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Public Safety and National Security**

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**Wednesday, June 21, 2006**

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**Chair**

**Mr. Gord Brown**

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## Subcommittee on the Review of the Anti-terrorism Act of the Standing Committee on Public Safety and National Security

Wednesday, June 21, 2006

• (1540)

[English]

**The Chair (Mr. Gord Brown (Leeds—Grenville, CPC)):** Order, please. We'll call to order this second meeting of the Subcommittee on the Review of the Anti-terrorism Act of the Standing Committee on Public Safety and National Security.

We'd like to welcome the two ministers, Mr. Day and Mr. Toews, to the committee today.

Minister Day.

**Hon. Stockwell Day (Minister of Public Safety):** Thank you, Chair, and thank you, honourable members, for the good work you do on this committee.

[Translation]

I want to thank the members of the subcommittee for offering me this opportunity to appear today. I also want to congratulate them for all the good work that they will continue to do in reviewing the Anti-terrorism Act.

[English]

The review you're conducting is mandated by section 145 of the act, as you know.

[Translation]

The ATA constitutes an essential component of an effective security framework and it represents a crucial means to protect Canadians and their families.

[English]

The act provides us with tools to combat terrorism, and safeguards to ensure that these tools are used appropriately. The threat environment has not diminished, as you know. Twenty-four Canadians lost their lives on September 11; thousands of Americans and others also did. Since then, terrorist attacks have continued in more than 30 countries, including the nightclub bombing in Bali, where Canadians were killed, the trains that were bombed in Madrid, the school and the tragic incident in Beslan, the London Underground, a bus in London, and of course recent arrests here in Canada.

[Translation]

These tragic events remind us that terrorism is a constant international threat.

[English]

It's international in nature, and so it's going to require an international response. We need to collect and share information to respond to and to prevent attacks here on Canadian soil.

Intelligence-gathering is the lifeblood of our efforts to detect and disrupt this sophisticated and global threat. The UN recognized the value of intelligence and called upon all states to intensify and accelerate the exchange of information; they did that in Resolution 1373, in 2001.

This act has helped us to ratify and to implement other important international agreements, international recommendations on terrorist financing, and other UN Security Council resolutions against terrorism. The ATA has provided us with the means to stand with our allies around the world in fighting terrorism.

We recognize that intelligence alone will not forestall an attack. We need cooperation; we need support of all Canadians, from all backgrounds. Security and intelligence law enforcement agencies in Canada are reaching out to communities to more effectively communicate with Canadians. They're working within the framework of Canadian law and reflecting our democratic values. In some communities there can be misconceptions at times, but I and the agencies under my direction are doing all we can to address that.

[Translation]

We will continue to work together to establish a relationship with ethnic and cultural groups in our society who may feel isolated or ignored.

[English]

I meet with the cross-cultural round table on security. They engage in long-term dialogue on national security issues. I met with members of the round table as recently as Monday, and also in February. I'm encouraged by their ongoing support for open dialogue.

In Toronto, there were a series of arrests made. When I was at the G-8 meetings with other G-8 ministers responsible for security just last week, that was a major matter of interest to them in terms of what had been happening in Canada, because the G-8 countries, as with most countries around the world, are experiencing similar problems.

The RCMP and CSIS meet regularly with representatives of ethnocultural communities to address their concerns. The feedback I get from those meetings is very positive. People are very pleased that they can actually talk to, hear from, and give feedback to members of our policing and intelligence agencies in community settings and community meetings.

Prime Minister Howard of Australia reminded us in his speech to Parliament that “terrorism will not be defeated by rolling ourselves into a small ball and going into a corner and imagining that somehow or other we will escape notice”. Wishful thinking is not a policy, and failure to act is not an option. Combating terrorism requires that we have tools that are appropriate to defend ourselves.

● (1545)

[Translation]

The Anti-terrorism Act is precisely one of these tools. Thanks to this legislation, it is more difficult for terrorist organizations to operate both here in Canada and abroad.

[English]

The ATA contains important preventative measures to stop attacks before they start and to give us safeguards, and it's appropriate that we review those.

The ATA gives us the ability to lay charges and to prosecute terrorism offences. The charges against the 17 individuals arrested on June 2, as you know, fall under the ATA. And they're now before the courts.

Terrorism is fuelled by dollars, and in 2004-05 FINTRAC, which is Canada's financial intelligence agency, provided financial intelligence on 32 suspected cases of terrorist financing activity and other threats to the security of Canada. Providing these disclosures to law enforcement and intelligence agencies is vital and is a key element in efforts to cut off the supply of funding to terrorists. Through its listing provisions, the Criminal Code, as amended by the ATA, provides another ongoing means to curtail the ability of terrorist groups to raise funds, thus reducing their ability to operate in Canada. Listing provisions are just another part of an international effort, spearheaded by the United Nations.

We've recently listed the LTTE, Tamil Tigers. By denying this group the ability to operate in Canada, we're making our communities safer. The LTTE uses a variety of terror tactics to achieve its objectives, including attacking political, economic, religious, and cultural targets as well as targeting civilians. The government is determined to help ensure new Canadians who have come to this country that they can come here knowing they can live a life of freedom and won't be subject to campaigns of fear or intimidation.

Through the ATA we also protect the integrity of charities by preventing organizations that support terrorist activities from obtaining registered charitable status.

The ATA is working. It is making Canadians safer. It takes a measured approach that protects our safety and security, but it does not come at the expense of our liberties. Canadians understand that terrorism is a direct threat to their way of life, and public opinion polling shows that Canadians know that the values we cherish

depend on the security we enjoy in our homes, in our communities, and at our borders. Canadians rightly expect that their government will do all it can to keep them safe from harm. It's vital to the social and economic well-being of Canadians to have the freedom to raise our children and see them pursue their dreams, and to live our lives without fear.

Some people have pointed to the fact that many measures contained in the act have not been used, or have been used very sparingly. That frequency of use is evidence that indeed we are being careful with these provisions. It does not speak to the necessity of their conclusion, but it speaks to the care and sensitivity with which they're used.

Civil liberties have not been sacrificed under the ATA. Many fears were expressed at the time the law was drafted that it could be used extensively. Those fears have been proven to be unfounded. Police and other agencies are using the powers provided by the ATA in a very careful, prudent, and responsible way, and checks and balances are integrated into the use of all the powers and provisions. The ATA is a necessary tool in fighting against terrorism.

There are other tools at our disposal, for example, security certificates. This process has been used carefully over the years, and it's a widely understood process. It's been in place since 1978. It's rarely used. It happens when somebody arrives at our borders and is deemed by security and intelligence to be an extreme danger and threat to Canadian society. At that point those individuals are offered the opportunity to return to their country of origin. Should they decide not to return, should they want to go through our very generous and extended appeal process, then they're allowed to do that. That's a process that takes a number of years. Since they've been deemed to be extremely dangerous, they're offered the choice of appealing that designation but remaining in detention while their appeal goes on, or again, returning at any time—they can leave the detention centre and return to their country of origin.

● (1550)

This particular process has been used only six times since 2001. It's been upheld by the federal courts as lately as September 2005, and now, as you know, it's going before the Supreme Court to have its constitutionality judged. Six people since 2001 is not a sign of something that's been overused, when you compare it to the fact that every year between 10,000 and 12,000 people are removed from Canada through a variety of immigration measures.

The government has taken decisive steps to protect Canadians and their families.

[Translation]

Our budget includes \$4.1 billion over two years to protect Canadian families and communities, to ensure security at our borders and to improve our state of readiness in terms of public health threats.

[English]

I'll conclude by informing you that we will invest \$303 million over the next two years to implement a border strategy to promote the movement of low-risk trade and travellers within North America, while protecting Canadians from security threats. We will be investing \$95 million over two years to bolster security for rail and urban transit.

On June 23 our country will observe a national day to remember victims of terror. It marks the anniversary of the 1985 Air India bombing, the worst terrorist attack in Canadian history, when 329 innocent people lost their lives. It reminds us that the work is not done, the threat is ongoing, and vigilance is necessary.

You've heard expert witnesses describe the current threat environment, you know the nature of it and the challenge we face, and you bring invaluable expertise and perspective to this issue. The skill of our law enforcement and intelligence communities and the strength of our legislation will allow us to meet the threat of terrorism in Canada.

I thank you for your work, for your advice, and for your input.

**The Chair:** Thank you, Minister Day.

Minister Toews.

**Hon. Vic Toews (Minister of Justice):** Thank you very much, Mr. Chair.

I would like to thank the subcommittee for inviting me to appear to discuss this important legislation. I'd also like to indicate that I have two officials here, Bill Pentney and Doug Breithaupt, who are both officials in my department and who perhaps can answer some of the more technical issues that I cannot address.

I know that some of you were involved in the review of the Anti-terrorism Act in the last Parliament, a review that was interrupted by the election. Others among you are new to this particular study, although I've no doubt that your experience and expertise will contribute significantly. The Minister of Public Safety and I both look forward to your comments and recommendations.

The Anti-terrorism Act is divided into various parts that deal with the Criminal Code, the Security of Information Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, amendments to other acts, and the enactment of the Charities Registration (Security Information) Act. The act includes comprehensive measures to prevent and suppress terrorism. It permitted Canada to become a party to UN treaties against terrorist bombings and terrorist financing, as well as the Convention on the Safety of the United Nations and Associated Personnel. It has also allowed Canada to comply with various UN Security Council resolutions and with other international commitments. So it's very important in that international context.

We need to be sensitive to the concerns raised by various communities in Canada, and I want to make it clear that it is terrorism that is the target of this legislation, and not any particular ethnic or religious group.

The Anti-terrorism Act includes key provisions of the Criminal Code to address acts of hatred, and it clarifies that the communica-

tion of hate messages using new technologies, such as the Internet, is a discriminatory practice under the Canadian Human Rights Act. The act is a key element of our legislative framework for combating terrorism. It represents an effective, measured, and proportionate response to the terrorist threat.

Some may suggest that the Anti-terrorism Act is unnecessary. I strongly disagree. The emphasis on preventing and pre-empting terrorism attacks is an important feature of the act. Evidence of this preventative approach can be seen in the range of offences, which aim at dismantling and disabling the terrorist network itself, as well as in tools such as recognizance with conditions and investigative hearings. As I have stated elsewhere, the act's emphasis on prevention continues to be necessary. For example, for those persons who are willing to kill themselves in order to commit terrorist crimes, after-the-fact deterrence is no punishment whatsoever.

In addition, as to the importance to be accorded to the prevention of terrorism and how it differs from organized crime, I refer you to the testimony of Lord Carlile, the independent reviewer of the U.K. anti-terrorism laws, given to your predecessor committee last year.

Let me briefly address one aspect of the Anti-terrorism Act that I commented on last week: the motive requirement of the "terrorist activity" definition. As I've said elsewhere, the motive requirement is an additional element that must be proven by the prosecution. I recognize that some previous witnesses have expressed concern that the motive requirement could be perceived as singling out particular groups in our society. Indeed, I stated that on prior occasions while I was in opposition.

The motive requirement narrows the definition of terrorist activity and prevents the terrorism offences from expanding into other areas of the Criminal Code. I would be interested in the committee's comments on the elimination of that motivation requirement, or indeed on redefining terrorist activity, perhaps along the lines of what the French, the Americans, or the Germans have done, without reference to political, religious, or ideological motivation. But the law's approach to this issue—and I'm speaking about this specific law as opposed to this issue—has included a great deal of caution against laws that are overly broad.

● (1555)

I do, however, note the RCMP commissioner's very recent comments in respect of the motivation requirement, and I would commend his testimony to you in that respect.

I will now turn to two provisions of the Anti-terrorism Act that will cease to apply in early 2007 unless their application is extended by a resolution passed by both Houses of Parliament. I respectfully submit to this subcommittee that both provisions should be extended.

First, the act provides for the imposition of recognizance orders. This has sometimes been called preventative arrest, but in fact the power of the police to arrest a person without warrant, and to bring him or her before a judge to have conditions imposed, is quite limited in scope. Generally, before this provision may be used, the relevant Attorney General must first consent to its use. After obtaining this consent, a peace officer then lays information before a provincial court judge.

The peace officer may only do this if two conditions are met. First, he or she must believe on reasonable grounds that a terrorist activity will be carried out. Second, he or she must suspect on reasonable grounds that the imposition of a recognizance with conditions, or the arrest of the person, is necessary to prevent the carrying out of the terrorist activity. The judge then causes the person to attend before him or her, for example, by issuing a summons.

This provision is only available under strictly defined conditions, and is subject to numerous procedural safeguards. The object of this provision is to assist law enforcement officers in disrupting terrorist attacks, and the onus is always on the state to justify the imposition of conditions. If the court is not satisfied that conditions are necessary, the subject is released.

The imposition of conditions to prevent offences before they occur is not exceptional in Canadian law. Conditions are imposed when a person charged with an offence is released on bail. The recognizance provision of the Anti-terrorism Act are based on the recognizance powers of section 810 of the Criminal Code, which are intended for use in dealing with domestic violence, organized crime, and serious sexual offences. Those provisions have consistently been found to comply with the Charter of Rights and Freedoms.

The other provision that needs to be extended before next year is the power to hold investigative hearings under the Criminal Code. Where there are reasonable grounds to believe that a terrorism offence has been or will be committed, a court may issue an order for the gathering of information. A peace officer may only apply for this order after obtaining the consent of the relevant Attorney General. If the order is granted, the judge may order a person to attend a hearing before a judge, answer questions, and bring along any relevant documents or items in their possession.

An investigative hearing is not a criminal prosecution. The person compelled to appear is not an accused, but a witness. In that sense, it's very similar to the American grand jury proceeding. The provision explicitly states that the person appearing has the right to counsel. The process is for the purpose of gathering information that may assist the investigation and prevention of terrorism offences.

At such a hearing the charter right against self-incrimination is fully enforced. The subject may be compelled to answer questions, but any information or thing entered into evidence, or evidence derived from the evidence obtained from the person, cannot be used to prosecute the person for any offence except perjury or the giving of contradictory evidence. There is also protection from the disclosure of privileged information.

As you know, the Supreme Court of Canada in June 2004 upheld the constitutional validity of the investigative hearing provisions. The Supreme Court has noted that the protection against self-

incrimination actually goes beyond charter requirements. This is not an unprecedented procedure, and other jurisdictions have more extensive or similar procedures.

Some witnesses before this committee's predecessor argued that these two powers should not be renewed because they have hardly been used at all. However, the frequency of the use of these provisions is not the measure of their importance. Numerous provisions in our Criminal Code are infrequently employed. The hate crimes provisions and the offences of hijacking or treason come to mind. They are nevertheless still an essential part of our criminal legislative framework.

● (1600)

As the Supreme Court of Canada has stated, the challenge for a democratic state's answer to terrorism calls for a balancing of what is required for an effective response to terrorism in a way that appropriately recognizes the fundamental value of the rule of law. A response to terrorism within the rule of law preserves and enhances the cherished liberties that are essential to democracy.

The Anti-terrorism Act was carefully constructed to protect Canadians against national security threats, while continuing to respect and promote the values reflected in the rights and freedoms guaranteed in the Charter of Rights and Freedoms. It is a complex balance, but one that I believe is effectively accomplished in the Anti-terrorism Act. This legislation is part of a sophisticated tapestry designed with the express goal of protecting our fundamental freedoms and preserving our democratic values.

The importance of this law cannot be stressed enough. We need tools to fight acts of terrorism when they occur. We have seen that the likelihood of such acts is indeed real. Canadians must feel certain their government has done all that is necessary to protect them from terrorism, while respecting their individual freedoms.

We look forward to your recommendations as we continue to look for ways to improve the operation of the Anti-terrorism Act. I wish you every success in the completion of the important work before you. I would be pleased to receive your comments and questions.

Thank you.

● (1605)

**The Chair:** Thank you, Minister Toews.

Round one will be for seven minutes, and we're going to call upon Mr. Wappel.

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

Thank you, Ministers, for appearing today.

The previous incarnation of this subcommittee in the previous Parliament began its work by hearing from your predecessors and ended its work, prior to beginning discussion on a draft report, by hearing from your predecessors, and we are beginning our hearings here by hearing from you.

I was interested in listening to determine whether I could detect any change in position whatsoever between the former Liberal government's position on this act and the current Conservative government's position on this act. As far as I can tell from the evidence that the two of you have given so far, I can't see a scintilla of difference. Would you agree with that?

**Hon. Vic Toews:** Generally speaking, I would agree with that. I followed the debates very closely in this respect, and I think the prior government and the prior Minister of Justice recognized the delicate balancing act that needs to take place.

The only comment I would make is that in the past I have expressed some concern about the definition of terrorism activity. I only commend that issue to you for your consideration. I'm not necessarily suggesting any changes, but I think it is an issue that needs to be examined. It's something that I raised many years ago.

I note that some of the groups that came in front of the committee a few years ago expressed that the phraseology of the motivation to be proven, the political, religious, or ideological motivation, may lend itself to racial profiling or similar kinds of concerns.

At the same time, I've now heard the RCMP commissioner, and I must admit that the evidence I heard was second-hand. His statement seemed to imply that he would like to see it removed or, if the motivation clause were removed, without stating whether he preferred that or not, he could then use this to attack organized crime.

An issue you might want to look at is whether that would be overly broad or whether that would be acceptable in a free and democratic society.

**Hon. Stockwell Day:** From the point of view of those responsible for the services that provide our policing and intelligence gathering, I also did not see any major departure from the previous government in terms of their stance, the ability to equip, and keeping our policing and intelligence services in check.

**Mr. Tom Wappel:** Thank you.

I would like to explore the definition of terrorism activity for a moment, in a minute.

What I found curious about a complex bill like this is that, when asked, neither previous minister offered any suggestions for amendment whatsoever, as if the act was perfect as written. I know the Minister of Justice has suggested that we consider looking at the motive and that sort of thing.

I'm asking specifically, are there any specific amendments to the act that either of you would like this committee to look at?

**Hon. Stockwell Day:** I can say first from my point of view, leaving the legal justice matters to the Minister of Justice, that I look at the work of this committee as helpful and valuable and necessary, clearly, even by legislation, and I don't want to presume upon the committee when I come to a committee like this. I like to hear from you, take your suggestions, and give them thoughtful consideration.

There are some other issues also. As you know, the O'Connor review is going on right now. We anticipate there will be some suggestions coming from that...well, there may or may not be, but I think there will be, so I don't want to presume on those either. I

would like to get all the information about concerns and insights that have been raised. From my point of view, if there are things related to policing and intelligence gathering that need to be addressed, then certainly I would come before this committee again with those suggestions.

• (1610)

**Hon. Vic Toews:** I would like to simply point out, and I think reinforce what you said, that this bill has proceeded on a remarkably non-partisan basis from the onset. Yes, there were differences, but I think generally speaking we all agreed that the aim was a noble one and we wanted to do the best job possible.

In terms of possible amendments, we don't come here with any specific agenda to seek broader powers. But we are in fact very interested in what this committee and the Senate committee is thinking about this matter.

The one point that I think the committee should look at is the sunset clause in respect of the investigative hearings and recognizance orders, that these will cease to apply in 2007 unless their application is extended by a resolution of both Houses of Parliament. For me, these are very important tools in the fight against terrorism. I wouldn't want those to be suddenly lapsed for a reason of an election or other times when the House wasn't sitting. That would concern me. I would be interested in this committee's consideration or recommendation of whether it could be accomplished in another way, perhaps a regular review of the provisions of the act, mandated by legislation, rather than the legislation itself collapsing and then we're left with a hole in our safety net, so to speak, when we might require it.

It's not that I shy away from parliamentary or committee oversight, but I'm wondering whether this is in fact the best mechanism to accomplish that for what I consider rarely used but very important tools.

**Mr. Tom Wappel:** I'm not clear, Minister Toews, on your comments about motive. I presume you're referring to paragraph 83.01(1)(b), talking about what I see as a threefold test. There has to be an act committed in whole or in part for political, religious, or ideological purposes, but not only for those purposes. That has to be in conjunction with intimidating the public, etc., and that also has to be in conjunction with intentionally causing certain effects.

So it's not only that you happen to believe in a particular religious ideology, which is only one of three things, but you also have to do two active things that would then bring it into the definition of terrorist activity. I'm curious as to why that somehow implied religious intolerance.

**Hon. Vic Toews:** I'll be very brief because I know the member's time is short, but it is an important issue.

This means that a prosecutor has to prove, as an essential ingredient of the terrorist activity or crime, that there has been political, religious, or ideological purpose. So think of a group that arises out of a particular religion but is not necessarily a part of that religion. These individuals believe they are carrying out a particular religious mandate.

The concern that has been expressed by some is that to collect evidence of religious motivation may unfairly impact on that religion when it doesn't have anything to do with that religion. You stigmatize a religion unfairly by calling forward that evidence.

Now that phrase seems to have been adopted more by Commonwealth countries based on the British model. The British, for some reason, have adopted that, probably arising out of their terrorist experience in Great Britain itself. It has been adopted by Australia and some other Commonwealth countries. Canada has adopted that as well. But if you look at the American legislation and other European legislation, that motivation element does not appear.

I'm wondering why we chance the risk of so-called racial profiling in a prosecution when it's not necessary in other countries to have that element.

•(1615)

**The Chair:** Thank you.

Monsieur Ménard.

[Translation]

**Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ):** Ministers, I thank you both for having agreed to appear before us at the beginning of this exercise that has been undertaken by our subcommittee, and also for having acquainted yourselves with the presentations that had been made previously.

You have already answered the first question that I wanted to put to you. Mr. Wappel has asked that question. I know that in your view, even though Parliament acted in a state of emergency, in haste, because of the circumstances, it has produced a practically perfect legislation requiring few improvements. It seems that this was not the view held by the Parliament that passed the legislation.

Could I suggest a few improvements? Don't you believe that in hearings where the judge receives some ex parte evidence, it would be beneficial, in order to respect our general legal principles, to have what is called an *amicus curiae*, or a friend of the court, that is a lawyer whose security clearance is the highest possible and who could cross-examine the witnesses in order to better inform the judge who must make a decision?

[English]

**Hon. Vic Toews:** As you know, this issue is currently on appeal to the Supreme Court of Canada. During the Supreme Court hearings held last week, several models were suggested by counsel for the appellants and intervenors. The government believes it would be prudent to wait for the Supreme Court judgment before making any policy decision on this issue. However, if the committee wishes to make recommendations, we would suggest that the following considerations be kept in mind.

First, consideration could be given to questioning whether a special advocate could offer a significant advantage in terms of fairness over the current model, whereby designated judges of the Federal Court can and do ask probing questions to test the government's case.

Second, relevant consideration would be given to issues related to solicitor-client communication and the need to ensure non-disclosure of sensitive information. I understand that in the British experience,

where these advocates are, several prominent counsel have refused to act in that capacity because of the impact on solicitor-client privilege. So that would be a consideration.

Whatever we do, I think it's clear that no model is going to be a panacea. No system can both protect sensitive information and ensure that the person concerned fully knows the case against them. It's a difficult balancing act, but if the committee wants to look at some of the British experience on the *amicus curiae*, or special counsel, more detail could be given than I can offer at this time.

[Translation]

**Mr. Serge Ménard:** We could examine what has been suggested to us by some people. The Federation of Law Societies of Canada, in order to solve these problems, has suggested that the *amicus curiae* be only allowed to contact the detained person's lawyer, so that the aforementioned person could feel perfectly confident to tell anything necessary to his or her lawyer, and the *amicus curiae* could thereafter receive his instructions from that other lawyer. I don't know whether you have examined this suggestion, but I have found it really original. If it was implemented, the detained person could be completely open to his or her lawyer.

I see that you are still waiting for our suggestions in this regard and that it is not because the case is before the Supreme Court that Parliament will be prevented from improving the legislation.

We have already discussed the type of custody that is being imposed on people who have not been found guilty of anything. When I saw the previous government decide, even before we had made any suggestion to them, to open a special prison to detain these persons, I thought they had understood the kind of suggestions that we were about to make. But I must say that we never expected that, by opening a special prison, they would make the custody of these persons who are not accused of anything and who are presumed innocent harsher than that of the people who are accused of ordinary law crime.

Do you intend to see to it that these prisons are compliant? I would suggest a test that appears in the Charter of Human Rights and Freedoms of Quebec, that is that these persons must be treated in accordance with their status as being presumed innocent, since in this case, they are not being accused of anything.

•(1620)

**Hon. Stockwell Day:** All prisoners in Canada, including those you are talking about, have all powers and all the rights of ordinary prisoners who are detained in our institutions. We are complying fully with Canada's legislation in terms of their rights. There are also organizations such as the Red Cross that can make inspections of the inmates' living conditions. They are living in vary humane conditions and that can be verified. We allow visits by families and lawyers.

The previous government was of the view that it was not right to detain these persons together with prisoners who have committed crimes in Canada. This is one of the reasons why we have a new institution for them. It is quite clean and I can assure you that the conditions of custody are quite humane.



**Mr. Serge Ménard:** Minister, I believe that your intentions are pure, but if you read the same newspapers as I do, you will find that this is not what has been observed, quite the opposite.

**The Chair:** Thank you, Mr. Ménard.

Mr. Comartin.

[English]

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

Thank you, Ministers Day and Toews, for being here.

I'll just pick up where Mr. Ménard left off. I have to challenge you, Minister Day. You have three members of the five who are subject to certificates on a hunger strike in Kingston right now. To describe their conditions as humane....

You have one, Mr. Jaballah, who in five years hasn't been able to touch his children. He has only been able to see his children through thick walls of plastic or glass. He doesn't even know what he's faced with because so much of the data is claimed for national security.

By any standards, especially, again, when he hasn't been charged, how do you see that as humane? And what is the justification? I understand—and I want to give you a little defence here—that we've only started in the last few months to put them in federal custody as opposed to putting them in the provincial prison system.

From the attempts this committee itself made for those three members about a year ago to try to get the provincial government in Ontario to change, I know we've not had any justification as to why personal contact is not allowed with family members, including in Mr. Jaballah's case his very young children.

•(1625)

**Hon. Stockwell Day:** I'll comment on a number of your observations, and I'll also include Mr. Ménard's last statement.

With all due respect to free media, which I certainly respect and I will always defend, surely, sir, you don't accept everything you read as always being truth or reality without verifying it. I'm not suggesting there is an attempt otherwise, but it's always good to check—as I know you do—two, three, or four sides of any story. The media may well present one side of the story or one person's view, but they don't always present the other side.

As far as the hunger strike goes, there are medical practitioners who regularly check on prisoners. This is not an uncommon occurrence within detention systems, to see prisoners who choose to go without food for a period of time. Some of them may go without a meal or two a day, some of them go without food during the day, but they take sustenance during the evening. They are also checked regularly by medical practitioners. They are allowed family visits.

Again, they are free to leave these facilities at any time, should they decide to go back to their country of origin. I realize some would also suggest that depending on what country that is, they may face repercussions. I respect that. That's why they have the appeal process.

I guess the bigger question is—and I would put it back to you—do you think there should be no provision? When we live in a day

where terrorists have claimed the lives of thousands of people—and in this heightened atmosphere of terrorist activity, I'd be curious to know your view—do you think there should be no extra security provision at all for Canadians, especially one that has been tested by the Federal Court, as I said, as recently as September 2005 to be constitutional?

I know it's being tested again, but it has been tested a number of times. It is a constitutional process. The facilities are checked regularly by a variety of people. They are allowed contacts with their families; they're allowed access to a telephone, and reading and writing materials; they can have daily outdoor exercise and essential medical and dental services.

Are you saying there should be no extra security provisions at a time of heightened concerns related to possible attacks on Canadians? I'd be curious to know that. I'm not asking that rhetorically; I'm asking it sincerely.

**Mr. Serge Ménard:** Should we answer that question?

**The Chair:** Yes, if you wish.

**Mr. Serge Ménard:** Of course not. You know the answer. You put the question in such a way that it is not a question, it's an argument.

We're here to try to attain that balance between the basic rights in a civilized country against the threat of terrorism. When I asked you to check on the real situations of the prisoners who should be kept better than the other prisoners, why you would ask us a question as if we are against.... You know very well that we think there should be measures. We think there should be measures on those measures. That's one of the things I was going to suggest, and I will do so in the second round.

Thank you, Mr. Chair, for allowing me to answer

**The Chair:** Yes, thank you.

We're going to give Mr. Comartin another extra minute or two now.

**Hon. Stockwell Day:** We're posing the question to Mr. Comartin on the broader issue because, from what he was asking, he was going beyond just the facilities, he was reflecting on the broader provisions. So that's why I'm asking him the question.

**Mr. Joe Comartin:** I'll adopt Mr. Ménard's questions. Specifically, if you're asking me whether they should be prevented from having physical contact with their children, my answer to you is that this is a special provision that this state should not be imposing.

**Hon. Stockwell Day:** Joe, with respect, I'm asking the broader question out of interest and not rhetorically, but sincerely, because we're here to glean advice from you.

Do you think the Government of Canada, with a provision like the security certificate...? And that's why I specifically referenced that, as late as September 2005, the Federal Courts upheld it. But you seem not to like that provision. Do you think the government should not have that provision? That's what I'm asking.

●(1630)

**Mr. Joe Comartin:** I think the basic answer to that is you also have to look at the other decisions, both in Charkaoui and Harkat, where courts have looked at it and said, we're now at a stage where these people, in effect, are no longer a risk to the degree that they have to be held in custody. And the sense I have of the other three cases is that we're probably in the same stage and that we should be looking at advanced provisions for security where they're allowed out into the general community because they're no longer a threat. That's what we should be working on.

Mr. Toews, I want to say this to you. By depending on the courts, you're falling into the same trap as your predecessor did. You accused them in a number of other sectors of relying too heavily on our courts and, as parliamentarians, as governments, of not assuming our responsibility. So I'd like to go to that since my time is short.

One of the provisions we saw as a real hindrance in these cases is that you're taking evidence, to a large degree, not from our own reliable sources of information, whether it's CSIS or some of our other intelligence agencies, but from information that's coming from international sources. And in a number of cases, as we saw in the Maher Arar case and any number of others, it was very suspect and may in fact be the subject of torture to some of the witnesses.

I think we're going to hear from Justice O'Connor—and I'd like your view on this, if we get it from him—a strong recommendation that the amount of evidence that's classified, to what degree it's classified, and who has access to that information would now be determined not by our security services, not by our intelligence services, but by an independent, well-trained—and that's a factor—judge or panel of judges. Would you be interested in pursuing that kind of approach? I'm suggesting to you, Mr. Minister, that you're going to get that from Justice O'Connor in his report.

**Hon. Vic Toews:** I don't want to prejudge Justice O'Connor's report, but what I would be very concerned about is to have someone analyzing evidence and not understanding the full context of that evidence. That, for me, is a very serious problem. And if that analysis is going to be done on strictly legal principles—and by legal principles I mean our British common law statutory interpretation type of system—if that's how we're going to do it, by respecting the rules of hearsay, opinion evidence, and the strict formal rules of evidence, and then trying to apply those standards to evidence gathered by security services around the world, I think you're going to have a huge difficulty in accepting much of the evidence that is considered. So I would just caution against applying court standards, in terms of testing the evidence, and standards that security forces need to rely on in terms of making an assessment.

The context, as well, has to be borne in mind. This is not a criminal process with respect to the security certificates. It's a civil administrative process, where the person is in custody, is detained, and the individual does have the right to leave. Now that situation might not always be the best alternative, but the concern that security

forces may have is, what is the alternative? Do we release that individual here?

So am I interested in Justice O'Connor's comments? Absolutely. Would we consider those comments? Absolutely. I think we have to take it with a caution about simply trying to make this into another legal process in the same way as you would prove, for example, a criminal offence and those types of standards, because it's a very different process.

**Hon. Stockwell Day:** I would just like to add, Mr. Chairman, that it's obvious by our presence here and the comments we've made that we support in general the cautious use of security certificates and that provision in law.

Joe, I would still like to hear if you support that in general.

●(1635)

**Mr. Joe Comartin:** Do I support the use of security certificates? No, I'm opposed to the use of security certificates.

We have to come up with an alternative system. The special advocate alone is not enough. I think we have to give more authority to special judges, specially trained judges, who do understand, as Mr. Toews has just been saying, this balance that has to be struck. It can't be the criminal balance; I understand that. On the other hand, the standard we're using now within our intelligence services—that is, they make the call on what can be produced and what can't be—is way too low in a democratic society.

**The Chair:** Thank you, Mr. Comartin.

**Mr. Joe Comartin:** Mr. Chair, I think you used some of my time.

**The Chair:** Yes, but you've used a lot more than that.

**Mr. Joe Comartin:** I have one quick one that I want to ask Mr. Toews and perhaps Mr. Day as well.

**The Chair:** Mr. Comartin, we'll go back around. I'm sorry, you've had way more than regular time.

We'll move to the government side now, and Mr. Norlock.

**Mr. Rick Norlock (Northumberland—Quinte West, CPC):** My question might be somewhat utilitarian, because that's the part of the legal system I come from. My question would be basically to Mr. Day, but please step in, Mr. Toews, if you feel there is something pertinent from the justice end.

I'm very concerned about not only those people we have at our border, but the people we are training to apprehend those who would dare commit acts of terror against Canadians. I'm going to ask you a very broad question. You can say what you're doing now and what you propose to do.

Do you find that our border personnel, law enforcement, and prosecutors have sufficient training and equipment to do their jobs? How and by what means do you determine that? What do you see as the near and distant future? I'm talking about our CSIS personnel as well as the RCMP and our border guards.

**Hon. Stockwell Day:** First of all, for border officers themselves, the training is very extensive. It includes being trained to the same level as police officers to perform arrests under certain conditions. An example is drug seizures. Last year, there were 6,700-and-some drug seizures at the border. There were a number of seizures of illegal firearms and other contraband. They have to be trained in all of that legal process. As you would know as a long-standing police officer, you have to be trained even in the area of arrest and even in terms of other people's legal rights, etc., so they're very well trained in that.

The one area of training being added now is on sidearms for border officers. They will have to go through extensive training, obviously, for that purpose. That's the border officers themselves.

When it comes to the issue of security certificates—because we're still talking about protecting our borders here—we've had six people since 2001, as we've said. When the intelligence is gathered and the reports are made on people in this case, those levels of security and intelligence are gathered by different agencies altogether. Those are our intelligence agencies within the RCMP, so they have a very different level of assessment and training.

Then when an assessment is made, as rare as it has been, the intelligence gathering and that information are also subject to judicial review. In fact, security services, not the border officers themselves, will make the suggestion.... Border officers will flag if a concern comes up as they're checking on the individual in question, but when the research shows that there is a significant danger to Canadians—and that assessment is made by intelligence officers—it is still subject to a judge; the judge will determine if he or she agrees with the information that's gathered.

So it hits the border officer level first, then our intelligence agencies, and then goes all the way to the judicial level before a final determination is made. When you add up all those layers, the training is pretty extensive—not that a mistake couldn't be made, but it's a pretty extensive network.

**Mr. Rick Norlock:** Mr. Toews, do you believe Canada has the legislative tools necessary to ensure we are able to apprehend and prosecute those who would commit acts of terror against Canada?

As a little comment, I'll say that it seems some people think we're too tough. I happen to meet more people who think we need to do more in that respect, and that we need to have those tools heightened as opposed to lessened. Have you a comment on that observation?

• (1640)

**Hon. Vic Toews:** I understand. I meet people who are concerned about security making the same kind of comments. Any time a nation is under threat, or perceived threat, people ask those questions constantly, and that's good.

At this point, I believe if we look at our act itself, the Anti-terrorism Act, and compare it to those in other free and democratic societies—European primarily, American, Australian—I would suggest Canadian legislation is not the toughest. Certainly other acts of other countries have much more stringent proceedings and processes available to them, and those have been upheld in free and democratic societies as appropriate measures.

Perhaps I should simply speak on my own behalf. I'm here to hear from the committee to see whether the committee recognizes any specific concerns, powers you would like to see added, perhaps study other pieces of legislation from other countries. At this time, my concern more than anything is something Minister Day touched on, and I think we're addressing it through our budget—the additional money we've put aside for more front-line officers, border security, more federal prosecutors, and others who will give us tools on the ground to use the legal tools we have.

I think the issue of border security is not simply to pass a piece of legislation. You've got to be prepared to enforce it. We have to look at the issue of our ports, which our government is examining, and certain commitments have been made in that respect.

Although my primary responsibility would be the examination of the legislation, I would suggest some of the steps Minister Day has been taking to strengthen security at ground level should be addressed at this time, and I'm very pleased our government is moving in that direction.

I come back to the comments of Mr. Wappel. I think we're in agreement with the bill as passed.

Is it perfect? I don't think we should be patting ourselves on the back too soon. We cannot anticipate many situations, but given the response after the September 11 attack, I think the committee and the House did a remarkably good job, working on a non-partisan basis.

Might issues be fine-tuned? We've heard some suggestions respecting Justice O'Connor's recommendations. Will we look at them? Absolutely. Will we consider what the Supreme Court of Canada has got to say? Yes. Are there other issues like what the Commissioner of the RCMP just recently stated? Should we look at those issues? I think yes, and I think you have full authority in this committee.

**The Chair:** Thank you, Minister.

We're going to move to round two now, which will be five minutes.

Mr. Cullen.

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

Thank you, Minister Day, Minister Toews, and the officials.

Some have argued in the last many months that things have changed in Canada. I think it's within the context of the arrests in Toronto. I'm not quite sure, but I would argue that things really haven't changed, that we knew this kind of activity was going on in Canada. In our briefings, CSIS referred to that.

What has changed is that we have a new government. Just to reflect on what Tom Wappel, my colleague, said, what we're hearing from the new government is that generally.... Mr. Toews, you've raised the issue of the definition of terrorism, but generally you're comfortable. As you've said, you're anxious to hear from the committee, but the thrust is largely the same.

I had a couple of questions with respect to the arrests in Toronto.

One, I'm a little confused. I've read in some secondary information that the tools of preventative arrest and investigative hearings, those tools in Bill C-36, were not used for those particular arrests. I wonder if you could clarify that.

Second, it seems there was a lot of cooperation between CSIS, the RCMP, the CBSA, provincial police, and other law enforcement. Would you confirm that—that there was a high level of cooperation, and that the levels of coordination have improved significantly over the last many years?

• (1645)

**Hon. Stockwell Day:** It has been reported on, so it's public, and the agencies themselves were very forthright in talking about high levels of cooperation. I think, Roy, that does reflect a cultural change within policing and security organizations themselves.

It could be argued...let's say, if you want to go back a number of years, 15 or 20 years—this isn't unique to Canada but applies to the United States and other agencies—agencies, being proud of what they do and somewhat protective of what they do, had in the past developed a bit of a silo approach to things, and because of concerns about that, information sharing might have been more limited. The culture now, and the reality that the threat of terrorism is real, has really compelled policing agencies to work together to share information.

I think I know where you're going in your question here. I would agree that this type of operation reflects that shift in culture. When I talk to people in the different agencies, not just within RCMP and CSIS but even within different policing agencies municipally or provincially, they do all reflect on that. They have a sense that we need to work together. They have their appropriate areas of jurisdiction, but the proper sharing of information to protect the safety and security of Canadians is being done willingly and appropriately, in my view.

As for your other comments about the investigation itself, it's ongoing to a degree and things have been filed before the courts, so I would prefer not to comment on any of those at this point.

**Hon. Roy Cullen:** But can you comment on whether or not the preventative arrests or investigative hearings provisions of Bill C-36 were used, or are you not at liberty to comment on that? Can't you comment on this? It's sort of relevant to the review of Bill C-36, but if you can't comment.... I've read the reports in the press and I'm anxious to know if they were used or not, that's all.

**Hon. Stockwell Day:** As I understand the ATA and as has been publicly commented, certain provisions under the Criminal Code were applied, and we'll see how that weighs out in court and if they were directly a result of the ATA or not. Further evidence will come forth on that.

**Hon. Vic Toews:** Perhaps I could intervene. I don't think it's appropriate to comment on that. I'm very concerned about making any specific comments in respect of that particular investigation. Most of us, certainly I myself, would only be speculating in that respect, and I suggest that if police officers are at liberty to disclose that information, call them directly, because they are responsible directly for the investigation. I would suggest you might want to conduct that kind of hearing in camera before you decide to reveal anything.

I don't think it's appropriate to discuss that matter, but what I would like to discuss, and it's just sort of taking off—

**Hon. Roy Cullen:** My time is limited, so perhaps you could cut to the chase.

**Hon. Vic Toews:** And I'll be very quick. It's to your credit that you've raised the issue, but in an indirect way.

The whole issue of sharing of information, I think, is very important between various agencies. And one of the things that I think are beginning to concern people more and more in the security and policing fields is the cooperation now between terrorists and organized crime. In terms of legislation, does our terrorist legislation properly dovetail with organized crime legislation? Is there a disconnect between the two when we're investigating essentially the same common activity, if there is interaction between a terrorist group and organized crime?

That is an issue that I think is ripe for exploration in terms of possible legislative analysis. Whether that's in the context of this act in particular, or otherwise, I would leave to the committee.

**Hon. Roy Cullen:** I think you've raised an interesting point, and certainly organized crime is a major issue and challenge in Canada. Whether what you suggest could be incorporated into this and still keep the balance of civil liberties, I'm not sure, but I think it warrants consideration, certainly.

Maybe we need to bring Commissioner Zaccardelli here to hear what he has to say about that and the amount of cooperation and coordination that's going on today. I'm thinking also about the Air India inquiry. Of course, I feel that was redundant, but you made a political decision. We're now going to be comparing the levels of integration or cooperation and coordination of twenty years ago, that was or wasn't there; and we have a new world today, where I think we're clearly seeing cooperation and coordination going on.

I know in the Air India inquiry they're going to look at other things, but that particular aspect....

I'm supportive of Bill C-36. There are a couple of areas I'm interested in looking at, such as the security certificate process. Actually, it's been around for many years. It's an immigration and citizenship provision, and I think there's a lot of misinformation out there in terms of what information people are privy to. With regard to the independent counsel, I think you've raised an interesting question with respect to solicitor-client privilege and some of the stresses that could create if we wanted to pursue this sort of independent counsel approach, something that I think we should be looking at.

**Hon. Vic Toews:** Thank you, Mr. Cullen.

•(1650)

**Hon. Roy Cullen:** I don't know if you want to react—

**The Chair:** Thank you, Mr. Cullen.

Go ahead, please, Mr. Toews.

**Hon. Vic Toews:** Very briefly, I think the suggestion here by Mr. Comartin to have specially trained judges doing this, like the investigative judges that places like France have, is an idea worth exploring. Again, it's something I leave to this committee to look at.

**The Chair:** Thank you.

Mr. MacKenzie, go ahead, please.

**Mr. Dave MacKenzie (Oxford, CPC):** Thank you, and thank you to both ministers for being here.

By its nature, terrorism is somewhat different yet connected to criminal activity. The terrorist's real intent is to strike fear into people who are not necessarily the direct victims. They intend to cause some mayhem. I think that sometimes we mix up what we're trying to deal with, and we treat these issues in a criminal sense, as opposed to in a terrorist sense. There is a difference, and I think Mr. Cullen has rightfully made the connection that the security certificates are not directly related to these issues; they're really immigration matters.

Having said that, our borders are one of our major concerns, obviously, as regards products being brought in, or even products going out of the country being used to raise funds for terrorist activity inside.

Minister Day, very recently—perhaps this week even—the head of the CBSA made a statement to the members of the other House that it'll be three years before we have our border guards armed and the single, work-alone border crossings covered. Does that seem like a reasonable length of time, given the situation out there in the real world?

**Hon. Stockwell Day:** Three years refers to the completion of the first large segment, but there will be armed officers as early as, if I recall correctly, next July or September. The first armed officers will have been trained and gone through the process. There are three years to complete the first section. The entire process could take from eight to ten years to have everybody trained and in fact carrying a sidearm. That's pretty close to the speed at which the U.S. implemented their program about 25 years ago. In terms of work-alones, the training is beginning now; the resources have been obtained through the budget process to address recruiting and training in terms of the work-alones. It's coming to a theatre sooner than you think.

**Mr. Dave MacKenzie:** Mr. Norlock and I come from another side, and we would question that length of time to train people for arming them at the border. Are there other issues, in addition to the training for firearms, that take that length of time?

•(1655)

**Hon. Stockwell Day:** There are a couple of issues here. First of all, as you well know as former officers, there's a lot more to this than, "Here's how to hold a firearm. Aim and shoot." They have to be fully apprised of all of the legal ramifications that go with carrying a sidearm. We hope it will never have to be used, but its use

in a place as populated as a border port would be will require extensive training. That's being done carefully.

There is also the whole aspect of the contracts for the trainers. They want to eventually get into training trainers so that they can keep their costs down and in fact have trainers certified within CBSA so they can do their own training. It's not something that can be done overnight, simply because it isn't taken lightly.

That explains some of the reasons for the delay. Again, in terms of the work-alone sites, we're talking about recruiting people. You have to go through the whole recruitment process, and then the training. They're going to do that as expeditiously as possible, but it will take some time.

**Mr. Dave MacKenzie:** We're talking about arming the border people who are currently there, so that's not really recruiting.

**Hon. Stockwell Day:** As you know, it's a three-week training program they're anticipating, so they have to bring in the replacement people and arrange their shifts so that all this can take place. Though it sounds like a fairly simple process, there's a little more to it than meets the eye.

**Mr. Dave MacKenzie:** I think it's fair that the community understand that it is more than simply giving them firearms and sending them out there.

**Hon. Stockwell Day:** I'll say, too, that the unions are very positive on this, very cooperative. You know, it's been their request for a number of years to have the sidearms so that they don't get into situations, as happens sometimes, where they have to vacate the border and lock it down because of a danger approaching the border.

So it's going to work well, but it takes time.

**Mr. Dave MacKenzie:** That's all I have, Mr. Chair.

**The Chair:** Thank you, Mr. MacKenzie.

We're going to go to the third round. Mr. Wappel.

**Mr. Tom Wappel:** Like Mr. Cullen, Ministers, I'm supportive of this act; I just find it inconceivable that an act of Parliament of this complexity could be passed that is so perfect that department after department, assistant deputy minister after assistant deputy minister, and acting ministers have been unable to suggest any constructive amendments whatsoever to this act. I believe the only person who's uncomfortable with it as written in some parts is the Information Commissioner—I think I'm correct in that—and also possibly the Privacy Commissioner.

Let me raise just two specifics that I'm just curious about.

I'm wondering if you don't find it curious, Ministers, that the act makes it illegal—perhaps you can check with your officials here—to facilitate the commission of a terrorist activity or to finance a terrorist activity, but it does not make it illegal to undertake a terrorist activity.

**Hon. Stockwell Day:** I'll get the Minister of Justice to parse that out with you, but can I say this. I just don't want the notion hanging out there any longer that the Liberals created a perfect law.

**Some hon. members:** Oh, oh!

**Hon. Stockwell Day:** That would be difficult.

**Hon. Vic Toews:** It was done with Conservative help.

**Hon. Stockwell Day:** Right.

I think it does suggest the prudence and the caution that all of us took in the development of this law. And it is not perfect. It has been tested rarely, especially on the idea of security certificates; the security certificates process may not hold up.

So I think it speaks to those two things. It speaks to the proper regard that parliamentarians have for our individual freedoms and human rights in areas of secrecy and privacy. It also recognizes this heightened danger. That's what it speaks to, though it's not perfect—and the other fact, that it has rarely been tested.

I don't want to speak to the powers of the investigative process. To clarify the question from Mr. Cullen earlier on the charges, the charges themselves were under the ATA. But as to the investigative process from here on in, and what's being used, I won't be commenting on that.

**Mr. Tom Wappel:** Minister Toews, do you have any comment on the fact that it's not illegal under the ATA to undertake or engage in a terrorist activity?

•(1700)

**Hon. Vic Toews:** I would suggest it is illegal to both engage and undertake—

**Mr. Tom Wappel:** Under what section?

**Hon. Vic Toews:** Well, again, it's not my area of expertise—

**Mr. Tom Wappel:** You have two officials here.

**Hon. Vic Toews:** —but subsection 83.18(1) states, for example, that

Every one 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

—I would say that's very close to “undertake”—  
a terrorist activity is guilty of an indictable offence

Then as to the specific offences, such as setting off a bomb, or even the conspiracy aspect, I would suggest—

**Mr. Tom Wappel:** Sorry, Minister, but wouldn't it be very simple to say that the commission of a terrorist activity is illegal?

**Hon. Vic Toews:** I believe it does say that.

**Mr. Tom Wappel:** Where? It doesn't say that. The definition of a terrorist offence is specifically stated, and there are specific sections mentioned, with specific offences. I just find it curious that we can't find a very simple, clear statement in the act that to commit a terrorist activity is an offence.

There's “facilitate” this, and “move” this, and “check on” that, and “look after” that, but—

**Hon. Vic Toews:** Let me repeat this—and I know that the headings are of no legal force or effect—under “Participating, Facilitating, Instructing and Harboring” it says: “Every one who knowingly participates in or contributes to, directly or indirectly, any activity...”. So you're contributing indirectly to an activity of a terrorist group for the purpose of enhancing its ability to facilitate. We're getting about as close to being as broad as you can possibly be, and we're spreading a net without being uncertain.

It's a complaint I often express about the law—why can't the law be a little clearer? The problem is that after many years of courts interpreting sections, to simply put down “undertake” may confuse things rather than help things. As difficult as that is for most of us to understand, the more you try to simplify it, the more confusing it often becomes. So you end up with sections like this.

**Mr. Tom Wappel:** Allow me to give you another example, Minister, and that's section 83.23. This involves harbouring. According to this rather wordy section, someone who harbours someone who the harbourer knows has already carried out a terrorism activity isn't guilty of an offence unless, in addition to the harbouring, the harbouring is done for the purpose of permitting the terrorist to facilitate or carry out a second terrorist activity.

To me it's very simple. Why isn't harbouring someone who the harbourer knows to have carried out a terrorist activity, in and of itself, not an offence?

**The Chair:** Quickly, Minister.

**Hon. Vic Toews:** I would be surprised to find a specific act that Canadians would regard as heinous not covered in this specific legislation.

Again, you may well have hit upon the only imperfection in the entire act, to utilize your words. I'm not suggesting this act is perfect. Often a car looks perfect until you start it up. I'm wondering whether we have really started this car up yet. Have we considered every aspect? You try to do your best, but until you actually put the gas in the tank and turn that key, you want to see how well it works.

This goes back to my concern about the criticism of the security certificates. It's a very well-balanced piece of legislation, a very well-balanced device. I would be very reluctant to tamper with it until we've seen more evidence than we've seen to date.

On your considerations as a committee, go ahead and make those recommendations. I'll have some of the lawyers take a look at your suggestions. I'm not ruling any of them out.

•(1705)

**The Chair:** Thank you, Minister.

Monsieur Ménard.

[Translation]

**Mr. Serge Ménard:** Regarding security certificates, I fully understand the administrative nature of the process that was followed when they were first implemented. If I recall, at that time, they were to apply almost as soon as the person arrived in Canada. Thereafter, the period was extended and it is now so long that the certificate can be used 10 or even 15 years after the person arrived in Canada. He or she has raised a family, the children were born here, the person went abroad and came back, he or she was allowed to come back and was given all benefits that are granted to Canadian citizens, except the right to vote. Since these certificates are not being applied to Canadian citizens, don't you believe that they should not be applied either to persons who have not become Canadian citizens, but who have spent some period of time in Canada? According to you, how long would security agencies need to apply them?

**Hon. Stockwell Day:** You have raised an important issue. If you have ideas to improve on the act, you must tell us about it. Until now, officials and judges have used security certificates almost immediately after the arrival of the persons, but this is simply due to the fact that the act is still new. If you fear that they could be utilized 10 or 15 years after the arrival of the persons, this indicates that there is a weakness in the system, and I would appreciate if you could propose an amendment.

**Mr. Serge Ménard:** I am talking about security certificates and I understand that there are some cases where they have been used when the person had been in Canada for at least 10 years.

**Hon. Stockwell Day:** This may be due to the fact that the system has been in place since 1978. You may be right.

**Mr. Serge Ménard:** We could make suggestions in this regard.

I would like to make another suggestion and I want to know whether you are open to it. It would be to create an office equivalent to that held by Lord Carlile, whose title escapes me for the moment. You did talk about it, Mr. Toews, and you seemed to be aware of it. You gave his title in English but I did not catch it. I believe it is some kind of ombudsman.

[English]

**Hon. Vic Toews:** Independent reviewer.

[Translation]

**Mr. Serge Ménard:** That's it. Are you open to such a suggestion?

[English]

**Hon. Vic Toews:** I certainly don't have any problems with that. We do that on an informal basis when we have judges review it. Developing particular expertise in that area and commenting on how legislation is working are not foreign ideas to our parliamentary system. Again that's something the committee has to examine in terms of all of the measures that are already in place.

[Translation]

**Mr. Serge Ménard:** You have raised another issue that concerns me, Minister Day: I am referring to the accusations made against the 17 persons who have been arrested recently in Toronto. I cannot imagine any criminal law allowing for people who have taken part in such a conspiracy not to be liable to the most severe penalties according to the law of the land. These people had meetings in order

to prepare a bomb attack similar to the one we have seen in Southern United States. I cannot imagine any criminal law system that would not consider this as a very grievous act. You added that the Anti-terrorism Act had been applied in that case and that it had been quite useful.

In what way would the Anti-terrorism Act be more helpful to the attorneys who will prosecute them and the judges who will judge them once they have been found guilty? How will it help them determine an appropriate sentence for what is truly a murder conspiracy? What added benefit does the Anti-terrorism Act provide to the judge? What added benefit does it provide to the prosecutors? Clearly, this is a case when an infiltration has taken place. In passing, I imagine that when such an infiltration occurs, it is orchestrated in a way that no harm can come to the public. I would like you to confirm that, but this is not really the question I'm asking you. I am asking what does the Anti-terrorism Act add?

• (1710)

**Hon. Stockwell Day:** That's a good question, but I cannot answer you because the investigation is ongoing. In the long run, we will see whether the Anti-terrorism Act gives these people additional powers. I cannot really answer you now because the investigation is still ongoing.

[English]

**The Chair:** Thank you.

Mr. Comartin.

**Hon. Vic Toews:** On that point, I think one of the things that cannot be understated is that this act permits Canada to become a party to UN treaties against terrorist bombings and terrorist financing. It allows us to enter into that international arena and allows Canada to then comply with various UN Security Council resolutions.

If you're asking whether there's a great deal of overlap, yes, I would suggest there is. When you're conspiring to blow up a building, there are laws against that. But I think it is seen as part of an international fight. It was one of the prerequisites, as I understand it, from the former minister that we had to bring in this legislation in order to be part of these UN treaties.

The other important aspect that can never be understated when you pass specific legislation in respect to a specific matter is to denounce it as conduct that is unacceptable in a Canadian society. You focus on an issue and you make that a specific offence because of the denunciation. You're standing up for certain values as a nation. Laws are not simply punitive.

If you look at the issue of hate crimes, I always go back to this example. How many times do we actually prosecute under the hate crime laws? As a result of what occurred during the Second World War, the UN suggested that we have hate crime laws in specific categories resulting from that.

Are most of those things covered in other aspects of the criminal law? I would say yes, they are. But it specifically denounces that activity and is important in that respect alone.

**The Chair:** Thank you.

Mr. Comartin.

**Mr. Joe Comartin:** I can answer your question, Mr. Toews. I did one of the six cases in the history of this country on which we used the hate propaganda section, and it goes back almost 40 years now.

**Hon. Vic Toews:** You agree, then.

**Mr. Joe Comartin:** I have a point that I want to make, and then I'll go to Minister Day.

As part of that denunciation factor, it also gives some permission. It gives permission to do racial profiling and it gives permission for, I'll say, rogue elements within our intelligence services to abuse.

I have a case, Minister Day. I always brought this up with your predecessors, and I'm going to do the same with you.

I have been working on this file for three years. The man has been in the country for 13 years, and his wife came from their country of origin after him. You have this in your office, if you want to check it out. I'll give you the name afterwards.

She has her citizenship, the two children who were born in the other country have their citizenships, the three children who were born here are obviously Canadians, and he's still waiting. I can't get an answer on that.

He quite frankly feels, and I think there's some justification, that the only reason he doesn't have his citizenship in order to get on with his life in Canada is that he's twice been recruited to become an agent and has refused. He's been very vocal in his opposition to the Afghan war and support of the Palestinians. There is certainly no suggestion, from anything I can see, that he is violent.

It's that kind of permissiveness, the official stand where we go to the extreme, that I think the ATA has taken us to. We should be very careful in how we use this legislation. It authorizes that and permits it.

On the one hand, there's a denunciation factor, as we saw with the hate propaganda, and I agree on how important that is. But there's another side to this, and we have to be very careful. As legislators, as ministers, and as senior officials, we have to be very careful that it's not used.

In this particular case, and I have several others in my office right now, I believe there is an abuse going on.

• (1715)

**Hon. Vic Toews:** Your point then, to quickly interject, perhaps hearkens back to the point I made. The definition of terrorist activity may well lead to the profiling of characteristics that are not necessary for the purpose of determining what terrorism should be defined as. I think you're making the point that I had raised earlier.

Again, it's for the committee to determine.

**Mr. Joe Comartin:** Mr. Day, I'd ask you to look at the file. Your officials won't tell me anything about it, and they don't tell me about the other ones. They won't even let members of Parliament make an inquiry. They won't even admit that they've got the file, even though I know they do.

Mr. Toews, you've taken the position that you don't see—

**Hon. Stockwell Day:** I have to address that, Joe. I can't tell you as I sit here where in the process it is, but it is being looked at.

Information is shared with members of Parliament. You know there's an agreement that can be made from time to time, where the individual constituent would first have to agree that the information be shared.

**Mr. Joe Comartin:** I have that authorization in my file and you have it in yours.

**Hon. Stockwell Day:** I just didn't want people thinking that MPs are never told anything. If it's a matter of security classification, then there could be a restriction. But MPs are regularly given that particular ability.

On decisions related to citizenship, though, my department will be consulted if it's a security issue. Those decisions are finally left in the area of the Department of Citizenship and Immigration.

Also, if people have a concern about how something is being handled, there is an appeal process for everything CSIS does, through the SIRC process—through the Security Intelligence Review Committee, which is independent, arm's-length. The RCMP has an independent review also. As a matter of fact, there are a number of provisions for both the RCMP and CSIS that are arm's-length—they're not part of those organizations—for somebody having a complaint, and it is not uncommon to see that independent process rule in favour of the complainant.

**Mr. Joe Comartin:** We're the only country, Mr. Minister, that doesn't have a parliamentary oversight committee, among our traditional allies: the U.S., the U.K., Australia, and New Zealand. You know I've been bugging you, as I did your predecessor, to get that legislation forward, because frankly I do not have enough faith, whether in SIRC, or... Well, we know the complaints we've heard from the RCMP complaints commissioner and all the concerns she had that the system just isn't strong enough. We need something stronger to be sure that in fact, if there were abuse going on, we'd get it corrected.

**Hon. Stockwell Day:** I've shared the concerns with you on that, and the good work you and others have done, and I want to move that process along in terms of seeing what it could or would look like and whether there would be support for it. I want to see what's going to come out of the O'Connor commission. I share concerns similar to yours. I did when I was in opposition and I share similar concerns now.

**Mr. Joe Comartin:** Mr. Toews, we heard in the last round of the review of the ATA very strong concerns from charities—these aren't suspect charities, but the Red Cross, UNICEF—and their being very concerned about their charitable status because they are caught in an emergency situation.

Let me take the most recent one, the Pakistan earthquake. If they were in there, they might in fact run into some al-Qaeda. They might very well do that in the region where it was, on the frontier in Pakistan. And they were very clear.



We didn't hear this from any of the officials who came in front of us. In fact, if the election hadn't intervened, we were going to demand that those officials come back, because they didn't tell us about the problem. But we had a number of very significant charities who were worried.

I would suggest, sir, that you could you look at that and maybe go back to look at the evidence we took at that time. They are very concerned about their status. At times they think they have made decisions to not help in providing humanitarian relief out of fear that they might be charged and have their charitable status lifted.

**Hon. Vic Toews:** I recall that evidence. I think back in 2002 when the hearings were going on there were charities, I believe including the Mennonite Central Committee, that made some comment in that respect.

But perhaps my official can answer that.

• (1720)

**Mr. Bill Pentney (Senior Assistant Deputy Minister, Policy Sector, Department of Justice):** We at the department and other departments have met with charities who have expressed those issues. There are difficult questions of balance on both sides in trying to find an appropriate approach to it, because it's also the case that through the charities listing process a number of charities that had been operating within Canada have been listed because of their connections. There is a—

**Mr. Joe Comartin:** But those aren't the ones I'm talking about.

**Mr. Bill Pentney:** I understand that. Having said that, it is a process that is under consideration within the government now. Charitable status and listing and other things are the responsibility of a variety of different ministries, so it is something that is—

**Mr. Joe Comartin:** But we were given those same assurances from the officials. Then when the charities came forward later on in the process, they said, "Yes, we had some initial discussions. We never heard from the officials again. They won't talk to us." That was about a year ago, and I don't know what's happened since then.

**The Chair:** Thank you, Mr. Comartin.

Mr. Norlock.

**Mr. Rick Norlock:** Once again, I have a rather utilitarian question, but it really isn't. It has to do with prevention and preventing the terrible thing from happening.

Leaving aside the tremendous emotional and physical damage to people that it would cause, I'm wondering if your department, Mr. Day, has looked at the costs of doing business in order to prevent terrorism, to prevent the bad thing from happening, against the costs that would occur if the bad thing did in fact happen.

We have some examples that can help us do those costings. A lot of people will say these things are costing us too much money and that we should really put these dollars to another use. I'm looking primarily at the terrible experience of 9/11 and the huge costs. The whole world is paying for that, from the increased insurance costs to the need for countries to upgrade and learn from the mistakes made there.

Have you done a cost analysis with regard to prevention—in other words, the things that we're doing and their protracted costs over

several years? As well, if something bad happened, you might have a scenario, because we now know what some of the targets were; in that case, what would the cost be to provide social assistance to people who are not housed anymore, as well as everything else?

**Hon. Stockwell Day:** The well-intended concern you raised is something that.... I don't know that any of my officials have sat down and costed out all policing and security work, all border agency work.

You could argue it's all done from the point of view of prevention—stopping something from happening by the very existence of those policing and intelligence agencies. What you're really hoping is that you're deterring people from even thinking about doing it anyway, because the likelihood of being caught is great. That's one of the bases of security and police work. We haven't sat down to figure out what it would cost to replace the Parliament Buildings or a significant structure, but everything is done from that point of view.

That's why you saw an increase of \$1.4 billion going into increasing our policing and intelligence services in virtually every area imaginable. There is \$161 million going to increasing the number of RCMP personnel on the streets, cost sharing that we're going to be doing with the municipalities for 2,500 more personnel at the municipal level, and an increase of over \$300 million to the border agencies.

Everything we're doing is from the point of view of prevention, because we know that any cost analysis you do will show that if these horrific events do take place, the cost would be far greater to repair, to fix. And what price is a human life? It's all done from the point of view that it's better to deter and prevent these things from happening.

On the area you mentioned in terms of anticipating, you may recall—I'm sure you've done some of the reading on this—that former President Clinton himself admits his security people brought him the information related to Osama bin Laden, including where he was and things that could be done to stop it. None of that information went through due process of law; none of it was presented to a court. He himself says they should have acted on it. Now we're getting into the area of presumption, clearly, but some would say that had it been acted on, it might have avoided some of the multi-billion dollar costs of 9/11. That's just infrastructure alone. It does not even calculate the human loss, which is priceless.

It just shows the necessity of having good intelligence and good policing. It's all done from the point of view of prevention, because the cost of not doing it will always be far greater.

• (1725)

**Hon. Vic Toews:** If we just look at the costs to victims generally of crime in Canada.... And to give you some idea about that, when I participated with Minister Day at the announcement of the National Victims of Crime Awareness Week some months ago, cost figures were given to me in terms of cost to victims of crime of about \$70 billion in Canada on an annual basis. That's taking in all types of costs.

I know people will ask, isn't it cost-prohibitive to put people in a prison? Minister Day could probably talk about the \$100,000 a year on average of that cost, but how do you calculate the fact, for example, according to the evidence I heard in Vancouver, of a crack addict who steals \$1,000 of product a day, which is \$365,000 a year from one individual in direct economic cost? When we're talking about the terrorism issue, I think we're looking at other huge numbers. How do you calculate that? You'd probably calculate it as a part of the annual costs to victims generally in this country.

I want to stress the point that Minister Day made in respect of prevention. We use preventative mechanisms all the time in this country in order to protect individuals. Those preventative measures are, I would suggest, absolutely essential in a free and democratic society in order to preserve our rights in a free and democratic society.

There's the whole issue of bail, for example. No one has been convicted of an offence when that individual is taken into custody and then released on certain conditions. Those are preventative measures—pre-trial custody, preventative measures. They can often spend a couple of years awaiting trial as a preventative measure.

Section 810, which I talked about earlier, is used primarily in domestic situations where a spouse has reason to believe that—in most cases it is a woman—her life and safety are threatened, and yet the courts regularly impose measures designed to prevent that domestic abuse from occurring.

The hate literature laws—I view those laws in many ways as preventative laws to stop in its tracks certain reprehensible conduct, even though many might consider that it's an impingement on our free speech. Yet we use those types of mechanisms.

I would suggest that in this context preventative measures are no less an absolute necessity. To deprive the government and the people of Canada of those types of measures, I would suggest, would be foolish.

The committee, of course, is charged at looking at that. Can we improve that? I wait to hear what the committee says.

**The Chair:** Thank you, Minister.

We've got a couple of minutes to wrap up.

Mr. Cullen.

**Hon. Roy Cullen:** Thank you, Mr. Chairman. I'll be brief because you've been generous with your time.

I have two questions.

What do you do if the Supreme Court strikes down the security certificates? That's my first question.

**Hon. Stockwell Day:** I'll talk from a security point of view and then we can reflect.

We respect the process we have in this country. Obviously we have made our case, and so we wait to see. I can give the broad commitment that we will always put first and foremost the safety and security of Canadians. I respect the Supreme Court process and I don't want to prejudice it in any way by saying, what if?

• (1730)

**Hon. Roy Cullen:** You're not prepared to tell us what your plan B is today, right?

**Hon. Stockwell Day:** Did you glean that from my response?

**Hon. Roy Cullen:** I hope you have a plan B, and I'm sure you do.

**Hon. Vic Toews:** You're assuming that the legislation is somehow suspect. I think it is—

**Hon. Roy Cullen:** No I'm not assuming that, I'm just saying that it's not inconceivable that the Supreme Court will strike is down.

**Hon. Vic Toews:** It's not always easy to predict what the Supreme Court of Canada is going to do.

**Hon. Roy Cullen:** No.

The Canada Customs and Revenue Agency had introduced what was called a taxpayer bill of rights. Now, the customs part came over to the Canada Border Services Agency. Did they bring along with them the bill of rights? I'm using the term loosely. I don't know exactly what it was called, but it was basically in the Canada Revenue Agency to give taxpayers a knowledge of what they should expect in terms of fairness, equity, courtesy, etc. Was that imported into the customs part when it became part of the Canada Border Services Agency? I'm wondering if you've looked at incorporating some fairness or some guidelines so that people who come across the border know what to expect—whether they should be treated with courtesy, or what they can do if they feel they've been treated unjustly at the border.

It links roughly to this question about alleged racial profiling, but I think it goes beyond that as well. It just deals with what a person can expect at the border and what you are obliged to do as well.

Have you looked at the rights and responsibilities that you have when you come across a border and your recourse if you feel you've been unfairly treated? Have you looked at that, Mr. Day?

**Hon. Stockwell Day:** To be honest, on the taxpayer bill of rights as a specific item, whether that has been brought into...I'm not sure. I'm here today with Mr. Bill Elliott, former national security adviser, who now, just recently, is working in the associate deputy position within my portfolio. So I'll get an answer to you on that.

With anything that happens at a border, whether it's being assessed costs for a product you're bringing in, or for anything a person runs into, there's an extensive appeal process if they feel they are unjustly treated. I follow up if I get personal requests. Sometimes I get requests from people who feel they just weren't politely treated at the border. Those are followed up. CBSA looks into those and we get a full report back, keeping in mind there are between 70 million and 90 million border crossings a year. That's just on the land borders, so it's 260,000 to 300,000 people a day. In a month, I might get four or five complaints from people. Now, there are other complaints that might go elsewhere, but in every one of those cases, CBSA checks it, goes to the officer concerned, and in cases where they feel there might be some enhanced sensitivity and client appreciation training needed, that's provided.

**Hon. Roy Cullen:** I guess we have to be more specific. Under the former government, I think it was public knowledge that there was an initiative being launched to consult with stakeholders to set up the same kind of regime that was with the Canada Customs and Revenue Agency with respect to taxation issues, income tax, GST, the same sort of bill of rights, if you want to call it that, with respect to people, and the customs function within the Canada Border Services Agency.

So I don't know if you have had a chance to be briefed on that, or whether you're saying that's not an initiative you're going to be pursuing, or what.

**Hon. Stockwell Day:** I have a specific note that Mr. Elliott just passed to me. Just let me read it to you directly. It says:

Though it was now under the aegis of another department, the new border services agency, CBSA, continues to administer the decision appeal processes that were in place at the time. Recent discussions with CBSA officials have confirmed that while it is currently drafting its own client fairness program—that's in process right now—it continues to respect the spirit of fairness embodied in the "YOUR RIGHTS".

So that continues to be applied, and they're looking at improving on it.

**Hon. Roy Cullen:** Thank you.

**The Chair:** Thank you, Mr. Cullen.

Thank you, committee, and thank you, Ministers, for coming. We will be meeting tomorrow to decide the path forward. It's my personal view.... It will be up to the committee what we decide to do, but Ministers, once we've done our work, it may well be useful for us to call both of you back again.

So thank you very much.

**Hon. Stockwell Day:** We look forward to that. We look forward to your work and your recommendations. Thank you.

**The Chair:** The meeting is adjourned.

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