow up a plane filled with 300 people. What's shocking to me, as a Canadian, is that they can do it in this country and they can get away with it. That's a fact.

You are in the unique position to change that fact. I'm here to tell you how easy it can happen here unless we are extremely careful. It happened to my family and hundreds of other families here in Canada. My mother, Barsa Kelly, who was murdered on that flight, was the best and most loving mother and wife. Her loss continues to devastate our family. She was a friend to many people from all walks of life around the world. She was a creative force, an educator, an activist, a feminist, and as she would say, a student of life. She was also a dedicated volunteer and treated everyone with respect, and she was truly a positive force. Thankfully, her memory has been indelibly imprinted on those of us she loved, and she remains a powerful force in our lives today.

My sister Lorna and I were born in this country, raised in this country, as was my daughter, who will never know her grandmother. We are as Canadian as it gets. Yet, over the years, we've been let down again and again by many different governments. What was shocking for me, as a person who considers herself a Canadian, is that my government utterly failed to protect me and my family, to convict the guilty parties, and to provide the support and resources I needed to recover. In fact, up to this year, the government completely failed to even give us recognition, let alone answers. If it hadn't happened to me, I would never have believed it could happen in this country.

I would like to conclude by saying we can no longer afford to be complacent. The cost is too high. Hundreds have already died. Thousands of Canadians have been affected. We hope this generation of politicians will be inspired to implement new and tougher legislation and make it harder for terrorist groups to come to Canada and flourish here. We hope we will never suffer another terrorist attack in this country again.

Thank you.

• (1545)

The Chair: Thank you.

Mr. Gupta.

Dr. Bal Gupta (Chair, Air India 182 Victims Families Association): Mr. Chair and other members of Parliament, thank you very much for giving us an opportunity to testify.

I'm not a legal, intelligence, or anti-terrorism expert. As chair of the Air India 182 Victims Families Association, I speak from the perspective of victims impacted most directly by the terrorist bombing of Air India flight 182 on June 23, 1985. This tragedy was a result of an explosion of a bomb planted on the plane in a terrorist conspiracy, conceived and executed on Canadian soil.

A majority of the 329 victims were Canadians, from all the provinces except Prince Edward Island and Yukon and the other territories. They came from almost all religions. Eighty-six victims were children under 12 years of age. Twenty-nine families were completely wiped out: husband, wife, and all the children were gone. Thirty-two persons were left alone; their spouse and all their children were taken away from them. Six couples in their late forties and fifties lost all their children. Two children below the age of ten lost both parents.

This is the largest terrorist act conceived and executed in Canada on Canadians. This terrorist act will continue to cause incalculable suffering and pain to thousands of friends and family members for decades to come.

On the same day, in a related act of terrorism involving a Canadian Pacific air flight, a bomb exploded and killed two luggage handlers at Narita Airport in Japan. This bomb also originated in Canada.

This was followed by the murders of two important and prominent potential witnesses: Tara Singh Hayer in Canada and Tarsem Singh Purewal in the U.K., both newspaper publishers.

The Air India 182 terrorist bombing was not prevented, but it could have been. It took almost 15 years to bring charges in court, and the prosecution failed. This is clear proof that deficiencies in our system have hindered our intelligence agencies in preventing terrorist acts, investigative agencies in bringing the terrorists to court in a timely manner, and the justice system in convicting and punishing the terrorists. Whether the deficiencies are from lack of tools, training, resources, legal framework, or political will, we do not know. We are still trying to find out.

Apparently, few if any serious lessons were learned from the terrorist bombing of Air India flight 182. The Anti-terrorism Act was passed and some terrorist entities were banned only after September 11, 2001, 16 years after the Air India 182 bombing. Why? We do not know. As parliamentarians, you may and should know the reasons for it.

As families of the victims of the terrorist bombing of Air India 182, we have suffered and continue to suffer incalculable grief and pain, which we do not wish to fall on any other Canadian—actually, anybody in the world—in future terrorist acts. Air India 182 victims were mostly Canadians, by chance of East Indian origin. Victims of the next terrorist act could be anybody. Terrorism cares little about colour, creed, gender, or age of the victims.

Terrorism is an international phenomenon, and the terrorists in most cases have worldwide connections. Well-known examples are as follows: Canada, Air India 182; U.S.A., 9/11; Spain, train bombings and murders; Indonesia, Bali bombings; U.K., 7/7, the July 7 transit bombings; Russia, school bombing; India, blasts just a couple of weeks back, before the Hindu festival of Diwali; and very recently, a new 9/11/2005 in Jordan.

• (1550)

We may not like Canada being called a terrorist haven by some people. I noted this word was used by the honourable ministers before the Senate inquiry yesterday, but there may be many terrorists marking their time in Canada. All conspirators of the Air India 182 bombing are still roaming loose, freely in Canada. Canadian courts have several prominent ongoing cases of suspected terrorists. We all know of terrorists caught crossing into the U.S.A. from Canada, the famous millennium bomber case. There are others, and recently there was a headline, "terror cell busted", in Toronto's *National Post* on November 3.

Many other cases pursued by CSIS and the RCMP are probably not public knowledge. If I may say so, for each identified terrorist there are probably hundreds of other terrorists hiding in anonymity in Canada. Terrorists in Canada appear to have good financial resources. There was a headline in the *National Post* of November 5, 2005: "Terror fundraising hits \$80M". That's from FINTRAC.

The funds are often raised through money laundering and/or donations to charitable, social and religious organizations. Some of the religious preachers, who should be messengers for peace, brotherhood and understanding...actually, religion was supposed to bring the animal out of man, but unfortunately some preachers preach and support terrorism, recruit terrorists, and collect funds for terrorism.

There are many examples of clerics suspected, detained, prosecuted, and/or convicted for supporting violence and terrorism: Talwinder Parmar and Babar Khalsa and several known cases in the U.S.A., in the U.K., and in Indonesia. I can show you a picture from the Toronto *Star*, November 4, pages 8, 12 and 13, of a cleric waving a gun in a large crowd on a holiday in a religious place. Religious places may be easily used as covers by terrorist sympathizers, supporters and recruiters. These terrorism-supporting activities may often lead to a culture of isolation, intimidation and fear in the community, the typical symbols and symptoms of ghettoism. And if somebody is caught, persecution of a kind may be and is used as a powerful defence argument, with strong support from civil libertarians—and I don't know where they are when victims suffer terrorist acts. They don't contact the victims of terrorism at all.

The government has to and should be able to stop the heinous activities of those promoting terrorism in the name of religion. It does not matter what religion is involved.

I will now move to the aspects of the law that deal with stopping terrorists from entering this country.

We ourselves are immigrants. I came to this country in 1968. We also know first-hand that new immigrants are an asset to this country, and we hope we are able to continue welcoming new Canadians into our country every year. Having said that, we cannot afford to be naive about the world we live in today. We must do more to investigate the background of individuals entering this country.

We do not pretend to have answers to this complex issue. I leave it to the more experienced individuals to figure out what methods we should use. However, judging by the existence of terrorist cells in our country with established financial roots, something has to change with our immigration policies.

An article in the *National Post* on October 31, 2005, reported that 83% of Canadians are in favour of tougher immigration standards to sift out terrorists. I would underline that.

• (1555)

The Chair: I'm going to jump in a little bit, because I want to give Mrs. Basnicki an opportunity. And members are going to ask you some questions anyway.

Dr. Bal Gupta: Can I read the recommendations?

The Chair: Okay, but I'm going to ask you to wrap it up, if you don't mind, sir.

Dr. Bal Gupta: Number one, from the victim's point of view—as I said, we are not experts in law, intelligence, or anti-terrorism—we make these recommendations.

The Anti-terrorism Act should not be repealed or softened, and its provisions should be strengthened by closing loopholes.

Penalties for participating in or supporting, promoting, or preaching terrorist activities should be increased.

The capability of terrorist organizations or individuals to raise financial resources should be eliminated.

Religious and other charitable organizations should be scrutinized to prevent them from providing support to terrorism-related activities. The law should allow victims of terrorism to make claims against terrorism-related charitable organizations, similar to claims against churches for sexual abuse of orphans and children.

Victims of terrorism should be assured of certain minimum emotional and financial resources to deal with the aftermath.

Private member's Bill C-394 should be passed as a tool in designation of terrorist groups, and as financial recourse for families of victims of terrorism.

Communication and dissemination of information between security agencies should be improved. We must never allow rifts between agencies to stand in the way of national security.

Policies regarding evidence-gathering by Canadian security agencies should be changed so that the information gathered could actually be used for prosecution.

Increased resources should be directed towards enhanced cultural training of the security agencies. Such training goes much beyond language and should include education about cultural norms and expectations.

Relationships between law enforcement officers and members of communities should be improved. We must only look at the Air India case to see the devastating effects that can occur when members of the public do not feel safe to communicate with law enforcement agencies.

There will be more legal tools to compel witnesses to testify in terrorism-related cases. There should be better policies to ensure the safety of individuals who come forward with information to law enforcement officials and for protection of witnesses in cases of terrorism.

A three-judge system should be used for trials of terrorism-related cases of large magnitude, such as Air India 182.

Public inquiries into terrorist cases should be automatic and timely so as to ascertain the problems inherent in our systems and to improve our security and intelligence systems to prevent further tragedies.

More stringent security policies should be used by Transport Canada and other internal transportation systems such as TTC.

Thank you.

The Chair: Thank you very much.

Ms. Basnicki please.

Mrs. Maureen Basnicki (As an Individual): Good afternoon.

My name is Maureen Basnicki, and since the day I married Ken Basnicki, my best friend and the love of my life, I have constantly joked when asked to spell Basnicki that it was my true love name. I would always say it had to be true love, because my maiden name was Maureen Young, and to go from Young to Basnicki was indeed a lifelong commitment. I happily embraced the thought of being Mrs. Ken Basnicki for the rest of our lives together.

Initially I was going to describe what a wonderful husband, father, son, and brother Ken was for me, our daughter Erica and son Brennan, his parents, and his two brothers, but decided not to. We are here to discuss the aftermath of 9/11, so I'll devote my time allotment to how this horrific and heinous crime affects the average innocent civilian whom terrorism targets.

I also want it to be noted that the Anti-terrorism Act was first proposed in direct response to the terrorist attacks of 9/11. I am very concerned and ashamed that Canada did not make efforts to respond to the threat of terrorism after the deadly bombing of the Air India flight more than 20 years ago. I am also embarrassed and ashamed that after 20 years my friend and fellow crime victim of terrorism here has only 10 minutes to describe the effect on his life.

This committee is examining the Anti-terrorism Act, which was passed in the months following the murder of my husband and thousands of others, including 24 Canadians. Your task is a difficult one. You must, on the one hand, consider the freedoms and civil rights we value in a free and democratic society; on the other hand, you must ensure that you provide the appropriate tools to law enforcement to protect Canadians. You've heard from ministers, government officials, police chiefs, lawyers, and community groups. You will now hear from a victim. I use the word "victim", even though it was my husband who was murdered, because I have felt victimized time and time again since that horrific day.

I, like Dr. Gupta and Nicola here, am not an expert in legislation, terrorism, or national security. I'm a flight attendant. I am a mother. I am a wife. I was also married to a man who was committed to his country as well as to his family. I can't tell you what specific wording or provisions need to be changed, but I can try to help you understand the importance of this balancing act you've been tasked with.

It was stated that 9/11 was an unprecedented act of terrorism. I'll remind you that Canada, as stated, has had its own self-manufactured and executed acts of terror. I refer to the FLQ situation and the Air India bombing. My heart goes out to the families of the Air India flight. Again, 20 years later they are still seeking justice. I do not want to wait that long, for my children's sake as well as for the sake of all Canadians.

In his book—and I hope a lot of you have had the chance to look at it, and perhaps he was here as a witness, as I believe he was—Professor Kent Roach said, "Bill C-36 was intended as a means to respond to the massive victimization of September 11, but it did absolutely nothing for the families of the victims."

Professor Roach and I may not agree on many of the aspects of this bill, but he does make an important point when he says "the two dozen Canadian victims of September 11 would have been better

honoured by appropriate memorials, victim compensation and temporary tax relief than by the rushed amendments to the Criminal Code."

I'm here to remind you what happens when you get the balance wrong. I know that no country, not ours, not the U.S. or the U.K., nor Spain or Jordan, can ever truly be safe from terrorists. But that does not mean we do not have a duty to do everything we can to identify, prevent, and deal with those who would murder Canadians.

Prior to 9/11, I was like many of you. I was happily married, a proud parent of two wonderful children; I had a career I loved. That was taken away from me by a group of madmen who did not know me but hated me anyway.

I want to tell you about my experience as a Canadian victim of terrorism. In doing so, I do not want to suggest that my suffering is any more than that of any other family of a murder victim. We all suffer the same, regardless of the identity or motivation of the offender. However, in many ways our experiences are different, and I will share that with you.

• (1600)

There is an assumption, probably shared by some of you, that 9/11 victims were well taken care of and have nothing to complain about, that we actually got rich from the U.S. government fund. We were more fortunate than other kinds of victims when it came to compensation.

Let me tell you that no amount of money will ever compensate for my husband's murder, and that Ken was a successful businessman at the peak of his career. Like many other all-Canadian businessmen, he knew that with tenacity, courage, and good old-fashioned hard work, he would succeed; and indeed, he did. He won the "Bulldog Award" for his company. My husband not only achieved his yearly quota in sales, he exceeded it.

If 9/11 had happened in this country, there would be no external fund that Canadian or provincial governments could direct me to so that my family would be taken care of. In Ontario, for example, the maximum award that can be made for one single event under the criminal injuries compensation plan is \$150,000. That is to be shared among all victims. If tomorrow there was an attack on, say, the CN Tower and 500 Canadians were killed, they would each receive \$300. If there was an attack in Nova Scotia, victims would get maybe \$2,000 for counselling. I understand that in Newfoundland victims would get nothing.

Compensation plans in many jurisdictions are very slow and have substantial backlogs. It is not realistic to expect that a provincial compensation plan could handle an attack that injured or killed hundreds or even thousands of people. The workload alone would be a challenge, not to mention the funds to compensate all the victims.

For me personally, it took three years and approximately \$200,000 in legal expenses to receive the 9/11 fund money. It took a public outcry to ensure I received life insurance money. It took compassionate Canadians to reach in their pocketbooks for affected families. For the most part, I want to inform you, this money went south of the border. I ask you, must Canadians seek charity due to a crime?

I've also been informed that since the obvious huge payout from insurance companies after 9/11, insurance companies are now slowly excluding—that is, no more life insurance policy for terrorist victims. What, may I ask, is a victim to do?

Before my husband's murder, I was a flight attendant with Air Canada. Because of the way Ken was killed, I was and still am unable to return to work. I suffer from post-traumatic stress disorder and have problems sleeping. I'm currently receiving treatment from a psychologist at my own expense, because the province recently stopped funding that much-needed help.

After Ken's murder, I went on disability—flight attendant, plane, hit the buildings. The insurance company chose to stop these benefits after the second anniversary of the 9/11 attacks. Again, at great cost, I had to hire lawyers to fight the insurance company. What was my problem? Why could I not return to my job?

One year after Ken's murder, I received a letter from the federal government demanding payment of unpaid taxes and threatening legal action. The letter was addressed to my husband—not to me, not to the estate, to my murdered husband. If I had lived in the U.S., my income taxes would have been forgiven for the years 2000 and 2001. I could have benefited from pro bono lawyers, who would have helped me fill out the endless forms for compensation. Instead, it became necessary to have lawyers in both the U.S. and Canada. The few Canadians living in Canada felt that we were second-class victims. We did not matter as much to our government as the U.S. victims meant to theirs.

Actually, those Canadians who chose to live in the U.S. were given the tax benefit. The handful of Canadians living in Canada and choosing to live in Canada were not given equality. Instead, we had more expenses. Not only did my government not extend me the same sympathy that the American victims received from their government, my government wanted to tax the money I received from the U.S. fund.

You know, in Canada a person can win a lottery tax free, but again, legal and accounting expenses were required on my part, the victim's part, to be assured that my government was not going to tax the American compensation plan for my husband's murder.

I'd like to state here that it's very expensive being a terrorist victim. In fact, I'd suggest that the average Canadian could never afford the cost of being a terrorist victim.

•(1605)

Ken was a very proud Canadian. He would not have been proud of how Canada has treated his wife and children. As I watch my political leaders go out of their way to ensure a young man charged with murdering a U.S. soldier gets access to his Canadian lawyer, and his family, who live in the same city as I, Toronto, when I see them get health benefits and demand their rights as Canadian citizens, I am left wondering where was and is my government in helping me to access a lawyer? Where are my rights as a Canadian and where are my rights as a victim of this horrific crime?

There is nothing that can change the impact of being ignored by my own government and being treated better by the leader of another country. But I'm here to tell you today that it's not enough to prevent terrorism. You must begin to deal with the reality, not that terrorism

can happen here, but that it did kill Canadians already, and we need to make sure there is a strategy in place to help.

Do you know what it's like to hear my premier and MP when they say that a family who confessed on CBC to having al-Qaeda ties and celebrated the attacks on 9/11 deserve fairness because they are Canadian citizens? It is not for me to say whether—and I'll say the name—the Khadr family is entitled to these things or not. But when a family who publicly supported the group of terrorists who murdered my husband gets fairness, I ask, where are my premier and my prime minister to ensure that I get fairness? I am a Canadian citizen too.

The former prime minister refused to create a memorial for terrorist victims. Prime Minister Chrétien said these things happen from time to time, I see no reason to mark that occasion. This was an insult not only to us, but to the families of Air India too.

The terrorist attacks, 9/11, all terrorist attacks—they are an attack on freedom and democracy. I'm proud to say the support and comfort 9/11 families have received from average Canadians has been overwhelming. However, at the government level we have been invisible.

Perhaps one of the most painful aspects of this is that I have no forum where I can seek justice for my husband. The men who flew the planes are dead. The man ultimately responsible may never be caught and will likely never face a trial. I do not get the chance to prepare and submit a victim impact statement to a judge. In fact, this may be the closest I ever get, and I almost did not get to come here.

I will never attend a parole hearing. I will never face the men who took my life away from me. I cannot even seek justice in the form of a civil suit against terrorist groups responsible for Ken's murder. If I lived somewhere else I could, but not here in Canada.

Although it may not be within the scope of your current mandate, I hope you will take the time, if you've not already, to review Bill C-394. It's called the victims of terror compensation bill. This bill was introduced by Mr. Stockwell Day and has received support from MPs from all parties, including Mr. Ed Broadbent and Ms. Susan Kadis. I won't get into the details of the bill.

Since 9/11, there has only been one agency that ever tried to help me. The former Ontario Office for Victims of Crime was the first group to ask me what I needed. No other victims' service was made available. No one else asked what we needed, and I was shocked to learn that the OVC was unable to get our contact information from the federal government, which was more concerned about our privacy than our well-being.

Premier Harris created a \$3-million emergency fund a week after 9/11. I was recently informed that I needed to submit my receipts to this fund, as it was being shut down. I had only just buried my husband—the parts that I received.

I'm still going to a therapist and am now required to pay for this on my own.

•(1610)

The McGuinty government has significantly restructured the Office for Victims of Crime.

The Chair: I'm sorry; I don't want to interrupt you, but I know that members want to have an opportunity to question you, so could I ask you to go to your recommendations?

Mrs. Maureen Basnicki: Yes, I will do that. Thank you.

I do have some recommendations. They're general; they've been said before.

If changes are made to the Anti-terrorism Act to address some of the concerns raised during these hearings, do not weaken or remove the tools that law enforcement supports and needs.

Continue to promote and improve communication between agencies.

Encourage the federal government to work with the provinces to develop a national strategy to respond to the victims of a terrorist attack.

Encourage the federal government to hold a national conference or summit on addressing the needs of Canadian victims of terror.

Pass Bill C-394.

Finally, encourage the federal government to be more aggressive in going after moneys raised in Canada to support terrorists.

In closing, I want to emphasize that remembering those who lost their lives in terrorist attacks is not enough. We must focus our efforts on protecting the lives of other Canadians who are at risk from terrorism. To succeed in this effort is going to be the greatest tribute to my late husband's memory.

Thank you.

•(1615)

The Chair: I want to thank both panels for being here today. I know this is a difficult day, and I want to tell you on behalf of all of us that we're proud of your courage and your conviction for being here.

Now I would like to give colleagues an opportunity to ask you some questions. You'll have a chance to answer those questions fully. We'll have a dialogue.

Thank you very much.

We'll begin with Ms. Guergis.

Ms. Helena Guergis (Simcoe—Grey, CPC): Thank you, Mr. Chair.

I'd like to thank the witnesses for being here today and giving us your very important testimony.

I can't even begin to imagine the pain and suffering you and your families have experienced. It is really important that you are here today. It is important that we know and understand that Canadians have been killed by terrorists. It's also important that we know terrorists continue to operate here in Canada today. What makes this most infuriating, I think, is that many of these groups are actively fundraising in Canada, and they're using that money to support the terrorists who commit the crimes—who murder people like your husband, Maureen, and your mother, Nicola.

I have a couple of questions. First, I'm curious to know if you would support the establishment of a nationally funded victims' ombudsman office.

Mrs. Maureen Basnicki: I'm sorry, Helena, could you speak up, please?

Ms. Helena Guergis: Would you support the establishment of a nationally funded victims' ombudsman office?

Maureen, you and I have spoken many times, and I've heard you say you'd like the opportunity to actually go after terrorists. I think you've even gone as far as to say you'd sue them. Can you tell us how? Why do you think it would be effective?

Mrs. Maureen Basnicki: I think victims are the fallout of terrorist acts, and as a Canadian, I feel I should have the ability to seek justice, deterrents, and accountability. I'm searching for this method, and I know it's a challenge. It's a challenge for Canadians and for all countries to engage in the battle against terrorism.

We see the solutions that other countries have made, and I don't agree with all those solutions. But I think Canada has an opportunity as a peacekeeper of the world to come out and be proactive in solutions. I personally would like to be empowered as a victim to seek redress civilly, and that option is not there. I see it as a way of perhaps offsetting the obvious costs that I referred to before of being a terrorist victim, but I also see it as a means to deter terrorism, because we all know terrorist acts need funding.

Our intelligence communities tell us that there exist a number of fundraising bogus charities, for example. Canada cannot turn a blind eye to the fact that fundraising happens here on Canadian soil. If I were able to go after this through the civil courts... We see how the courts have let down the Air India families in a conviction, but if civilly I was able to go after the funding of terrorist organizations, I see that as a great deterrent. I'd like to be able to disable terrorists financially. This has been done successfully. The Lockerbie case comes to mind. The U.S. and Ireland are examples of two other countries.

I feel not only those present victims but victims in the future are not going to be able to go about rebuilding their lives until they have an opportunity to seek some form of justice. Presently we are stuck in a spot where we are not empowered to do anything. We need help, of course, in an ombudsman, and we need people to look at what our unique peculiarities are as terrorist victims, but we need a vehicle, an opportunity, to go back.

I remind everybody that just today I watched the news and there was an airline incident, Air France, which didn't involve a crime. They are yet to determine what the cause of the incident was. Fortunately, there were no casualties. But I ask you, what am I to do as a victim of a crime? I do not have the capability of going to the courts. I can sue civilly for many reasons, contractual reasons, but for the murder of my husband.... I do not know why our laws can't keep up to the very real facts that as victims of this crime we need a recourse.

• (1620)

Ms. Nicola Kelly: In our case, after our criminal trial is ended, we have no further recourse. I think it would be a great idea to set up that for victims, because at the time of the Air India bombing we had absolutely no services provided for us whatsoever in terms of psychological counselling. As I said, there were not even any Canadian officials present in Ireland to help the families when they arrived there, even in terms of how to get to the makeshift morgue they had at the hospital. There was nothing for us whatsoever.

I think we need to learn from that experience and set something up so that people hopefully will never have a.... We have to strengthen our security and intelligence to prevent these strategies from occurring, and we also have to look at what happens if another one slips through the cracks—what systems are set up and in place for people like us.

Dr. Bal Gupta: If I may add to this, the idea is very good. I even put in recommendation six, which you have, that a portion of financial resources confiscated from terrorist organizations might be allocated for this purpose. If we can sue the churches for sexual abuse by aberrant ministers or priests, why should not the families of the victims of terrorism be allowed to sue, in civil courts, the organizations that perpetrate these acts of terrorism?

It's very important. We as victims have a hard enough time to carry on with our lives after the fact. I had to raise two children, ages 12 and 18 at that time. It's hard for them to fight the battles, and if I may say so, we had to fight a battle against the Canadian government in the civil case. It was the biggest roadblock in the civil case, rather than supporting us provincially or federally. I'm glad to state to you that nobody from the Air India families ended up in the funny farm. They all kept their sanity, thanks to the network of the families. But we didn't get a single person from the federal government. To the credit of the provincial government, it did send some counsellors to families. But the federal government didn't give us any help whatsoever.

The Chair: Thank you, Ms. Guergis.

Now we're going to ask for Mr. Ménard from the Bloc.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Believe me, I found your testimony very moving. I was quite shocked, even scandalized by the way you were treated as victims.

[*English*]

Ms. Nicola Kelly: I apologize...[*Inaudible—Editor*]

The Chair: It's all right.

Dr. Bal Gupta: Let me answer.

• (1625)

Ms. Nicola Kelly: I didn't hear the question.

Dr. Bal Gupta: There's no question, just a comment.

We really appreciate your comment. I should thank you personally for supporting a call for an inquiry in Parliament on April 7, 2005, on behalf of Air India 182 Victims Families Association.

Ms. Nicola Kelly: We thank you all.

[*Translation*]

Mr. Serge Ménard: Perhaps you got wind of my remarks in the House of Commons. We don't have much time, but I should point out that this is not a civil rights committee with victim compensation. However, I understand from your testimony that this is very important to you. As a human being, I think that the way you were treated was frankly disgraceful.

I would like to know your opinion on a particular matter. It pertains to one of the biggest problems we are grappling with in the fight against terrorism.

You seem to have understood that the biggest struggle we face is not with the law, but rather with how effective security agencies are. As a result, infiltration methods have been resorted to. However, the terrible thing about law enforcement nowadays is that cultural groups are being infiltrated, and despite the fact that these groups are considered to be among Canada's great riches, it takes some time for police officers to get to know these cultural groups well enough to ensure that any action they take is effective.

It also strikes me that you acknowledge the immediate need to cooperate with these cultural communities who, just like other communities, carry around the shameful burden of those that preach violence and terrorism and who blatantly disrespect the essence of many religions which, although different from our own, are nevertheless based on love, forgiveness and compassion. I don't think who any god, whether it be the god of Indians, Islam, Muslims or Christians, would approve of murdering innocent people for political ends. This is a complete distortion of what religion really is.

So, we need to penetrate these organizations, probably monitoring those who preach violence. When I broached this problem with Muslims who appeared here in committee, they told me that their law discouraged cooperation between Muslims and the police, who—I acknowledge—awkwardly attempt to infiltrate these groups.

Given your experience, don't you think, like them, that the Anti-Terrorism Act, as drafted, seems to target foreigners rather than Canadians who have been here for several generations. And don't you think that that has a negative impact on infiltrations which are necessary if we want to prevent further terrorist acts, especially terrorist acts perpetrated by people who aren't afraid of prison, because they are often more than prepared to sacrifice their own lives? Doesn't this legislation have an unfortunate and detrimental impact on the need to cooperate with these cultural communities?

[English]

Dr. Bal Gupta: I'll respond to it.

Understand, I'm an immigrant. I'm a Hindu. I have been a priest, whether you believe it or not. I'm probably the first or second priest in Ontario authorized to solemnize Hindu marriages.

As I said in my statement, it doesn't matter what religion it is; you're to keep in mind two things. One, religion is a very powerful tool. It's a good tool to make men out of animals, but at the same time, it's a powerful tool to work the other way, by offering the carrot of heaven through martyrdom and by showing the stick of rotting in hell if you are an infidel or heretic.

What has to be done is to encourage the real law-abiding religious people. It does not matter whether they are Hindus or Muslims or Sikhs or Christians or Zoroastrians. At the same time, don't be lenient on the so-called leaders who are preaching hatred. And if the shoe fits, so be it. To quote a Saudi Arabian cleric.... I'm just quoting, it was in the paper. I went through the list of presentations you have heard, presentations that were directed at our kind. I am also a "kind"—not the mainstream religion, not the mainstream skin colour—but if the shoe fits, so be it. That cleric in Saudi Arabia said, all Muslims are not terrorists, but most of the terrorists who have been caught are Muslims.

So we are not going after any particular religion. We would be totally wrong, worse than terrorists, if we recommended it. What we are saying is do not encourage these activities.

A point Nicola made is that as politicians you have the responsibility not to knowingly participate in activities where the language is not understood to you. She gave an example where in Punjabi they were talking about killing Hindus.

• (1630)

Ms. Nicola Kelly: Can I just jump in and say one thing to that, really quickly? I know you have to go.

I think that there needs to be a feeling in the community that the police and law enforcement agencies can protect those people who are innocent, who want to come forward and speak. In our case that didn't happen, because witnesses were being murdered, and obviously the feeling wasn't there in the community that they were able to cooperate.

I think on a deeper level, although I know this isn't the mandate of your committee, they do offer this carrot, but we have to find out what's going on in our society, why young people are taking the carrot. In the case of the London bombings, why was this appealing to these young people, who are English? That's something that's deeper, getting at the root of terrorism.

Sorry, and thank you.

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

We're going to move on.

Mr. Comartin, I guess you're going to pass your time to Mr. Layton.

Welcome to our committee, sir.

Hon. Jack Layton (Toronto—Danforth, NDP): Thank you, Mr. Chairman.

On behalf of the New Democratic Party, first of all, I'll just be very brief and thank you for being here. I recall our first meeting in our constituency office on the Danforth and how moving that was, our time in Ireland where the crash took place, and the conversations that we've had.

The first observation I have is about your courage—all of you in the community. The way in which those who were affected have come together to hold on to each other and support one another is truly remarkable, as is also the way victims of terrorism—various terrorist attacks—now are coming together to bring this very strong message to us. I know that in many ways it might have been easier to privately grieve and try to move on, but you've decided that you want to make a change as a result. We need to thank you.

I think also this means that the recommendations you bring to us deserve very special attention. I know we're not going to have a lot of time to talk about them here today, but we need to commit to you, from all of us around this table, all of the parties, that we will take a look at these recommendations and transform them into action. This is the way we can most effectively thank you.

You've given us quite a range of areas where work can be done. I look forward to working with you to make sure that, for example, an infrastructure is created, some sort of net that reaches out to people who become victims, so that you're not left alone by your country. The examples you gave are pretty dramatic. That's a very important area we often forget about. I know you're here to make sure we don't forget about it.

Secondly, the work around prevention does need to take a number of forms. It can't just be the simple things that one thinks about right off the top in terms of preventing terrorism. It has to reach in much deeper. Some of the comments from my colleagues here have touched on that. There needs to be a deep analysis of why this alienation and nihilism is beginning to set in, in so many ways and so many places. I think we all have our ideas about that, but we need to pursue those as well.

So we look forward to working with you on an ongoing basis. In honour of your wisdom and your loss and your courage, let's make a commitment that we will have some results to show to you and all Canadians in the very near future.

Merci. Thank you.

• (1635)

The Chair: Thank you.

Mr. Wappel, please.

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

I'll be brief. All I can say is that it was very difficult to listen to what you had to say. I can't pretend to imagine the pain you have experienced, particularly that even though time goes by it still hurts, and it's obvious that it still hurts.

I was particularly appreciative of the fact that you have brought forward recommendations. That's very helpful to us.

I also want to say that I thought, Mr. Chair, it was very important that these witnesses remind us about something, because we've heard witnesses who have come here and said, time and time again, that it's not a question of if, but when, we will be victims of a terrorist attack. To me, it's critical that you pointed out to us that we already have been the victims of terrorist attacks. It isn't a question of, "not if, but when?", but "when again?" I think it's absolutely critical that we recognize that.

For people who are looking at the legislation as if it's targeting particular groups, I can't help but comment that the Air India disaster, as far as we know, is in no way connected to Islam or to Muslims, and yet it was a terrorist act—a heinous terrorist act.

Your rhetorical question, of course, can never be answered, which is, why was there no anti-terrorism act brought forward after the Air India disaster? I think we simply have to move forward and do what we can to prevent anything like this in the future, and if we're unable to prevent it, to ensure that the victims have some help from all levels of government so that their pain can be eased.

I want to thank you for reminding us that we already have been the victims of terrorism and for sharing your stories, which cannot be minimized in any way.

Thank you very much.

Ms. Nicola Kelly: Thank you very much.

I just want to say that's why we brought a copy of this book, which has pictures of all the people who died and their stories—there's some wonderful writing from the children—so that we can see what we lost, what it has already cost us.

Thank you for that.

Dr. Bal Gupta: We're giving them to Mr. Toupin, and you can look at it.

Thank you so much for giving us this opportunity.

Mrs. Maureen Basnicki: I'd like to add to Mr. Layton's comments and yours.

It's giving us some sense of satisfaction to be here to remind you that Canada did have victims of terrorism. It's also giving us some sense of satisfaction that our voices are being heard, and we ask that we not become victims of politics now. We ask all parties to embrace us. Terrorists, to repeat, don't know what colour you are or what religion you are. They don't know what country you come from. They don't know what political party you belong to. We do not want this to be an opportunity for various parties to posture and to say that.... In fact, it concerns me that, in my opinion, which I share with other family members, really it hasn't been high enough on Canada's agenda.

I question constantly how we can have, south of the border, an election that was based entirely on who could battle terrorism best, and why it's so little mentioned here in Canada. Again, I don't believe other countries are effectively coming up with the best solutions. I invite Canadians from all parties to examine this very real problem we have and to be proactive in coming up with solutions.

We cannot afford as Canadians, with this global threat, to be complacent in this area. We stand here as Canadians who've already been affected, but we are united in our desire to keep other Canadians from being affected.

• (1640)

The Chair: Mr. Cullen.

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you very much, Mr. Chairman.

We're just about out of time. I had a couple of questions, but I want to basically thank you for coming, for your very powerful testimony, and for the courage to do that.

In the interests of not being partisan, I think our government has spent a lot of attention on the national security agenda, but nonetheless I can understand why you might say that.

With respect to victims of crime, which you are, I'm wondering if you have had the opportunity to see a government bill that was tabled—Bill C-46. It's in the House now. It's the Corrections and Conditional Release Act, which deals with tightening up the conditional release, but it also has a large package for victims of crime. I don't imagine you follow everything that happens on the Hill, but if you haven't read it or seen it, I'd like to offer to give you a package on it. I'd be very much interested in your feedback as to whether that goes far enough in dealing with some of things you've presented us with today.

Thank you.

The Chair: Colleagues, I'm in your hands, but we are running a little bit behind.

I'm happy to have received your very courageous presentation today. I think it's an important forum for you. As you know, we're in the process of reviewing the legislation, and I think you've humanized it and given us an important aspect of it.

I'll just—because we're on television—show you a copy of the book that has been circulated. It's called *Love, Honour, Respect: The Memories of Our Loved Ones*, and this is from the Air India disaster victims.

Mr. MacKay has asked to make a very short intervention. I'm happy to have him do so, give each of you a chance to respond, and then we'll conclude.

Mr. Peter MacKay (Central Nova, CPC): Very briefly—and thank you for your indulgence, Mr. Chair—I simply want to add my voice to those who have gone before me on the committee and commend you for having turned such a personal tragedy into a cause that you have articulated so well here on behalf of your lost loved ones.

On the question that was asked by my colleague with respect to a central victims' ombudsman office—and I commend the work of people like Steve Sullivan in the Canadian Resource Centre for Victims of Crime—I would ask you this. Is this what you contemplate, a single office for the entire country, where you could ensure there was, first, timely support?

Ms. Kelly, what I got most from your report, your evidence here, was that at the time you needed it most, you didn't feel there was the necessary support.

So with regard to that type of fully funded national victims' ombudsman, an office commensurate with what we currently have in Canada, a correctional investigator's office, which is there for the convicted—we don't have a similar nationally funded office for victims—is that something you have contemplated and would recommend as part of your presentation here to address specifically some of your concerns about the shortcomings?

Ms. Nicola Kelly: I would absolutely recommend it. I think that is a great idea.

Dr. Bal Gupta: It would help, but it may not be the final solution, because it's still the.... I will go a little further. They say prevention is better than the cure, but in this case there is no cure after the fact. It's the aftermath we have to clean up. Whatever you can do to help the victims of terrorism, it'll help.

• (1645)

Mrs. Maureen Basnicki: I would suggest, Mr. MacKay, that right now there is a great deal of confusion about whose jurisdiction we come under. Is it the province or is it at the federal level? I would suggest that given the nature of the crime, it would be best handled at the federal level because it affects Canadians all across the country.

Our experience is that it's been pass the puck, so to speak, and really nobody has taken responsibility for the needs of terrorism victims. I do think that at the federal level it's very necessary to create something that affects Canadians, and not only if the terrorist act happens within our borders. Canadians travel. In fact, we had members of Parliament in England at the time of the 7/7 bombings. You can see how readily....

We have to get outside of the box here, so to speak. It's a different set of circumstances that are involved in this crime. I think we have to realize that because the circumstances are different, we have to create something at the national level that addresses it.

The Chair: Again, I'd like to thank you all for coming this afternoon. I want to tell you that we've received your briefs and will be reviewing them. As you know, today is near the end of our inquiry on this particular piece of legislation. We'll no doubt be taking note of your recommendations. Once again, thank you very much. I wish you well.

We're going to suspend for approximately five minutes to change panels.

• (1655)

The Chair: Colleagues, we're reconvening 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're completing our order of reference of November 22, 2004, which is a study of the Anti-terrorism Act.

I'm pleased to welcome back to our committee the Honourable Anne McLellan and the Honourable Irwin Cotler, who I believe both have opening statements and will be available for questions.

You may want to introduce who is accompanying you, as well, from the officials' side, and I'd ask you please to proceed. Thank you.

[Translation]

Hon. Anne McLellan (Minister of Public Safety and Emergency Preparedness): Thank you, Mr. Chairman.

[English]

I am indeed here this afternoon with my colleague Irwin Cotler and with Kimber Johnston from my department.

And Irwin, you have with you today...?

Hon. Irwin Cotler (Minister of Justice): I have our two experts in these matters, Doug Breithaupt and Stan Cohen, both of whom have an institutional memory in these regards.

Hon. Anne McLellan: Before I go any further, Mr. Chair, let me indicate that I think all members of the committee have received the joint statement that has been prepared by my colleague and me. This is a detailed response and has been filed with the Senate committee as well. It is a response that both deals with context—some of the recent context obviously—and also directly addresses, in more detail than we can and will in our opening statements, some of the things you have heard here from witnesses.

Mr. Chair, my opening statement is going to be very brief, even more abbreviated than the one I delivered in the Senate, because I think time is pressing this afternoon. I will speak quite briefly and then turn it over to my colleague the Minister of Justice, who will speak for a longer period of time, I think, addressing some very important contextual and global issues.

Again, I thank the members of the committee for the opportunity to be before you again on this important review.

• (1700)

[Translation]

I'd like to thank you for the action you are taking, on behalf of the Government of Canada.

[English]

In the three years since the passage of the Anti-terrorism Act, or as it is referred to, the ATA, the threat of terrorism has not diminished. I think we see that all around us. The network of terrorists is diffuse and less easily identified than ever. While most forms of political violence in the world have declined since the 1990s, things like car bombs and suicide bombers have increased in numbers and have claimed an ever increasing number of victims.

From the public transit system in London to Egypt, Bali, India, and now Jordan, innocent people, even children, have been killed indiscriminately. Following the attacks in London this past summer, al Qaeda reissued its list of target countries. Canada is on that list. It also remains a nation that terrorists around the globe see as a potential—and I say this with no pride—favourite source of financing for their horrendous activities.

This means that we must prevent, disrupt, and deter terrorist attacks from occurring in this country and from being directed or financed from this country. Toward such ends, the ATA is an essential tool of national security and an important component of Canada's membership in the community of nations. Its aim is prevention and its powers are pre-emptive.

In taking steps to protect Canadians from terrorist violence, this ATA demonstrates the government's resolve to defend Canadians' rights and freedoms. It is, we believe, the right response, the right balance, and the right approach, and public opinion tells us that Canadians agree. They want strong measures, but balance and care in their application. We are being sensitive particularly to the concerns held by some people, such as the Muslim and Arab communities. This is why the Minister of Justice and I and our parliamentary secretaries have met with individuals and organizations across the country over the past year and will continue to do so.

In fact, this weekend we will attend the third meeting being held this year by the Cross-Cultural Roundtable on Security. I don't know, Mr. Chair, whether you've had people appear from the Cross-Cultural Roundtable, but this is an important initiative to engage members of Canada's diverse communities and to benefit from their perspectives on national security. This sort of dialogue helps ensure that the way we implement the ATA and other national security initiatives is consistent with Canadian values. It also fits with similar efforts that other countries, such as the United Kingdom, are undertaking to reach out to ethno-cultural communities.

I was in the United Kingdom in September after the horrendous bombings of July, and clearly the United Kingdom, a multicultural and diverse society, is struggling with, again, getting the balance right and struggling with how they ensure that they work in an inclusive fashion with all members of society, especially ethno-cultural communities that might, for unintended reasons, feel marginalized or victimized by anti-terrorist laws, which are, of course, put in place to protect them as much as any one else. It is a challenge that we all face, quite obviously, and I know you've heard a lot about that in this committee.

Let me just say a few words on one specific issue, and I know it's one of concern to this committee, although it has nothing to do with the ATA, and that is the question of security certificates. Since 1991, only 27 of them have been issued, even though we remove over 9,000 people every year from this country. I think this demonstrates that we use these certificates only as needed and only based on an extensive amount of intelligence. I believe that our system incorporates both extensive due process and judicial review, and that it strikes a balance between the rights of individuals and the protection of society's collective safety and security. These certificates allow for preventive action if someone appears to pose a serious threat to our national security, and they provide the flexibility to meet emerging threats before they occur. Security certificates are a valuable tool to discharge that responsibility and should remain available to us as an extraordinary response to extraordinary circumstances.

I know that, colleagues, you have spent some time considering security certificates. I will look forward to answering your questions and hearing any recommendations you might have in terms of the tool of security certificates and the use of security certificates. Of course, while the courts have upheld them consistently, the Supreme Court of Canada has indicated that they will review certain specific cases involving security certificates. The Minister of Justice and I look forward to hearing any recommendations and insights they have for us, as well as insights and recommendations from either this committee or the Senate committee.

Mr. Chair, I would like to close by saying that the Anti-terrorism Act, we believe, represents a truly Canadian response, reflecting Canadian values and consistent with Canadian law, and beyond that, consistent with and in discharge of our international obligations, which the Minister of Justice will speak more of in just a minute.

The Government of Canada does not intend to repeal the act. The dangers to Canadians and our allies around the world are simply too great. As with any security measure, we must strive to ensure that our measures are both adequate and balanced. I look forward to any views the committee may have in relation to how we continue to strike the right balance—respect for the Charter of Rights and Freedoms, individual rights and freedoms, respect for the rule of law, and the discharge of the paramount obligation of any government anywhere, which is of course to provide for the collective security and safety of its people.

Thank you. Merci.

• (1705)

The Chair: Thank you, Minister McLellan.

Minister Cotler, please.

Hon. Irwin Cotler: Thank you, Mr. Chairman.

[*Translation*]

I would first like to say how glad I am to be here and to take part in a common cause which affects us all: the fight against terrorism is part of the larger struggle to protect humans from harm.

[*English*]

May I also begin by expressing my appreciation for the long hours of hard work by this committee. The review you are conducting is not simply mandated by section 145 of the act, it is one that is welcomed by the government and most appreciated by Canadians. Your review ensures that the best of intentions and the best of parliamentary inquiry are reflected in the best possible law. As Justices Iacobucci and Arbour have said, and I quote, "The challenge for democracies in the battle against terrorism is not whether to respond but rather how to do so".

It is of vital importance therefore to understand how Canada has chosen to respond. Our choice was to proceed on the basis of human security, the protection of human security, which is rooted in both the protection of national security and civil liberties. Too often I believe we see these two in a zero sum relationship. It's civil liberties or national security; it's personal freedom or national safety; it's the rights of the individual or the powers of the state; whereas, in reality it must be both together at the same time in a complementary and not contradictory relationship. That's because we cannot talk about protecting personal freedom or civil liberties without first ensuring our security, and we cannot speak about security without that notion being inclusive and protective of civil liberties.

In that sense, the first and foundational principle, as I stated in my appearance before you the last time, is the protection of human security, a principle inclusive of both national security and civil liberties, which is the very foundation for every other freedom and the starting point for the protection of our most fundamental rights. Transnational terrorism, therefore, constitutes a direct assault on the most fundamental rights as a democracy—our rights to life, liberty, and security of the person—as you just heard in the witness testimony before you.

Counterterrorism is the exact opposite. It seeks to protect those rights—indeed to create the conditions that make such rights possible. A second and related principle is that terrorism constitutes a frontal assault on international peace and security and the very foundational principles of the United Nations charter itself. As the Secretary-General of the United Nations recently put it, and since we last met, terrorism constitutes “a direct attack on the core values the United Nations stands for: the rule of law; the protection of civilians; mutual respect between people of different faiths and cultures; and peaceful resolution of conflicts”. He might have added “and the values that Canada stands for”.

The third principle that underpins our approach to combating terrorism is that while terrorism itself is a fundamental assault on the rule of law, we remain utterly committed to respecting the rule of law in our counterterrorism response. This too is consistent with our values and our Charter of Rights, for we are a nation of laws founded on the rule of law. No individual and no group should be singled out for discriminatory treatment, because no Canadian enjoys fewer rights than any other. All are equal before the law and under the law and enjoy equal protection and equal treatment of the law. And that holds true whether we are talking about racial profiling or we are talking about any other enforcement and application process under anti-terrorism law and policy.

Simply put, our anti-terrorism laws are for the purpose of protecting human security and human rights and must not undermine the very rights that are the stuff of our security.

The fourth principle is that of zero tolerance towards terrorism, that there can be no exculpatory or exempting terrorist activity. As the UN Security Council put it, and for the first time, “We strongly condemn terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constitutes one of the most serious threats to international peace and security.”

The fifth principle, again reaffirmed by the United Nations Security Council and emphasized by the Secretary-General, is the danger of incitement to hatred and terror, of incitement as a proximate cause to international terrorism, and of the transnational character of that incitement.

Sixth, again affirmed by the UN, is the importance of the prevention principle. The reason I'm referencing the United Nations is that our anti-terrorism law is itself an incorporation by reference of both the UN Security Council resolutions and domestic implementation of international treaties to counter terrorism. The principle of the prevention principle is therefore the need to detect and deter rather than simply to prosecute and to punish. Our goal must be to disrupt, disable, and if possible, dismantle the capacity of those who seek to do us enormous harm.

● (1710)

The seventh is a principle that is often ignored, but one that you just heard from witnesses before you—namely, the pain experienced by the victims and their families. Terrorism is not an attack on the state in an abstract sense. Terrorism, simply put, is the intentional slaughter of the innocent. It is an assault not only on the targeted victim; it also has a correlative impact on their families and their communities, often with irreparable pain and harm.

Apart from legislative initiatives to protect victims of crime, we are exploring two other specific initiatives in that regard. The first one, which I discussed earlier today with the president of the Canadian Resource Centre for Victims of Crime, is the enactment of a Canadian charter of victims of crime act. The second is to seek to provide a civil remedy for victims of torture and terror in a manner consistent with both our international law responsibilities and our federalism and jurisdictional approaches.

Finally, Mr. Chairman, the Anti-terrorism Act needs to be appreciated in the wider context of international efforts to address terrorism. Indeed, if there is one overriding dynamic that has emerged since we last met, it is, as *Le Monde* put it in its commentary the day after the London attacks, the globalization of international terrorism. No country on its own can defeat it, and because it is a truly global threat, we must develop a truly global response.

Our Anti-terrorism Act, organized around an international criminal justice model, including, as I mentioned, the domestic implementation of 12 and now 13 issue-specific international anti-terrorism treaties and UN Security Council resolutions, seeks to do exactly that.

At the United Nations General Assembly in September, the Prime Minister signed the United Nations International Convention for the Suppression of Acts of Nuclear Terrorism, while I signed in Strasbourg in July the optional protocol to the European Convention on Cybercrime to criminalize the racial and xenophobic acts of hate on computer systems.

May I close by commending the elements of the UN Secretary General's anti-terrorism strategy, which speaks of an approach that would be anchored in Canadian values; of drafting a comprehensive international convention against terrorism; of civil and religious leaders raising their voices against terrorism, not unlike what you just heard in the witness testimony; of denying terrorists the capacity to carry out their attacks or to, above all, access weapons of mass destruction; of developing state capacity to prevent terrorism through the promotion of good governance and rule of law, which we have tried to do in our work with national justice systems in other countries; and of protecting human rights in the enforcement and application of anti-terrorism law.

Mr. Chairman, the Anti-terrorism Act was drafted with care and founded on clear principles, but it is not frozen in amber. We welcome the results of your work, and will seriously consider any recommendations you may make. We are confident that with your informed contribution, this law will continue to do what it was designed to do—help secure the rights and liberties of all Canadians.

Thank you.

The Chair: Thank you, both ministers, for your presentation this afternoon.

We'll now begin with Mr. MacKay.

• (1715)

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

To both ministers and your staff, we appreciate your presence here and your testimony, and also your acknowledgement, Minister Cotler, of the work this committee has done. As you know, we've travelled extensively and have heard from many witnesses already, as you've referenced. We have seen the examples of other countries and their legislation in terms of what they're doing, most notably in Great Britain, where there have been court decisions on their legislation that have impacted on things like the equivalent of the security certificates.

I want to ask both ministers two questions—and I'll allow you to respond—with respect to the rule of law and the paramount obligation to protect the public that Madame McLellan referred to, and also the reference to the charter.

No party has as much respect or embraces the charter as much as the Conservative Party does. We also recognize the origins of the charter. It came from John Diefenbaker's first bill of rights in this country. That charter applies to all Canadians, regardless of their political stripe.

I want to ask you specifically, Minister, something with respect to your view of the deportation of failed refugee claimants and the current practice in which there is still the ability and the risk that they may be deported to countries of origin that practice torture. Do you in fact believe, particularly with your own human rights background, that there is the need for legislative protection in that regard? I know there has been some discussion about this in our deliberations, and I would like to get your view of this. The Canadian Council for Refugees makes that recommendation, and it is consistent with international law, as you indicated in your testimony.

Also, Minister, with respect to the Information Commissioner and the Privacy Commissioner, they have both expressed concerns about the length of time the Attorney General—you—has in the ability to enforce a security certificate—fifteen years. They recommend that if the provision is to be retained, the length of time should be reduced. I would like to get your comment on that, again in the context of what happened recently in a court decision in Great Britain.

For you, Minister McLellan, I have two questions. We heard evidence and there has been some public discussion about the RCMP Public Complaints Commission and the commissioner that referenced the RCMP's involvement in national security matters in which they were not able to investigate. I would like your response to that and how that is going to be resolved.

It relates specifically to an ongoing issue of resources and the ability of the police to now meet growing demand—which you referred to yourself—and the expanded powers, responsibilities, and expectations that the Royal Canadian Mounted Police now have in this country since the proliferation of terrorism globally and its effects here in Canada. Those officers clearly have an even higher calling now, in addition to their domestic crime-fighting duties.

With respect to the RCMP and these additional security duties, one would expect that the normal course would be a requirement for more officers. With those additional duties would come the need for more officers.

My colleague from Yorkton—Melville recently received an answer to an order paper question that he had filed. In that answer from the government, in that document, your department stated quite clearly that there were “no unfulfilled requests for RCMP officers” in Canada. Yet in the very same document, the charts that were attached—and I'd be glad to give them to you—indicated that there was a net shortage of 1,059 RCMP officers in the country today, and provided a regional breakdown that accompanies it.

Can the minister explain this discrepancy between the answer contained in the answer to the order paper question and the charts themselves? There seems to be a blatant contradiction, with provinces calling for more officers and you stating that there were “no unfulfilled requests for RCMP officers”. How many RCMP officers are now devoting their time to national security matters? Is information available on how many RCMP officers devote themselves full-time to national security matters and are therefore not involved in current domestic investigation?

Hon. Anne McLellan: I'll take a first cut at your security certificate question, because it is I and the Minister of Immigration who sign those certificates, not the Minister of Justice.

As I made plain when I appeared before the Senate, we have not removed anyone to a country where they face a substantial risk of torture. We are in full compliance with the Supreme Court of Canada decision in Suresh and with international obligations.

The Supreme Court of Canada has two cases before it presently in which they are reviewing security certificates. We will obviously await the outcome of their deliberations for any guidance they might provide to us. But both the Minister of Justice and I have been clear. We have not deported anyone to a country where they have faced a substantial risk of torture.

If you want to pursue this perhaps in another round, we can talk about more complex issues around when one wants to remove, the seeking of assurances, and the independent monitoring by an international agency of those assurances. But you didn't ask that question, which we can return to if you want.

• (1720)

Mr. Peter MacKay: What I did ask, Minister, is whether you felt, and also whether the Minister of Justice felt, that it should be codified, that it should be in writing, that it should in fact be included in this legislation that we're currently reviewing.

Hon. Anne McLellan: As you know...sorry, I was going to call you "Peter". As you know, colleague, the Supreme Court of Canada decisions, such as Suresh, are as much a part of our law as anything that would be codified. We believe the Supreme Court was clear in Suresh. We await any further guidance. And the international covenant is there, which we have signed and ratified. I suppose you could treat that or see that as some kind of code.

At this point we are not anticipating codifying anything further into our domestic law, but if you have advice on that, we would certainly take it.

Mr. Peter MacKay: I'm not a big fan of Cartesian thinking.

Hon. Anne McLellan: We believe the law is clear, and we have not removed anyone to a situation where they faced a substantial risk of torture.

In terms of the RCMP, the Public Complaints Commission has full powers to investigate both traditional law enforcement and national security matters. I think that has been made very plain by the acting chair of the Public Complaints Commission. You might want to call him, if you so wish, to have him articulate his views of the mandate of the Public Complaints Commission. But it is a broad interpretation of their mandate, and one I completely agree with.

In terms of resources as it relates to the Public Complaints Commission, I await any advice from the acting chair of the Public Complaints Commission, as well as the new vice-chair, as to whether they need more resources to be able to carry out their important independent civilian oversight function.

Mr. Peter MacKay: So you're indicating that the public complaints commissioner did not say that their mandate precluded them from looking into complaints about RCMP security—

Hon. Anne McLellan: The previous commissioner did say that—

Mr. Peter MacKay: The *previous* commissioner said that. Okay.

Hon. Anne McLellan: —and I disagree with that, as does the new acting chair of the Public Complaints Commission upon review of the mandate. But as I say, you might want to call him and the new vice-chair and have discussions around the mandate.

In terms of the RCMP as it relates to resources, the RCMP has had its resource base increased dramatically since 9/11. We certainly understand the pressures under which the force presently carries out its functions. They're the same pressures every national police force in the world is under. We have additional pressure, because our national police force does contract policing in eight provinces and three territories.

In terms of officers, as far as I am aware, except...and I'm not sure; I've received a formal written request from the Manitoba justice minister for an increase in complement, but we did talk about it in Whitehorse last week. We are moving on the requests we have received.

For example, my colleague Harvey Cenaiko, Alberta's Solicitor General, after the Mayerthorpe tragedy asked for a significant increase in complement.

Mr. Peter MacKay: Perhaps I can just stop you there—

The Chair: I'm sorry, you're way over your time period—

Hon. Anne McLellan: We are fulfilling that request. We need a formal request—

• (1725)

Mr. Peter MacKay: This document says you received no requests for RCMP officers. It says specifically, "no unfulfilled requests for RCMP officers". But you've just told us that there were requests.

Hon. Anne McLellan: No, you're saying no unfulfilled requests. We have a request, for example, from my colleague Harvey Cenaiko in Alberta. We're fulfilling his request.

Mr. Peter MacKay: So there are requests for more RCMP officers. In fact, there are a thousand requests.

Hon. Anne McLellan: I think probably the key word is "unfulfilled", and whether they are formal requests that we have received. The province has to activate the request. I have to receive a formal request, in writing, indicating the number and the fact that the province has the resources to put their share of the funding on the table. You know what the formula is.

In the case of the Province of Alberta, we have indicated to Minister Cenaiko that we are moving on that—

Mr. Peter MacKay: You're telling us now that there are a thousand unfulfilled requests. Is that correct?

The Chair: I'm sorry, Mr. MacKay, you're way over your time.

I'm going to move to Mr. Ménard, please.

Hon. Irwin Cotler: I think that question was also directed to me, if I'm not mistaken.

The Chair: All right, Minister Cotler, you can finish answering his quick questions. But he's way over his time.

Mr. Peter MacKay: I'm not over my time. I was well within my time.

An hon. member: In total time.

Mr. Peter MacKay: In total time, yes.

Hon. Irwin Cotler: I'll be very brief.

Mr. Serge Ménard: Remember what I suggested for the rules, that only the time spent on questioning be counted?

The Chair: Mr. Cotler, please.

Hon. Irwin Cotler: On the matter of the deportation issue that you raised, let me just anchor it in what I call the Hobson's choice that we now face in these issues, between prolonged detention on the one hand or removal to a country where there may be a substantial risk of torture on the other hand.

The last time I appeared before this committee—I think it was before this committee, because I remember a question by Joe Comartin of a similar nature—I invited the committee to explore what I called other or middle-range options. That is where I got into trouble in the media scrum afterwards, but which I now have a chance to clarify, where as an example I said that one could look to the section 810 possibility, in other words, to supervisory control orders under the Criminal Code, which the U.K. has spoken about, not unlike a variation of our preventive arrest provisions under the Anti-terrorism Act.

When I was asked in the media scrum whether I would apply that to citizens, I said it already existed for citizens, but the next day the headline was, Cotler wants to expand Anti-terrorism Act to citizens. Not at all. I was looking for a way to protect rights and a way to have a middle-range option.

So I'm happy that you asked the question so that I can clarify this. The committee may be able to find a way to do that in looking at section 810 of the Criminal Code and preventive arrest provisions, and the like, for a judicially supervised approach to control measures. That's the first thing.

The second thing you brought up had to do with the issue of what you called the Attorney General's security certificates. I don't issue security certificates, but what are called Attorney General certificates. I don't want to confuse those with security certificates, but nomenclature aside, I take your point in that regard.

As I stated in testimony before the Senate committee two days ago, when the first draft of the Anti-terrorism Act was put before the parliamentary committee when I sat on the committee, I had said that the issue of Attorney General certificates, which were unreviewable, unfettered and utterly secret at the time, had been reason alone for me to oppose the Anti-terrorism Act. I recommended six amendments at that time to the Attorney General's unfettered, unreviewable power with regard to the issuance of certificates, which my colleague the Minister of Justice accepted at the time. That shows you the role that parliamentary committees can play in these matters.

Now the Attorney General certificate, as a result of that, is as follows. The Attorney General is required to serve the certificate on all relevant parties. It can only be issued within a legal process, and only after an order or decision for disclosure of security sensitive information has been made. The issuance of a certificate will not remain secret, as it was before, but will be published without delay in the *Canada Gazette*. The certificate will no longer remain unreviewable, but any party to a proceeding can apply to the Federal Court of Appeal for a review of the certificate. The judge reviewing the certificate now has the power to confirm, vary, or cancel the certificate. The certificate cannot be issued for an indefinite period, as was possible in the past, but will be limited to a period of 15 years, as you correctly noted. You still feel that's too long, but I'm just trying to locate your question in the overall Attorney General certificate—

Mr. Peter MacKay: My question was about...*[Inaudible—Editor]*...and your feeling as to the length of time.

Hon. Irwin Cotler: Yes, that's what I'm saying, in trying to locate your question in the panoply of remedies that were made to the unreviewable, unfettered, secret power of the Attorney General to issue this certificate. I'm listing for you the due process safeguards with regard to that, including, finally, that the Access to Information Act and Privacy Act are no longer excluded, and the right and duty of oversight by the Privacy Commissioner and Information Commissioner have been preserved, as have existing provisions regarding the collection, use, and protection of information.

So to sum up on the 15 years, I'm saying that you have all these due process protections, but maybe one could look into... I felt that an indefinite time was too long; you might feel 15 years is too long.

Make a recommendation if you feel that way—and a well-founded one.

• (1730)

Mr. Peter MacKay: You have no view of it?

The Chair: Thank you, Mr. Cotler.

Mr. Ménard, please.

[Translation]

Mr. Serge Ménard: I'd like to start by asking you a question which you'll be able to answer very quickly, as I would like to ask you more than one question.

You said that the Anti-Terrorism Act includes extraordinary measures for extraordinary circumstances and that it does risk violating our fundamental rights. If we were to renew the Anti-Terrorism Act, do you think that there should be another mandatory review in three years' time?

Hon. Irwin Cotler: Yes, indeed, there should be another review process.

Mr. Serge Ménard: You have basically come before us to defend the act as it is. However, it seems to me that when we decided to include a mandatory review after three years, it was because we recognized back then that the bill was adopted quickly in the aftermath of the spectacular terrorist attacks, and that therefore the bill would necessarily get some things wrong and even go too far, something which would become apparent in the first years following its passage.

However, what you are telling us today is that after three years of experience, the bill has somehow struck the perfect balance and does not need to be amended.

[English]

Hon. Anne McLellan: I will answer that because I was the Minister of Justice and Attorney General at the time.

As Minister Cotler has outlined, much of this legislation was not passed in haste, and the two gentlemen here, among others, could talk about how long we had been at the table at the United Nations. Global terrorism was a singular preoccupation of every global meeting I attended for five years. Before that, it was a singular preoccupation of the United Nations and other global bodies for the whole decade of the nineties. In fact, Canada was recognized as a leader in many of those discussions.

If you look at the conventions that were issued by the United Nations, we were one of the nations that ratified those. There were two outstanding conventions, and the ATA reflects the obligation on our part to ratify them, as well as what happened after 9/11 and requested of nations in the following weeks and months. Much of the thinking and the principal construct on which the legislation is based, which Irwin talked about, is not new, wasn't adopted in speed, and had been a long time in the making. So I want to refute or negate the notion that somehow—

[Translation]

Mr. Serge Ménard: I understand your point of view. You do not have to dwell on this issue for three minutes when I only have seven to ask questions of you. I understood your answer perfectly.

I was not here when you passed this legislation. Could you remind me when it was adopted?

[English]

Hon. Anne McLellan: It was passed in December, but in fact—

[Translation]

Mr. Serge Ménard: In December of what year?

[English]

Hon. Anne McLellan: 2001.

[Translation]

Mr. Serge Ménard: So the bill was adopted three months after the September 11th, 2001, attacks, but 19 years after the Air India disaster.

[English]

Hon. Anne McLellan: Well, keep in mind—

• (1735)

[Translation]

Mr. Serge Ménard: Do you want to tell the people here that you began to think of fighting terrorism after the Air India disaster, but that what really pushed you to act were the attacks which took place in our neighbouring country?

[English]

Hon. Anne McLellan: No. In fact, if you're talking about security certificates, of course they play no part of the ATA; they are in the immigration act. I don't think we should confuse the public in terms of what is in the ATA and what is found elsewhere. I know you're not doing this deliberately. Security certificates are found in the Immigration and Refugee Protection Act, and in fact they've been there for almost 15 years. So if you want to talk about that, fair enough, but don't confuse it with the ATA.

Minister Cotler and I are not here to suggest that the legislation is perfect. In fact, as you see now in Britain, Australia, New Zealand, the U.S., and here, there are reviews of the legislative responses; they are strengthening their powers in some countries, such as Australia and the U.K. We are not here to ask for additional powers, in spite of the horrific acts that have happened since 9/11. We believe the tools here are adequate, and they are being applied in a fair and balanced fashion. We're not asking for additional powers such as the U.K. and Australian governments are seeking.

However, if in fact there are things you believe can be improved in terms of the act itself, its language, or its application, of course we will take that seriously.

[Translation]

Mr. Serge Ménard: So you are open to amendments?

[English]

Hon. Anne McLellan: Yes, yes.

[Translation]

Mr. Serge Ménard: Well, I can suggest something, such as the English commissioner, the friend of the court, whose security was verified, the incarceration conditions of people who are found not guilty, and so on. But don't you, too, have any suggestions for us in

terms of changes which you feel are necessary after the three-year trial period?

Hon. Irwin Cotler: First, as my colleague said, we are open to recommendations. Second, I wrote an article on the bill's adoption process, in which I also talk about amendments. It is an article which describes the preparatory work which was carried out, if I can put it that way. The article explains the measures adopted by the Department of Justice which had been proposed by the justice committee of the time. The same thing is happening now; we are involved in the same process and we welcome recommendations.

Mr. Serge Ménard: Mr. Minister, you were a great intellectual and a great jurist, but what we expect of you as minister today are not articles, but draft amendments to the legislation.

Hon. Irwin Cotler: I was only referring to the points you raised for our consideration. You asked whether we are open to recommendations, and I have said that we are. As an example, I mentioned this article to explain how the ground was prepared and to show you that the Department of Justice was open at the time, because I myself proposed 10 major amendments. I gave you the example of a framework of amendments regarding the Attorney General's certificates, but there are other amendments which dealt with definitions and offences. I am now saying that we are open to the idea of a friend of the court.

• (1740)

Mr. Serge Ménard: Mr. Minister, as far as amendments are concerned, you yourself talked about “the intentional slaughter of civilians”. I believe that you described the essence of terrorism well, but your definition is so wide in scope that it could apply to workers' demands in a situation of troubled labour relations, or to claims made by first nations. You don't seem to realize this. The problem is not that your definition applies to “the intentional slaughter of civilians”, which is what we want, but also to other areas, and there is the danger that it will be used to reject demands for better social conditions, or to strike down the means by which demands for better social conditions are made, which, in the past, led to improvements in our laws.

[English]

Hon. Anne McLellan: My colleague is going—

The Chair: I'll allow the witnesses to answer, and then we'll move to Mr. Comartin.

Hon. Anne McLellan: My colleague will respond to the definition in the legislation, but let me say this clearly so that no one is under any misassumption.

As far as I'm concerned, if we permit the intentional slaughter of human beings to take place at the hand of a terrorist or terrorists, we have failed in our paradigm obligation. The whole purpose of this legislation is prevention and deterrence.

I have said it before and I will say it again: if the terrorists are on the planes, we are too late and we have failed as a government in our fundamental obligation. Therefore, we want to try to prevent the intentional slaughter, whether it's in a tube station, in a high-rise, or wherever it may be. Let me assure you that the intentional slaughter of innocent people is a singular failure and we cannot—

[Translation]

Mr. Serge Ménard: You know very well that you are not answering my question. The Criminal Code also prohibits killing people. When a terrorist kills many people, he also violates the Criminal Code many times.

[English]

Hon. Anne McLellan: That's a qualitatively different thing—

[Translation]

Mr. Serge Ménard: Certainly, but it's exactly what I am saying. Why do you not include it in your definition? With the scope you have given it, it could cover violent incidents that occur during demonstrations by the first nations or by labour.

[English]

The Chair: I'll allow Minister Cotler to answer, and then I'll go to Mr. Comartin.

[Translation]

Hon. Irwin Cotler: Your comment leads me to believe that you may not have read or appreciated the amendment I made and which is now included in the bill. I will write to you and share this with you, because I had the same concern at the time. It seemed to me that this might allow this legislation to apply to legal demonstrations and other such things. I proposed an amendment that I will read out to you.

[English]

The deletion of the word “lawful” in section 83.01 is intended:

to ensure that any advocacy, protest, dissent, or work stoppage activity, even if unlawful, even if attended by violence, even if it causes disruption to a public or private essential service or facility, would not be considered a terrorist activity unless it:

—comports with the following four threshold requirements—

- is undertaken for a political, religious or ideological purpose”

—and that's a limitations principle because of the fact that you have to prove that, and an interpretation clause has been added of a non-discrimination nature with regard to that—

- is intended to intimidate the public, or segment thereof, with respect to its security, including economic security, or coerce a person, government or organization to do or refrain from doing something; and

- intentionally causes death, serious bodily harm, endangerment of life or serious risk to health or safety of the public or a segment thereof; or

- causes substantial property damage that is likely to result in such death, serious bodily harm, endangerment of life or serious risk to health or safety of the public, or a segment thereof.

In a word, unless a violent criminal act committed satisfies at least these threshold requirements of intentionality and motivation, it cannot be characterized as a terrorist activity.

I think the definition in that regard has been made specific and has particularly characterized the threshold elements for an offence.

Again, if you feel now as I felt then, that it is still too broad, suggest amendments.

● (1745)

[Translation]

Mr. Serge Ménard: It is certainly too complicated, when there are other, much simpler definitions proposed by the United Nations. You gave a definition:

[English]

Intentional slaughter of—

[Translation]

Hon. Irwin Cotler: All right. It is complicated in order to protect the accused.

[English]

The Chair: Mr. Comartin, please.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I'm almost afraid to start, Mr. Chair.

Do we have an indication from the ministers how long we have them for this evening?

The Chair: All night, I guess, Anne?

Hon. Anne McLellan: No, actually, I think we have to leave—

The Chair: Go ahead.

Mr. Joe Comartin: Well, let me make a quick statement and then ask a quick question.

Minister McLellan, I'm addressing this to you because, quite frankly, I've been upset with your public positions with regard to the ATA in response to the role this committee is supposed to be playing. We're supposed to be doing a review, as legislatively mandated, yet even though we've heard very serious proposals that the ATA should be fully repealed, you've said no to that. You are insisting that the investigative hearings wouldn't be changed, that the sunset clauses should be extended, that preventive detention provisions within that should remain as is. On all of that, if you were a judge, I would say to you that you would be in contempt of your process because you've prejudged the report that may come from this committee.

So my question to the two of you is, when this report does come through, who at cabinet is going to carry the weight to determine whether the report's going to be given any serious consideration or be simply rejected, which is what I would expect from you, Madam Minister?

Hon. Anne McLellan: No, we have made it very plain that we take this review very seriously, and it is an opportunity for you to review the operation of the legislation—the substance of the legislation—to take into account the global context of terrorism, the role that Canada must play both at home and abroad in protecting its citizens and the citizens of its allies. And I go back to the fact that this is not a new challenge. You had people here today who were the tragic victims of Air India, and this is not a challenge that will end. Tragically, we all know and the United Nations knows, the Council of Europe knows, everyone knows that the threat of transnational terrorism will continue to be with us for a very long time, and it is our obligation to be prepared for that and to try to prevent terrorist acts both here at home and abroad.

I think my colleague and I felt it was fair to come here and tell you that the government takes its obligation very seriously in fulfillment of both its domestic obligations and international obligations as set down by the UN. Therefore, we will not repeal this legislation. That would be in derogation of the most fundamental of obligations, both domestically and as a member of the civilized world.

However, we are very interested in hearing whether you think the balance is right in light of, for example, the increase of terrorist acts around the world. That's why some countries are looking at strengthening their legislation, because of the horrors that have been perpetrated on their citizens.

So we're here to say take a look; take a look at what Canadians expect, which is very interesting actually, and what the world expects, and let's see if we've got the balance right. And if not, I can assure you this government is very interested in hearing how you think the balance should be restructured. But—

Mr. Joe Comartin: My question was really quite simple. Which of the two of you is responsible for this bill, for this report?

Hon. Anne McLellan: We're both responsible, but Mr. Cotler is the lead.

Mr. Joe Comartin: That answer is satisfactory. Thank you.

We heard—and Minister Cotler, you were here, you heard—some of the evidence that came from the two craziest delegations. They recommended strongly that C-394 be adopted. Are you prepared, as a government, to indicate today your support for C-394? This is to change the immunity sections.

•(1750)

Hon. Irwin Cotler: Let me go to the principle and then to the specific.

I have, for some time, been exploring the notion of providing a civil remedy for victims of torture and terror, so I understand the principle behind the private member's bill and I share that well-intentioned approach. The problem is that whatever amendment we make has to take cognizance of international law and development in that regard and the obligation between states, which, as I said, are federal and provincial matters.

For example, the United Nations recently confirmed the established principles on state immunity by adopting a United Nations convention on jurisdictional immunities, which codifies the current state of international law and state immunity and does not provide remedies for acts of state-sponsored terrorism or torture committed in other countries. So we will have to, if we are to have amendments to our state immunity.... I'm not saying the United States has legislation in that regard. The United Nations has said this is not consistent with international law and practice. We will have to explore it nonetheless and see if we can provide that remedy in that regard.

The other matter that was in the bill of allowing victims of terrorists to sue foreign states may not be perhaps, in terms of the principle's effectiveness, the most appropriate way to meet the needs of victims as it does not appreciate the lack of true enforceability of monetary judgments. As someone who has been involved in some of these proceedings, I've had some experience with trying to enforce some of these judgments in my previous life. So the only property of the foreign state against which a judgment may be executed is commercial property, and foreign states tend not to have a great deal of commercial property abroad.

Then there's the issue about whether the criminal law power can be used to establish a civil cause of action. I'm just talking about

some of the issues that have been raised; you may look into them yourselves.

But let me close by saying that I share the principle that motivates that act and we are looking for ways and means to enact legislation that will provide a remedy, notwithstanding the concerns I have just identified for you. Frankly, I think an international law is evolving, and the United Nations may not have taken and had full appreciation of the evolving principles of international law and the provision of a civil remedy to victims of torture and terror. So there are some times when I don't necessarily share the view the United Nations has taken.

Mr. Joe Comartin: I agree with you about the evolution of international law on this point, that we are at a stage where in fact the argument can be strongly made that international law would permit this type of legislation.

On another point they raised, you've mentioned the work you're doing right now on victims' rights as a result of terrorist acts. It's quite obvious that the system of compensation and support at the provincial level is nowhere near adequate for the types of losses. I'm talking about financial losses and the need for support. The systems at the provincial level—even Ontario's, which is the most extensive in the country—are not large enough. They're proposing the establishment of a fund at the national level to compensate victims of terrorists acts.

Are you prepared to support that?

Hon. Irwin Cotler: I can't respond on behalf of the government with respect to a policy that needs to be initiated, but it is something that I'm certainly prepared to look into.

I'd just like to very selectively cite from an address I gave—that nobody of course knows about—on this issue, in which I said it is important that victims of racism, hate-motivated activities, and terror appreciate that their fear or moral outrage can find expression in concrete legal remedy. There are more options than doing nothing or just calling the police. Indeed, the centrality of the victim to legal remedy...etc.

In other words, I am responsive to that and certainly prepared to look favourably on that option.

Mr. Joe Comartin: Obviously, the victims of the acts are much more concerned about action than words. As politicians, we're all guilty of using words and not enough action. Has either one of your departments done anything about investigating the establishment of that kind of fund in Canada, up to this point?

•(1755)

Hon. Irwin Cotler: The department now has a victims compensation fund in that regard. The question we are speaking about is in terms of specifically these victims of terror. I'm saying to you that within the framework of our centre for policy on victims issues, and with regard to our victim compensation fund, we just extended it—

Hon. Anne McLellan: We just extended it and enhanced it.

Hon. Irwin Cotler: —and authorized \$500,000 for victims of crime to proceed to support their appearances with regard to national parole hearings.

Mr. Joe Comartin: But those provisions are for all victims of crimes generally. The question was directed specifically at the victims of terrorist acts.

Hon. Irwin Cotler: That's why I'm specifically saying that, consistent with those other principles and policies that exist, the answer is yes, we will look into it.

Mr. Joe Comartin: Thank you, Mr. Chair.

The Chair: Thank you, Mr. Comartin.

Mr. Wappel, please.

Mr. Tom Wappel: Thank you, Mr. Chairman. Before my time begins, I wonder if I might ask that if we're not finished by the time the minister or the ministers have to leave, if it would be possible for some or all of the officials to remain. I have a number of very technical questions of a legal nature.

The Chair: Why don't you just keep going, and we'll see how we're doing. I'll deal with that in due course.

Mr. Tom Wappel: All right. Thank you very much.

Following what Mr. MacKay said, may I begin by saying that this committee has worked very hard. We've invested a lot of personal time in this file—I know I have—and I'm going to be very personally frustrated if events over which we have no control result in our being unable to complete our task. In my view, it would be a tremendous waste of a year's work. I only hope we have the time left to complete the recommendations that I know will be coming from this subcommittee and that you have asked for.

As I said, my questions are generally of a very specific nature, because I intend to put forward a number of very specific amendment proposals for discussion amongst my colleagues, which they may or may not accept. The problem, as you well know, Minister Cotler, since you sat on the committee when it considered it line by line, is that it's very frustrating to read this bill and very difficult to keep it all in your head.

Let me just start with page 21 of your remarks of the joint statement. On page 21 of your remarks, in the second last paragraph, you make the statement, "The definition of terrorist activity targets criminal activity not any particular group". I take no objection to that sentence. The definition of terrorist activity, in what I will call (ii), describes five circumstances. I'd therefore like to ask you specifically, would it be fair to characterize all of those circumstances as descriptions of indictable offences?

These are specific questions, so I would be happy if the officials answered.

The Chair: Why don't we get a list of the questions and then have the officials respond at the end of this?

Mr. Tom Wappel: It doesn't work that way. I have to go one step at a time.

The Chair: All right.

Mr. Cohen, I guess you want to answer that?

Mr. Stanley Cohen (Senior General Counsel, Human Rights Law Section, Department of Justice): You're asking whether causing death or serious bodily harm to a person by the use of violence is an indictable offence. Yes.

You're asking whether endangering a person's life is potentially an indictable offence. Yes.

If causing substantial property damage, whether to private or public property, is likely to result in the conduct or harm referred to in the other paragraphs (a) and (c) we're talking about—that is potentially indictable as well.

Whether causing serious interference or serious disruption of an essential service facility or system, whether public or private—other than as a result of advocacy and so on—is an indictable offence depends on modalities, the circumstances of the case, and the degree of the harm that's involved. It does end with the words, "that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C)". So if it reaches the level of the kind of harm that gives rise to a cause of death or serious bodily harm, or causes serious risk to the health or safety of the public, yes, that too can amount to an indictable offence.

• (1800)

Mr. Tom Wappel: All right, let me ask it another way.

Is it contemplated that the descriptions contained therein would ever refer to a solely summary conviction offence?

Mr. Stanley Cohen: I'm sorry?

Mr. Tom Wappel: Regarding the descriptions contained in this definition, is it contemplated that they would ever refer to solely a summary conviction offence, as opposed to an indictable offence or a hybrid offence?

Mr. Stanley Cohen: I would hesitate to give you a legal opinion on this matter. I can answer in general terms, but as you're aware, at law, there is the concept of an included offence. If you fail to prove the larger substantial indictable offence and at the same time you demonstrate the existence of an included offence that might be summary in nature, it is possible that a person could be convicted of a summary conviction offence.

Mr. Tom Wappel: The reason I'm asking is that if we then flip back to the definition of terrorism offences, item 83.01(1)(b)(ii)(C) requires that it be an indictable offence, which also constitutes terrorist activity.

I'm just wondering why that distinction was made. Why could you not simply have, under (C), that a terrorism offence includes the definition of the commission of a terrorist activity? Why does it have to be an indictable offence?

Mr. Stanley Cohen: I'm sorry, I'm not following the...

Mr. Tom Wappel: Do you have (C) in front of you?

Mr. Stanley Cohen: Yes, I do.

Mr. Tom Wappel: Okay. So in order to be a terrorism offence, it is an indictable offence, under this or any act of Parliament, where the act constituting the offence also constitutes a terrorist activity. I'm wondering why that definition was chosen as opposed to simply saying, in (C), that commission of a terrorist activity would constitute a terrorism offence.

What I'm getting at is that surely every terrorist activity should be a terrorism offence, since, as the ministers have said, the definition of terrorist activity targets criminal activity.

Mr. Stanley Cohen: If I understand you correctly, you're suggesting that an abundance of caution has gone into the drafting of the offence, and that basically this could be pruned down in order to make it more accessible.

Mr. Tom Wappel: I'm saying that it could be simpler. I don't see the distinction as to why, if something is a terrorist activity by definition—which, by the minister's own statement, involves criminality—that terrorist activity isn't a terrorism offence, by definition.

Mr. Stanley Cohen: I'm still trying to get the implications of your question, though.

Mr. Tom Wappel: Don't worry about the implications, just wonder about the simplicity of it: why shouldn't the commission of a terrorist activity be deemed to be a terrorism offence?

Mr. Stanley Cohen: All right. If I can flip that around, one of the implications of what you're suggesting is that serious criminal offences are all terrorist offences.

• (1805)

Mr. Tom Wappel: On the contrary; there's a very specific definition—very specific, as the minister has already told us—of what constitutes a terrorist activity. If that is proven, why is that not a terrorism offence?

The Chair: Perhaps I could suggest that we consider the point our colleague is making and get back a written response. Would that be acceptable?

Mr. Tom Wappel: Well, it's only one of many, Mr. Chair.

Hon. Anne McLellan: Maybe your officials can come back and spend an hour or so with the committee to respond to some of the more technical questions. I'm sure they'd be happy to do that.

The Chair: Yes, I'm—

Mr. Tom Wappel: I'm happy to ask more general questions of the ministers, but this is the only opportunity we've really had since the first appearance to get into some of the technical things that I'm hoping to bring forward to my colleagues.

The Chair: Let's keep plowing through and see how we do.

Mr. Tom Wappel: I gather I'm out of time.

The Chair: No, I'm going to let you keep going. I've let everybody else keep going this afternoon, and I want to be fair.

Mr. Tom Wappel: Okay.

Hon. Irwin Cotler: An equal opportunity indulger.

The Chair: That's it, yes.

Mr. Tom Wappel: Let's turn to section 83.18, which, as we know, talks about participating and facilitating. Can we have an explanation as to why the test is a twofold test? Namely, why does a person have to “knowingly” participate, and why must it be also “for the purpose of enhancing the ability of any terrorist group to facilitate”? Why can it not just be “knowingly”? Why is there a twofold test?

Hon. Anne McLellan: I think Minister Cotler wants to say something about that.

Hon. Irwin Cotler: To tell you the truth, these offences were not intended to facilitate prosecution, they actually were intended to provide a very serious evidentiary threshold and prosecutorial requirement for prosecution. What you have to do here is to try to

identify what are the requirements for *mens rea*, for the guilty intention required. It was not enough to put in “who knowingly participates in or contributes to, directly or indirectly, any activity of a terrorist group for the purpose of enhancing the ability of any terrorist group to facilitate or carry out a terrorist activity...”. In other words, it basically means that the prosecution has to, in effect, demonstrate both those elements of *mens rea* or mental wrongdoing in terms of being able to secure a prosecution.

Mr. Tom Wappel: But *mens rea* is covered by “knowingly”, is it not?

Hon. Irwin Cotler: No, it's not covered alone by “knowingly” in this offence.

Mr. Tom Wappel: Arguably. I would argue that it would be, because if you know something, you have the knowledge of it. If you know it's a terrorist activity, then clearly you've got the *mens rea* to contribute to the terrorist activity. You don't have to have as a purpose the ability to facilitate. Anyway, that's an argument we can get into.

In that same section, let's go back to why I'm asking about “terrorism offence” and “terrorism activity”. In subsection (3), listed under subparagraph (c)(i), is “a terrorism offence”, or “a terrorism offence” under subparagraph (ii). That's why I'm asking why “terrorism activity” is not included in the definition of “terrorism offence”, because here if you recruit a person in order to facilitate or commit a terrorism offence you're guilty of an offence under section 83.18. If you recruit a person in order to facilitate or commit a terrorist activity, you are not covered as committing an offence under this section.

My question is, if you recruit a person in order to facilitate or commit a terrorist activity, what section of the Anti-terrorism Act are you breaching?

Hon. Anne McLellan: If you recruit, it's recruitment.

Mr. Stanley Cohen: Would you like me to answer that?

• (1810)

Hon. Anne McLellan: Yes, go ahead.

Mr. Stanley Cohen: Conceivably, you're breaching a great many provisions in the terrorist legislation. Any time you contribute to or facilitate the commission of a terrorist activity, the specific form of facilitation that you are involved in conceivably can constitute an offence.

We are talking about a form of participation that is not necessarily actual perpetration, but someone who is lending support to or contributing to the ability of others to carry out offences. It may be that, in its specifics, it might be a violation of terrorist financing. It might be a violation of another form of terrorist activity that constitutes a direct form of offence that causes danger to the public.

Mr. Douglas Breithaupt (Senior Counsel, Criminal Law Policy Section, Department of Justice): It could also include the previous part of the terrorism offence definition, “an indictable offence under this or any other Act of Parliament where the act or omission constituting the offence also constitutes a terrorist activity”, because the definition is imported into that.

Mr. Tom Wappel: Yes, but we already know the definition of terrorist activity or the phrase “terrorist activity” is not included as a terrorism offence. It's only if it's indictable, presumably.

If you're defending this wording, why would we not put in “recruiting a person in order to facilitate or commit a terrorism offence or a terrorist activity”? Surely most Canadians would think that if you're recruiting someone to facilitate or commit a terrorist activity, it should be against the law. If this section specifically talks about recruiting insofar as “terrorism offence” is concerned, why doesn't it also talk insofar as “terrorist activity” is concerned?

Mr. Stanley Cohen: What you have in section 83.18 itself is an offence. One shouldn't assume that one cannot be guilty of committing the offence that is specified in subsection 83.18(1) and therefore be subject to “imprisonment for a term not exceeding ten years.” That means that everyone who participates in that form, who knowingly participates or contributes directly or indirectly to the activity of a terrorist group—and that would have to be specified in your indictment—to facilitate or carry out a terrorist activity as defined, is guilty of an indictable offence. This is a free-standing offence provision, it's not simply a matter of an aid to interpretation for other parts of the Criminal Code.

Hon. Irwin Cotler: I don't want to complicate matters further, Tom, but when you get into the question of transfers, first of all, I think one has to appreciate that the whole approach to the establishment of offences here was really responding as well to UN mandates as set forth in UN Security Council Resolution 1373 at the time. That asked all state parties—and that's a way of perhaps understanding it—to criminalize the wilful provision of collection of funds to be used to carry out terrorist acts; refrain from providing any form of support to entities or persons involved in terrorist acts, and that would include the training, etc.; take necessary steps to prevent the commission of terrorist acts, the inclusive as well; establish terrorist acts as serious criminal offences in domestic law and reflect the seriousness of such acts in the sentences served by offenders; ensure the greatest measure of assistance and cooperation between states to investigate and prosecute terrorist acts...and I can go on.

What you then have is that the bill, in responding to those directives, effectively incorporated most of them in the act. It established a series of new criminal offences, the most important of which actually relate to the financing of terrorism, which incorporates both the definition of terrorist activities and terrorist groups as set forth in the bill.

Offences were therefore created regarding collection and provision of funds for property for the purpose of terrorist activities. You can see this in sections 83.02, 83.03, 83.04, etc.: participation in, contribution to, or facilitation of terrorist activities, which you mentioned, section 83.18, but section 83.1; instruction to anyone to carry out terrorist activities, section 83.12, but section 83.22; harbouring or concealing a terrorist, section 83.23, etc.

Mr. Tom Wappel: Sorry, Minister, excuse me, my time is running out. I don't want to get into a debate; I'm just asking some questions.

Hon. Irwin Cotler: Let me just conclude with one point. It may or may not help, it may confuse, I don't know.

In the definition of terrorism offence, it not only refers to these specific new offences created under part II of the Criminal Code in response to the UN. That definition can include any indictable offence under federal law committed for the benefit of, at the direction of, or in association with a terrorist group, or an indictable offence where the act or omission constitutes terrorist activity. That kind of inclusive approach is intended to capture all the things you mentioned.

• (1815)

Mr. Tom Wappel: Okay. My confusion arises from this. If you take a look at section 83.19, you will see that it is an offence to facilitate a terrorist activity. The penalty for that is 14 years. But if you facilitate a terrorism offence, the penalty is 10 years. So it would appear as though the act believes a terrorist activity is more heinous than a terrorism offence. I'm curious, then, why a terrorist activity isn't deemed to be a terrorism offence.

Hon. Irwin Cotler: I'm going to let the officials answer, but I'm going to tell you why I'm intrigued by it. I was the one who proposed, on that one, the inclusion of the word “knowingly”, but I didn't look at the term of imprisonment at the time. Maybe they can tell you the notion of—

The Chair: I'm going to have to—

Mr. Tom Wappel: I'm sorry, Mr. Chair—

The Chair: No, they're all valid. I'm going to ask the officials to answer, and then we're going to go to Mr. Sorenson.

Mr. Stanley Cohen: I'm just going to answer in a general sense, and if I can provide additional information for you, I certainly will.

The Chair: That would be great.

Mr. Stanley Cohen: What is intended, if you look through the scale of penalties and the offences that are created in section 83.18 and forward, is a gradation of the scale of penalties that is commensurate with the severity of the kind of activity that is being engaged in. So someone who participates in an indirect form is guilty of an offence, but only liable—I say “only”, because these are serious penalties—to 10 years. Further on, where we talk about instructing or harbouring—“instructing,” of course, can be the kingpins instructing—we get into a higher form of penalty structure.

The purpose in the construction of this particular part of the legislation in this way is really to have a graduated range of penalties that is designed to reflect the severity or the seriousness of the crime in question.

The Chair: Thank you.

Yes, sir.

Mr. Douglas Breithaupt: Very quickly, the defences are crafted around participation in assisting a terrorist group or a terrorist activity. For example, in 83.18 you have participating and contributing to the activity “of a terrorist group for the purpose of enhancing the ability of any terrorist group to facilitate” a terrorist activity, whereas in 83.19 you’re focusing on facilitating the terrorist activity.

Similarly in 83.21, you’re looking at instructing to carry out an activity for a terrorist group, whereas in 83.22 you have instructing to carry out a terrorist activity.

Looking at terrorist groups and terrorist activities, you see that same symmetry in the original terrorism offence definition, which you pointed us to, where we deal with in (b) “an indictable offence under this or any other Act of Parliament committed for the benefit of, at the direction of or in association with a terrorist group”. So it’s terrorist group centred. Or there is (c) “an indictable offence under this or any other Act of Parliament where the act or omission constituting the offence also constitutes a terrorist activity”.

So you can see how the offences are constructed around those two areas.

Mr. Tom Wappel: If it’s so heinous to have a terrorist activity and to facilitate a terrorist activity, then why isn’t it a terrorism offence per se? No answer is needed. I leave that rhetorically.

The Chair: Okay.

Mr. Sorenson, please.

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

These technical questions, I think, are very good. We look forward to any type of written submission on any of these questions we have asked.

I want to just follow up, more for the record than for real answers. It’s about what Mr. Comartin brought out in regard to the work of this committee. This committee has, I think, over the past number of months, many months, worked with a very good attitude amongst all parties. We’ve done everything we could to get together and work when we could. We’ve come back in the summer. We spent a week here when we should have been in our constituencies, and we worked hard on this.

Then on Monday, the report in the paper said:

The federal government is considering introducing special legal watchdogs into closed court hearings involving suspected terrorists who are being held indefinitely and without trial.

The Citizen has learned that the compromise move is being pushed by federal Public Security Minister Anne McLellan in an effort to soften criticism that the secret court process is unfair to defendants and contrary to the principles and traditions of Canada as an open, liberal democracy.

Then in *The Ottawa Citizen* yesterday, there was an article by James Gordon, which stated:

Defending the country’s record on a gamut of controversial issues—from allegations of racial profiling to problems with the listing of terrorist entities—the minister told senators the act remains a “vital cornerstone” that strikes the right balance between security and human rights.

She served notice the government won’t repeal the legislation, nor will it take advantage of a sunset clause to scrap the most powerful provisions.

Now obviously, if these quotes are correct, I really agree with Mr. Comartin in his assertion that much of the work of this committee has been basically rendered irrelevant. I have served on other committees where just when we’re getting ready to come down to the final strokes and we’re ready to issue a report, the minister has stepped out and said, “This is what we’re going to do, regardless of that”. Before the report is even issued, we get this from the minister.

I would suggest that if these quotes are indeed correct, much of this work is basically irrelevant, because it sounds as if you’ve already decided that on the human rights issues, “You know what? It’s a good balance. The security issues? It’s a good balance. Let’s just leave it. It doesn’t matter what the committee report says, we’ll leave it at that”.

So I guess one of my questions would be why you believed it was so necessary to publicly announce your intentions in regard to this and not wait for the report.

Now, just because my time is limited—I know you’ll respond to that one—I have one other question. It’s more of a question of process. If CSIS makes the decision that an entity should be listed as a terrorist entity, and Madam Minister, if you make the decision that regardless of what CSIS says you will not list that entity, is there any review of that decision? Now, I know that the decision to list an entity is a cabinet decision. But is the decision to reject a CSIS recommendation and not list it reviewed by anyone? Is there any way for an appeal?

● (1820)

Hon. Anne McLellan: Let me answer both questions. The Minister of Justice may want to add something on the first one.

If a decision were made not to list, in fact that would be reviewed by the standing committee of cabinet, the public safety, national security, and emergency preparedness committee. That is made up of colleagues—I think approximately 10 full-time members—all of whose departments have direct involvement with national security, public safety, and emergency preparedness matters. In fact, on these matters around listing, the advice of CSIS is taken very seriously and it is up to that committee.... CSIS, in fact, appears before that committee, and they are the ones who put the evidence before the committee. We have a fulsome discussion, as a committee, in terms of listing or not, and then that recommendation goes to Treasury Board. It is Treasury Board that ultimately makes—

Mr. Kevin Sorenson: The recommendations of that panel—

Hon. Anne McLellan: To list, if there is a recommendation to list—

Mr. Kevin Sorenson: Do they then, in writing, submit what they have found to—

● (1825)

Hon. Anne McLellan: Treasury Board—

Mr. Kevin Sorenson: Treasury Board?

Hon. Anne McLellan: If the recommendation is to list, that goes to Treasury Board.

Mr. Kevin Sorenson: Yes, okay, but that’s not my question. My question is, if you decide not to list—

Hon. Anne McLellan: That discussion would take place at a standing committee of cabinet ministers called the public safety and emergency preparedness committee.

Mr. Kevin Sorenson: How many sit on that committee?

Hon. Anne McLellan: I think approximately ten. All the ministers who have key involvement in public safety, national security, and emergency preparedness.

Mr. Kevin Sorenson: Okay, let me reword the question then. Because that committee may act... Cabinet secrets are within cabinet, and we understand the need for that, the reasons for that, but if it was a political reason that we not list an entity, if it's not a national security reason, is there no way for any other ability to access, no review?

Hon. Anne McLellan: There is no formal judicial review of that, no, because the decision is not to list, thereby not impacting upon the rights or obligations or responsibilities of that group. So there is no process of judicial review, but there are a number of review processes if you are listed, obviously, because that impacts on who you are and how you may be treated, either under the Charities Registration Act or elsewhere.

In relation to the first question you asked, let me be clear about a few things. First of all, on the article in the paper on Monday that you referred to, in the Senate when Minister Cotler and I appeared, I made it very plain that what was there was false as it related to me. In fact, we have not made any decisions at all around change to security certificates—which I underscore again has nothing to do with the ATA.

But as it relates to security certificates, which are found in another piece of legislation, we have made no decisions in relation to it. We believe we are in compliance, full compliance, with both domestic and international law. But we look forward to both the Supreme Court's decisions and the recommendations of the two committees as to whether or not any kind of change is required, and if so, what it might be. I was very plain about that in the committee when I appeared along with Minister Cotler that afternoon.

In terms of our appearance here, we represent the Government of Canada. We believe it is important to come here and tell you that the Government of Canada believes it is important to continue to have anti-terrorism legislation when one considers both domestic and global threats. Why would we come here and be dishonest about that? Therefore, we do not support the repeal of this legislation, because we believe it's profoundly important to have anti-terrorism legislation that protects Canadians, prevents terrorist acts, and helps defend our allies.

In terms of changes to the legislation, possible modifications, we made it absolutely clear that we are open to and will consider seriously any and all recommendations that come from the two formal review mechanisms.

Mr. Kevin Sorenson: But if you already believe this is a vital cornerstone—

Hon. Anne McLellan: That's right.

Mr. Kevin Sorenson: —and the proper balance is there, that we have the right balance between security and human rights, then what's the use of keeping this thing going? That's the whole issue

with this committee. The main issue we're dealing with here is whether or not human rights are being violated in the ATA. That is a major component of what we are—

Hon. Anne McLellan: And the government has a position in relation to that. We have come here and said that we believe the balance is right, as the government. However, you and your companion committee in the Senate have the right, you have the legislative responsibility, to in fact offer us your views, and we will take those views very seriously. As I said in the Senate, there may very well be, for example, ways that we need to strengthen this legislation based upon recommendations you make, as other countries appear to be doing. So absolutely, we're open to what this committee has to say.

Irwin, did you want to add something?

The Chair: I'll allow the Minister of Justice to have the last word.

Hon. Irwin Cotler: I'll begin with your words and my first and last words, which connect to it, if I may.

I understand the frustration of sitting on a committee and worrying about whether what you're going to be studying or recommending may never see the light of day to begin with, and now, which is what Mr. Wappel is concerned about, if an election interrupts, then this causes a kind of preemptive bar to the report, etc. You know what I mean. So I understand that concern. I didn't have that when I sat on the committee, but that is a concern.

But let me go to the other, about proposing any recommendations. In that regard, I'll just begin on two points here, what I said at the beginning.

I began by expressing my appreciation for the long hours of hard work. Those are the first words I said today, because I know what it is to sit on this committee, to study and pore through the legislation. It's not easy to read it. It's difficult sometimes to understand it. So I said that this review is not only mandated by section 145 of the act in a formal sense; it is, as I said, welcomed by this government and very much appreciated by the Canadian people. That is the first point.

Then I said your review ensures that the best of intentions and the best of parliamentary study are reflected in the best possible law. We come here to actually look to you for that kind of study and inquiry.

Now, there's an interesting report, which relates to what my colleague said, in the quote from Justices Iacobucci and Louise Arbour. They said, "The challenge for democracies"—which is what I began with, as well—"in the battle against terrorism is not whether to respond, but rather how to do so". I share that. The issue is not whether or not to have an anti-terrorist act. Very often, you know, when you were a law professor you have different principles. Wrong. You can look at my writings from the 1990s. I then said that we needed an anti-terrorism act. I have not changed. I believe in the validity of an anti-terrorism act.

I think the question of whether one has the balance right is something that your committee has been looking into and will study, but I want to say something about that issue of balance—and that was the first point. You cannot have a kind of either/or thing with regard to the protection of security and protection of rights. That's why the approach I used was with regard to protection of human security as including both national security and human rights.

And this is another point. We have to watch the kind of conventional wisdom that sometimes says that all those who are against the Anti-terrorism Act are the civil libertarians and all those who are in favour of the Anti-terrorism Act are somehow anti-civil libertarians. There are good civil libertarians on both sides of the issue. You have to make the determination on what is the proper balance in that regard.

I'll just close with my last remarks to you.

I said, Mr. Chairman, this act was drafted with care and founded on clear principles, but it is not frozen in amber. We welcome the results of your work and will seriously consider any recommendations you may make. We are confident that with your informed contribution this law will continue to do what it was designed to do: to help secure the rights and liberties of all Canadians.

It could not have been more plainly stated that we are open to any and all recommendations, except one, frankly—except one. We didn't come here to tell you that the law should be scrapped. We're here to be open to any recommendations as to how it can be improved. If I were to say the law should be scrapped—not as Minister of Justice—I would be turning my back on what I wrote and believed in all the years before becoming an MP or minister.

So we believe in the validity of such legislation. The question is not whether we should have such an act, but what kind of act we should have, and you can help us in that regard.

• (1830)

The Chair: Thank you very much.

Colleagues, on your behalf, I'm going to thank both of the ministers by telling them that we appreciate very much their staying an extra hour. I think that demonstrates their interest in making sure we have a fulsome review.

Colleagues, as you know, we're about to move into an in camera session to prepare for drafting instructions, so we're going to suspend for about five minutes while we clear the room.

Again, thank you very much.

I also want to make a comment about Mr. Wappel.

You had expressed some interest in some of the technical questions with regard to the Department of Justice. I would request, Mr. Wappel, that if you have some technical questions, we'll have them sent through the researcher or through the clerk to the officials. I assume by your nodding that you agree that you'll provide that information to us.

Mr. Tom Wappel: That's right.

The Chair: Okay, thank you very much. We're suspended.

[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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