House of Commons
CANADA

Standing Committee on Public Safety and National Security

SECU • NUMBER 053 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Thursday, February 10, 2011

Chair

Mr. Kevin Sorenson

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● (0850)

[*English*]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Welcome, everyone.

This is meeting number 53 of the Standing Committee on Public Safety and National Security, Thursday, February 10, 2011. Today we will be continuing our study of Bill C-17, an act to amend the Criminal Code (Investigative Hearing and Recognizance with Conditions).

Members will recall that the Minister of Justice, the Honourable Rob Nicholson, and his officials testified before our committee on December 15, 2010, outlining the goals and the features of this bill.

Appearing before us today, we have, from the Canada Muslim Lawyers Association, Ziyaad Mia, chair of the advocacy and research committee. Welcome. From the British Columbia Civil Liberties Association we have Carmen Cheung, counsel. As well, from the Canadian Jewish Congress we have Eric Vernon, director of government relations and international affairs. We thank you for coming in response to an invitation sent only yesterday. From the Canadian Civil Liberties Association we have Nathalie Des Rosiers, general counsel. Again, thank you for coming on short notice.

Our committee thanks the panel for agreeing and making the effort to appear before us today.

I understand that each of you has opening comments; then we'll proceed into a number of rounds. We have two hours today, or just short of that. We'll proceed into two rounds of questions. Perhaps we can work our way along, starting from one end of the witness table.

Mr. Mia.

Mr. Ziyaad Mia (Chair, Advocacy and Research Committee, Canadian Muslim Lawyers Association): Thank you, Mr. Chair.

Good morning, Mr. Chair, members of the committee, fellow witnesses, and guests. My name is Ziyaad Mia, and I am representing the Canadian Muslim Lawyers Association today. Thank you for inviting me to participate in this session on this very important matter that we have before us.

The Canadian Muslim Lawyers Association represents various Muslim lawyers across this country. As some of you may know, we've been involved in the national security and anti-terrorism issues that have arisen over the last decade, quite deeply. We have a number of concerns and we have expressed them over the last ten years. Some of them were heard, some of them not heard. We hope that you will listen to us today and that we can engage in a discussion about our concerns.

One of our central concerns with this legislation and the general tone of law and policy in this area is that it is largely driven by fear. The problem with that is that fear does not develop good law and does not develop good policy. At the end of the day, in this climate that we have in the world in the war on terror, the culture of fear, unfortunately there is xenophobia. Muslim Canadians, Muslims around the world seem to bear the brunt of it.

That's not the essence of all I'm going to talk to you about today; it is one concern I have.

I also have concerns about having broad and blunt powers that are not precisely crafted put into the law, to sit there and maybe be used against other vulnerable minority communities in the future. At the end of the day, when you have poorly drafted laws, mistakes are made and innocent people's lives are destroyed. And that's a real thing. We read about in the papers, but at the end of the day, when the rubber hits the road, it's real people—real children and families—who are destroyed. And you can't put that back together through compensation alone.

So we have two major concerns. The first is that these laws that are before you today are not necessary. We have in this country a Criminal Code that is robust; there are a number of provisions, and I'm happy to engage you on them. But what we have before you today is legislation that takes us away from the fundamental protections in the Criminal Code and in the Constitution of this country, which are finely crafted to strike the right balance in respecting rights and getting at criminals and terrorists—because that's what terrorists essentially are. And we're watering down or in some cases possibly throwing away historic, fundamental protections that have been with us for centuries: on arbitrary detention, habeas corpus, judicial independence, and the separation of powers. These are not things to be taken lightly, and we are putting them significantly at risk.

My second point is that these types of powers run the risk of abuse. When we talk about this today, we can talk about all the examples we now have over the last ten years of the mistakes that have been made and innocent people's lives that are being destroyed. I don't think that's your aim and I don't think it's our aim at the Muslim Lawyers Association. We stand firmly with every other Canadian to stop terrorism in its tracks, but we need to make sure we don't catch a lot of innocent people in the process of doing it. It will stigmatize some communities, and as I said, there is the very real fear of scope creep, once we start to change the fundamental fabric of the legislation and the Constitution of this country.

Many people have come before your committee, and the rhetoric and the discourse are about “striking a balance” between national security and civil rights. I'll tell you one thing: I don't think we need to strike a balance. Because we have the Constitution in this country and the criminal law in this country, a balance has been struck. We don't have a system of absolute rights; section 1 of the charter is essentially a balancing mechanism. We as a community have decided to strike that balance.

What you're doing is moving that balance from one place on the spectrum to another, closer to security. That is fine, if you want to do that. But I don't think this is being discussed exactly in that way. We've been told that we're balancing things, away from absolute to a balance, when in fact what we have is a movement of that balance: we're moving and altering the fundamental social contract in this country and we're not having a proper public debate about it.

So it is a fallacious argument to say that we're striking a balance.

As we've said, our position before you on numerous occasions and in front of other committees is that these provisions are unnecessary. The fundamental principle of legal drafting is that you do not draft laws that are unnecessary, and you need to be precise in drafting.

● (0855)

We have—and we can talk about these provisions and you've heard about them before—the Criminal Code.

Section 495 of the code allows you to pre-empt criminal activity. It was fallacious for the previous government and for those saying it now to say that we need to stop the terrorists before they get on the plane and that we didn't have the tools to do that before. We did have the tools to do that before. They were called the Criminal Code and investigative techniques. We need to use those, I agree; we need to use those robustly. But to say that preventative arrest is needed because we need to stop something that might happen.... Well, we have tools that will do that.

There are the peace bond measures. Section 810 of the Criminal Code, as you know and as you've heard, has those protections already there, including for terrorism. Now, I may have some criticisms about how those may be applied broadly, in a civil liberties perspective, but they are there. And they're based on reasonable grounds, not reasonable suspicion; that's a very important point we should be talking about today. Part 13 of the code covers all sorts of preparatory offences—conspiracies, attempts, et cetera—and those address exactly what prevention is all about.

Basically, what I think we're doing today as a society is putting the cart before the horse. These are poorly designed laws, they're overly broad, they're loose, and they're giving police and the security agencies—although CSIS doesn't use these powers, their investigations lead into and feed into this system—loose, blunt powers, and they're ill-equipped to deal with them.

You know that there's a host of inquiries sitting on the table gathering dust: the Arar inquiry, the Air India inquiry, the Iacobucci inquiry. You have two cases, Almrei and Charkaoui, in which CSIS and the RCMP were roundly thrashed as incompetent, as not really understanding geopolitics in the way they should, so that we can catch real terrorists instead of wasting resources on other things. That's what we heard from Justice Mosley.

On top of that—forget national security—the RCMP is in a bit of disarray. You have the Dziekanski affair, which is a tragedy, a fundamental tragedy in this country: that an innocent man was killed and the RCMP then moved forward to mislead all of us. Not only is it an insult to our intelligence; it is fundamentally wrong.

There's a lot that's wrong with the RCMP. At this table two days ago you heard from the RCMP senior brass about what's wrong with the RCMP. We know that CSIS doesn't “get it”, as Justice Mosley says. They don't understand what *jihad* is. They had it all wrong with Almrei in the first case. They're chasing an innocent guy when they should be chasing real terrorists, putting the cart before the horse.

What you need to do is clean house with CSIS and the RCMP; implement the Arar commission's findings immediately; have that oversight, that transparency, those protections, so that we get our police and security agencies going after real terrorists—which is what we all want to do—while respecting the rule of law. Essentially, we have a picture of a security service and a national police force that are dysfunctional and in disarray, and you need to work with them to clean that house before we even consider any extraordinary new powers.

These are sunsetted provisions, which you're trying to bring back. The point of a sunsetted provision is exceptional power. If we keep renewing it, it's not an exceptional power anymore. Justice Binnie in the Air India case looked at the investigative hearings and raised that very concern. He raised this red flag: that if you keep renewing this, it is no longer an exceptional power. And from a rule-of-law and a democratic perspective, that is very dangerous. We are now at the point where we might have permanent emergency legislation, permanent exceptional legislation. I don't want to get into the constitutional theory, but it's fundamentally contradictory to our system of government and the rule of law. That is the kind of thing that you see Mr. Mubarak has: 30 years of emergency law. It's a bit absurd: it's a permanent emergency.

I'm not comparing us to Mubarak or the Nazis—obviously we're far from that—but I'm raising the issue because we don't want to start adopting measures that are indicative of those societies. Nazi Germany had legal theorists who said essentially that the leader decides when there's exception and when it ends. We don't have that; we have the rule of law and we have oversight over government. We have courts, checks and balances, and oversight over police and security services.

I'm telling you, we don't need to say “we'll just pass this for another five years”. Security agencies will always tell you they need more power. Every government agency and every institution will tell you they need more power and they need more money. That is just how things work.

● (0900)

I'll leave you with one reminder—I'm finishing up. I'm sure you're all familiar with Edmund Burke, a great parliamentarian. He was actually the father of modern conservatism; I have a lot of respect for him. More than 200 years ago he said that “the true danger is when liberty is nibbled away, for expedience, and by parts”. And I think that is what we have before us today: we're nibbling away by expedience—“let this one pass, let that one pass”—and at the end of the day we have nothing left.

Thank you very much for your attention. I look forward to your questions.

The Chair: Thank you, Mr. Mia.

We'll now move to Ms. Cheung, for ten minutes.

Ms. Carmen Cheung (Counsel, British Columbia Civil Liberties Association): Thank you very much.

Good morning. My name is Carmen Cheung, and I'm counsel with the British Columbia Civil Liberties Association. On behalf of the BCCLA, I wish to thank the members of the committee for the invitation and opportunity to present on Bill C-17today.

The BCCLA is a non-profit, non-partisan advocacy group based in Vancouver, British Columbia. Since its incorporation in 1863, the mandate of the BCCLA has been to promote, defend, sustain, and extend civil liberties and human rights around Canada.

We speak out on the principles that promote individual rights and freedoms, including due process and fundamental justice concerns in situations in which individual interests are affected or engaged by the state.

In December this committee heard from our colleagues with the International Civil Liberties Monitoring Group, La Ligue des droits et libertés, the Canadian Council on American-Islamic Relations, and others. The BCCLA echoes many of the concerns so persuasively voiced here already, namely that the proposed legislation does little to protect Canadians, while at the same time compromising many precious and hard-won democratic safeguards.

Let me start by addressing the preventative detention provision, which permits a holding of an individual without charge for up to 72 hours based on mere suspicion of dangerousness. When this provision was last in force in the Criminal Code, it was never invoked. Advocates for preventative detention point to this statistic as demonstrating restraint on the part of law enforcement agencies; we view it as evidence that such sweeping powers of preventative detention are simply unnecessary.

Protection of personal liberty is a fundamental value in Canadian society and indeed in any free society. Expanding the powers of the executive to detain people must be examined with the utmost scrutiny. Canadian principles of fundamental justice impose limits, both procedural and substantive, on deprivations of liberty. This means two things. First, the process through which any individual is subjected to detention must meet the requirements of fundamental justice. Second, the substantive reasons for any detention must be justifiable in a free and democratic society.

Detention without charge or conviction is deeply problematic, because it is based on a hypothetical. It depends upon speculating on the future dangerousness of an individual because of assumed propensity. Preventative detention is necessarily based on propensity reasoning, because if there were actual evidence of preparation to commit a terrorist act or of conspiracy to commit a terrorist act, then there would be grounds to lay charges for committing a criminal offence, and suspected individuals could be detained under the usual criminal law procedures. Stripping an individual's liberty when no offence has been found to have been committed or when no offence is even suspected to have been committed runs counter to basic principles of fundamental justice.

The Criminal Code, as it currently exists, contains more-than-adequate mechanisms for prosecuting past terrorism offences and preventing future ones. The sweep of terrorism-related offences in the Criminal Code is broad. As defined in the code, terrorist activity encompasses everything from conspiracy to the attempt or threat to commit an act of terrorism to the actual terrorist act itself.

The code also confers expansive powers on authorities to impose conditions on individuals who pose a danger to public safety. As you've already heard, this is reflected generally in section 810.2, and with respect to terrorism offences in section 810.01. As you've also already heard, as recent law enforcement investigations have shown, the terrorism provisions in the current Criminal Code are effective. They have been successfully used to protect the safety of Canadians and to disrupt prospective terrorist attacks.

Detaining individuals based on predictions of future dangerousness is a troubling proposition. Because the requirements of proof are relaxed, there is an increased chance not only of error or abuse, but of such errors or abuse going undetected and without remedy.

For example, it may be difficult to accurately assess whether the prediction of dangerousness is ultimately borne out. Let's say an individual is held in preventative detention and no terrorist attack takes place. The fact that no terrorist attack ensued may mean that by detaining the individual, law enforcement officials successfully disrupted a terrorist plot. But it may equally mean that the detained individual was not involved in any planned attack at all. Such uncertainties cannot be the basis on which Canadians and others in this country are imprisoned for any length of time.

On the other hand, prosecuting inchoate offences such as conspiracy permits the government to incapacitate potentially dangerous people and to disrupt terrorist plots before they can take place, but the evidentiary requirements for laying charges provides a measure of protection against mistake or abuse.

● (0905)

Separate from the deprivation of liberty associated with preventative detention, there is the stigmatizing effect of being labeled a terrorism suspect or an individual associated with terrorist activities. We believe it is fairly uncontroversial to say that the stigma associated with an accusation of terrorism is severe. Yet the system of preventative detention proposed in this bill would effectively brand an individual a terrorist even though law enforcement officials may not have any grounds to lay charges, let alone evidence to convict, now or ever. The potential harm to that individual's reputation and other negative impacts flowing from being labeled as a terrorist cannot be discounted.

With respect to the second substantive prong of Bill C-17, the reintroduction of investigative hearings, we would observe that such a mechanism effectively renders the courts an investigative tool of CSIS and the RCMP. Indeed, we would adopt the logic of Justices LeBel and Fish of the Supreme Court of Canada, when they found that investigative hearings such as the ones proposed here compromise judicial independence from the other branches of government, which is a cornerstone of our democracy.

Although writing for the dissent, Justice LeBel's and Justice Fish's words should have resonance for anyone who subscribes to the concepts of the rule of law and an independent judiciary. They wrote:

> Although a judge may be independent in fact and act with the utmost impartiality, judicial independence will not exist if the court of which he or she is a member is not independent of the other branches of government on an institutional level.
>
> ....
>
> Section 83.28 requires judges to preside over police investigations; as such investigations are the responsibility of the executive branch, this cannot but leave a reasonable, well-informed person with the impression that judges have become allies of the executive branch.

While the previous iteration of this investigative hearing provision may have been deemed "charter-proof", to borrow a phrase from Professor Kent Roach, that does not mean that these measures are truly compatible with the right against self-incrimination. As contemplated in Bill C-17, investigative hearings bear all the hallmarks of complying with the right against self-incrimination. We would submit, however, that they still do not comply with the spirit of the right to silence.

We believe that Professor Roach, of the University of Toronto Law School, perhaps said it best, with respect to the 2001 version of this provision. He wrote:

> Regardless of whether investigative hearings can or cannot survive Charter review, there is a strong case that they are unnecessary, unprincipled and unwise. Those who will talk will do so without the threat of prosecution. Those who will refuse to talk or who lie will likely not be deterred by the threat of continued detention or prosecution for failing to obey a judicial order or for perjury. More fundamentally, it is unworthy to abrogate centuries of respect for the right to silence and the right against self-incrimination during police investigations. Attempts at Charter proofing, in the form of judicial authorization, right to counsel and use and derivative use immunity, should not take away from the fundamental damage that investigative hearings will do to our long traditions of adversarial criminal justice.

And indeed, while the Supreme Court did find the 2001 investigative hearing provision to be constitutional, it made that finding only after reading into the law what had not been expressly provided by Parliament. It placed limits on the use of investigative hearings. Specifically, it held that information gathered could not be used against an individual in any kind of proceeding, including extradition or deportation hearings or proceedings in foreign jurisdictions. As it is currently drafted, however, the investigative hearing provision fails to reflect those requirements and leaves open room for potential misapplication of the law. Given the danger that the information compelled through investigative hearings could potentially be used against Canadians or others abroad, perhaps by countries where human rights protections are not as robust as those found in Canada, we are deeply concerned that the Supreme Court's direction has not been codified here.

Finally, we wish to note that while the provisions at issue here, like their predecessors from 2001, are accompanied by sunset clauses, we fear that putting these measures in law again will be far from temporary. We urge you to refrain from passing this legislation and giving it a state of de facto permanence in Canada. Canada has historically served as an example among nations of how democracy, freedom, and the rule of law can be upheld on an ongoing basis. But we must be vigilant in protecting these values. The measures proposed by this bill have afforded no demonstrable gains in combating terrorism and instead would work to erode the democratic principles and ideals that we seek to protect.

● (0910)

I'll end here for now. Thank you again.

The Chair: Thank you, Ms. Cheung.

We'll now move to Mr. Vernon, please.

Mr. Eric Vernon (Director, Government Relations and International Affairs, Canadian Jewish Congress): Thank you very much, Mr. Chair.

Thank you for the opportunity, even as late in the day as it came, to appear before this committee as it studies this important legislation.

I am delighted to be here on behalf of Canadian Jewish Congress, which for over 90 years now has been the advocacy voice of the Jewish community of Canada and a voice for human rights for all Canadians.

● (0915)

[*Translation*]

Thank you for the invitation to present the Jewish community's views on antiterrorism in Canada and on Bill C-17.

[*English*]

Let me begin by stating clearly that Canadian Jewish Congress supports Bill C-17. I think it's good that I understand what it means to be a minority, because I clearly am one at this panel. At the same time, we would examine with interest any amendments that this committee might eventually recommend after completing its review towards strengthening the legislation as part of the overall anti-terrorist regime in Canada.

It will come as no surprise, I'm sure, that Canadian Jewish Congress has for many years, and well prior to 9/11, been a strong advocate for a comprehensive and effective counter-terrorism regime in Canada on behalf of a community that is essentially twice targeted—that is, both as Canadians and as Jews.

In our brief on the legislation establishing CSIS, the Canadian Security Intelligence Service, CJC noted, and I quote:

> If terrorism is allowed to implant itself in Canada because we are reluctant to establish realistic measures to prevent it, its impact will spread beyond any particular community to affect Canada as a nation and in the international forum. As terrorism grows more organized and more international in scope, so must the efforts to contain it be more organized, serious, and efficacious.

Members of the committee, that brief was submitted in April 1984, almost 27 years ago, and yet in the aftermath of September 11 it became clear just how unprepared Canada was in dealing with the threat of international terrorism and its domestic manifestations. Canadian Jewish Congress was therefore gratified by the government's introduction of then Bill C-36, including the two ultimately sunsetting clauses that lie at the heart of Bill C-17 now.

To date, thankfully, Canada has been spared the agony of the suicide bombings and attacks that, at least since the turn of the new century, have become a commonplace weapon in the terrorist arsenal. But our nation has certainly not been immune to terrorism, not least the tragic events surrounding the bombing of Air India flight 182.

Canada's Jewish community has been targeted for terrorist violence by the likes of Ahmed Ressam and Jamal Akal, and beyond that we cannot but see the community's security in the context of the vulnerability of and attacks on sister communities elsewhere in the world, both before and after September 11, 2001.

Given the multicultural and pluralistic nature of its society, Canada is especially vulnerable in an increasingly interconnected world to terrorist infiltration. While the vast majority of ethnic, cultural, and community groups and their members pose no threat, terrorists are well positioned to exploit, intimidate, or attract individual fellow ethnics and/or co-religionists into supporting, financially and otherwise, and providing valuable cover for their activities in one way or another. We have already had a glimpse into the potential for homegrown radicalization, and if that weren't enough, we have the examples of the U.K. and elsewhere in Europe to ponder.

From our perspective, it was a decided strength of the Anti-terrorism Act that it set its primary sights on prevention of terrorist acts rather than the apprehension and punishment of perpetrators. Potential terrorist operations, or those discovered in progress, must be thwarted immediately. The powers of recognizance with conditions and investigative hearings introduced by the act remain important for the attainment of this purpose. Though having been sparingly used, as we know, it is still important to have these powers available to our security and police forces, because the best and first line of defence against terrorism is effective and timely surveillance and intelligence gathering, intrusive though they may be at times.

We believed in 2001 and continue to believe in the importance of granting expanded powers to the security services through recognizance with conditions and investigative hearings for the careful monitoring of individuals and groups that are suspect and the amassing of relevant information well in advance.

Now, since the passage of the Anti-terrorism Act, Canadians have been passing judgment on how well it met the most fundamental challenge facing any democracy, namely, how to provide for the safety and security of its citizens while minimally impairing the basic civil liberties that underpin their society.

The two sunsetted measures clearly provide a stern test to any democratic society. In fact, these two provisions seem to epitomize the zero sum game of protection of security versus protection of human rights. And as we know, they ultimately died on the floor of the House of Commons.

● (0920)

From our perspective, one need not approach the debate from the either/or perspective of security versus rights. If terrorism is rightly regarded as an assault on human rights, it stands to reason that the implementation of counter-terrorism measures necessarily protects the highest priority rights of life, liberty, and the security of the person—the foundation of all other rights and freedoms.

Now, the corollary of course is that these actions themselves must always be rooted in and comport with the rule of law. A properly framed and implemented counter-terrorism policy enhances civil liberties and core charter values and protects them as part of the way of our life, whose essence is threatened by terrorism.

A look around the world clearly tells us that terrorist acts remain a clear and present danger, and our security and police personnel must have sufficient authority to take preventive action to interdict possible attacks before they occur. Nonetheless, we are fully cognizant of the potential severity of these measures, and we are heartened that Bill C-17 provides additional safeguards to reassure Canadians' concerns about the possible adverse impact of these measures.

Members of the committee, the most fundamental role of the state is to protect the safety and security of its citizens and the core national way of life. Governments such as ours must thwart the efforts of those who would use our open society against us and then shut it down, while at the same time we must be sure not to impair the very democratic nature of that society. But it would be the ultimate irony if in striving to maintain civil liberties we strip authorities of the necessary powers to stop terrorists and extremists from destroying our open and free society.

In our respectful submission, Bill C-17 deserves expeditious passage, as it successfully meets the challenge in restoring the authority for the use of recognizance with conditions and investigative hearings while providing additional safeguards for fundamental civil liberties and rights.

I thank you for your kind attention and look forward to your questions.

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

We'll now move to Ms. Des Rosiers. Welcome back.

[*Translation*]

Ms. Nathalie Des Rosiers (General Counsel, Canadian Civil Liberties Association): Thank you very much.

I want to thank the committee for having invited the Canadian Civil Liberties Association to appear. I will make the first part of my remarks in French and the second in English.

The Canadian Civil Liberties Association has existed since 1964. It has always worked to defend the rights and freedoms of Canadians. We will make four proposals as part of our submission.

The first is that in its current form, Bill C-17, An Act to amend the Criminal Code (investigative hearing and recognizance with conditions) contains major flaws and problems that must be remedied.

Secondly, like other rights and freedoms advocacy groups, we question the need to proceed this way and to adopt the bill in its current form.

Finally, I won't repeat what has been said by my colleagues, but I simply want to present the international context surrounding the bill. I will begin with that proposal.

This is an opportunity for us to take a sober look at provisions adopted in 2001, which expired in 2007 because of a provision, and to determine now if they were appropriate and necessary.

This is being done in a context where we hear the United Kingdom is preparing to review the use of control orders which had been used consistently as of 2001.

One of the reasons why many people say that Bill C-17 is not that dangerous is that these measures have not been used excessively by our police forces. Despite that, it creates a precedent in terms of commitment and in the context of international law. It becomes a precedent for other countries in the world who will look to and use the Canadian precedent.

The only guarantee that Canadians had in the face of these powers is that they were not abused and were almost never used. The same will not be true in other countries. Given Canada's leadership role in terms of international human rights, it is important to look at whether this is the right time to introduce a legal tool which fundamentally questions some of the principles around which our system is organized. That is one of our proposals.

● (0925)

[*English*]

I won't repeat what my colleagues have said. I just want to stress a couple of ways in which the bill stresses our system and its fundamental tenets. There are three tenets, I think, of our system that are at odds with the premise and the economy of the bill, and I think that's why we, as civil libertarians, are searching within this bill for guarantees.

The first one is that, obviously, we live in a system where judges are not inquisitorial judges. They are judges who work and are trained in the context of contradictory evidence. Indeed, I think one of the ways in which we have been able to fine-tune our system of counter-terrorism.... Canadian civil liberties all support the idea that the government has a duty to engage in counter-terrorism. What we're debating here is whether this is the best way. It's not to question the effort; it's to ensure that indeed it does what it seeks to do.

We have responded in other contexts by insisting there be special advocates, to ensure that judges are not put in a position to be inquisitorial. They're not trained for this; it is incompatible with the way in which they are proceeding. But this is not present here. Contrary to what happened after the Charkaoui decision, we are not seeing here a recognition that there needs to be.... If you're going to take someone and threaten his or her liberty in front of a judge in a context where the judge will have to rely on the information provided, you need to balance this by having at least a special advocate. That's what we've learned in other contexts, and I think this, indeed, should be looked at in this context as well.

The second tenet of our system that I think is fundamentally challenged by Bill C-17 is the one referred to earlier. It's the fundamental tenet that you ought not to be detained, arrested, or subject to punishment unless there is a format or a framework by which the accusations and the evidence against you can be tested and at the end of the day you are found to be guilty or not, and that's the end of it.

This process allows preventative detentions that threaten the concept of strong protection through habeas corpus. It creates a fracture in our legal thinking, and that's why people react to this with such visceral fear. It was a great advancement in law and legal thinking to insist that a king not be able to put people in jail simply because he was afraid that something might happen to threaten public order. The writ of habeas corpus was a great advancement in saying it is inappropriate to detain people without having a process to fundamentally challenge the evidence on which you are being detained. That's why people react with such fear to this case in which preventative detentions are being normalized in the process.

Finally, the third principle of our system is that there is no obligation for Canadians to cooperate with the police. Here, they are forced to come and give testimony in front of a judge. As Kent Roach has said numerous times, some people will tell the truth, some people will lie, and indeed they will not cooperate more because there's a threat of being incarcerated.

Now, let me go through the different dispositions and look specifically at some of the challenges they present and some of the ways in which they ought to be.

In our view, the bill should not proceed. It's not necessary and it's not the way to go. But if it is to proceed it must have additional guarantees that are not there.

● (0930)

The first guarantee is under proposed section 83.28. There is no guarantee that this indeed will not be relying on evidence obtained under torture. That's a significant issue. What we would suggest is that there be a commitment that there be included a specific reference saying that there is an affidavit from CSIS, an affidavit from the police, which is being recognized by the judge, as to the evidence's not having been obtained under torture.

We're insisting on this not only because there is a general prohibition around the world against torture and Canada should be part of it, should be an instrument, a model on this. It's also a good signal to say to other countries that whatever evidence they would want to lead in will not be acceptable. But what is interesting as well is that it protects our system from being polluted by the fact that some evidence obtained under torture may have found its way somewhere. If everybody along the system has to guarantee that to their knowledge—and they do the investigation—the evidence has not been obtained under torture, we improve the guarantee that the system will not inadvertently be an instrument of perpetrating torture.

One concern that has been raised, and I think my colleague has raised it, is that it does not protect testimony from being used in proceedings outside of Canada. This was mentioned by the Supreme Court. This is not in the bill; it should be in the bill.

As well, it should not be used against members of the family of people who testify. That's another aspect. Many people who could be compelled here will be shunned for sure by their community but will expose themselves to great dangers, and there's no provision here to ensure their protection.

I know my time is running out, and I just want to make sure that.... Let's see: no special counsel proceeding has been.... There has been no guarantee that no evidence has been obtained under torture....

There are no boundaries to the conditions that can be imposed by the judge, and I think there should be a way in which these conditions are reviewed and found not to be unnecessary.

Finally, there's no right of appeal. There should be a right of appeal.

The Chair: Thank you very much to all our witnesses.

We'll move into our first round of questioning.

Mr. Holland, you have seven minutes, please.

Mr. Mark Holland (Ajax—Pickering, Lib.): Thank you, Mr. Chair, and thank you to the witnesses, each of you, for very compelling testimony.

I think we recognize that the initial provisions came into being immediately after September 11. At that time there was a feeling that we needed to act as quickly as possible to do something to give extra powers to police, but I think wisely those provisions had sunset clauses to allow the country—Parliament, Canadians, and the judiciary—to examine both the necessity and the applicability of those provisions.

Over that period of time, we have heard, as the witnesses have said, from the Supreme Court. We have also heard from the former head of CSIS, who says that these provisions are unnecessary and don't provide any additional security.

But I have to say that I've also been moved by seeing the faces of security and intelligence failures: Maher Arar, Mr. El Maati, Mr. Nureddin, Mr. Almalki, and others. There were a couple of other cases referenced as well by Mr. Mia.

Let me just say to Mr. Vernon, I have to reject the premise that the suspension of due process or civil liberties for the possibility of greater collective security is unto itself not enough, because the danger of that argument is that it has no end. That argument could continue to the point that it fundamentally destroys the things that are most fundamental and important about what we're trying to protect.

The question here is, if you are going to suspend the civil liberties of an individual, if you are going to suspend due process, can you demonstrably prove two things: first, that you are in fact making substantive improvements to collective security; and second, that you have vigorous and robust oversight to ensure in those circumstances that the power will not be misused or that the powers will be restrained or that, if mistakes happen, they will be immediately caught and rectified?

On the first point, I am yet to hear in the testimony that we've had over the three meetings we have held any concrete examples of specifically how these provisions would achieve my first point. In fact, we've heard the former director of CSIS, who was responsible for oversight of all intelligence services in this country, say—not before this committee, but publicly—that these provisions fail in that first measure.

The second one is, I think, even more important, and I would bring this question first to Mr. Vernon. The second one deals with oversight. We have O'Connor, Iacobucci, Brown, the Standing Committee on Public Safety and National Security, Mr. Kennedy, Mr. Major, all of whom have brought out recommendations on oversight, the vast majority of which are unanswered. We have many departments involved in intelligence today that have no oversight: Immigration, as an example; the Canadian Border Services Agency, as an example.

Would you not agree with me, Mr. Vernon, that prior to the continuation or the re-institution of any extraordinary measures, we would first have to make sure that security and intelligence oversights, failures, and deficiencies that exist today are repaired?

● (0935)

The Chair: Mr. Vernon.

Mr. Eric Vernon: Thank you for your questions, Mr. Holland.

I think that it would certainly be in the best interests of the country to have those recommendations examined carefully and the ones that are deemed to be effective implemented, but I don't see that as a necessary first step towards maintaining these powers. We're not talking about powers that have been exploited or abused at all. This notion that these powers are some kind of first step down the slippery slope to fascism or some kind of jack-booted changes in our fundamental way of life I don't think holds water.

So I don't think that the changes that are being recommended in this bill need to be held hostage to the implementation of recommendations of other inquiries.

Mr. Mark Holland: My point, though, Mr. Vernon, is that these are not examples in abstraction; these are very specific examples. I have given you very specific names of Canadians who found themselves detained and tortured in foreign jurisdictions. According to Canadian inquiries, it was the failures of Canadian intelligence and security that led to their detention and torture. Those individuals faced horrific circumstances as a result of failures here in Canada and because of a lack of oversight that was in place in this country.

So I'm asking you, not in some vague abstraction but with great specificity, should we not ensure that we fix those deficiencies before giving, or even contemplating, expanded extraordinary powers that would have the potential, if there were not vigorous and robust oversight, to produce other such failures?

Mr. Eric Vernon: I think the second part of your formulation is probably something we'd be more sympathetic toward. Obviously the impact on the lives of the individuals you have mentioned is not something we take lightly, but it seems to me that having these powers in place did not necessarily mean that they're going to be improperly used or that they represent some kind of a thin edge of the wedge of the destruction of our democratic way of life.

If you have some specific proposals that will enhance parliamentary oversight, I think that would be very important. We'd certainly be interested in looking at those.

Obviously our police and security services are made up of human beings. There are mistakes. There are flaws. But the systems are in place. There are additional safeguards placed into this bill. If you have a couple more, one or two key recommendations, we'd be happy to look at those.

Mr. Mark Holland: I know I have a very limited amount of time, but I would like to hear from one or some of the other witnesses on this point, because I think the issue of oversight's an important one.

I agree, Mr. Vernon, people are human. Failures happen. It's the reason why we need to have vigorous and robust oversight. In my estimation, for the reasons that I outlined, I don't feel that it's present, and I'm wondering if I could hear perhaps from some of the other witnesses on the import of that.

Mr. Mia.

● (0940)

Mr. Ziyaad Mia: Thank you for your question.

The Chair: Very quickly, Mr. Mia. We're already a minute over, so very quickly.

Mr. Ziyaad Mia: I talked about the balance. Just to address your first question, due process and the adversarial process set that balance to find the truth to avoid mistakes while catching criminals.

And to Mr. Vernon's point, this isn't an issue about parliamentary oversight, sir. The Arar inquiry identified massive failures in the security and intelligence policing—CSIS, the RCMP, others—massive failures that led to the destruction of a human being, of a Canadian's life. Everybody makes mistakes, and that is why we need oversight. He didn't recommend pitches and patches. He recommended a robust oversight system that covered all security agencies, because if we're going to play in this game of national security and terror in the world, we better have a check and balance, and that's what he's talking about.

The Chair: Thank you, Mr. Mia.

We'll now move to Madame Mourani, please.

[*Translation*]

Mrs. Maria Mourani (Ahuntsic, BQ): Thank you, Mr. Chairman. Welcome everyone, and thank you for coming today.

Ms. Cheung, you are from British Columbia. You undoubtedly followed the saga involving Mr. Fadden. He stated in the media that there were agents of influence in British Columbia. Elected municipal officials are allegedly agents of influence from China. I would like to...

[*English*]

The Chair: On a point of order, Mr. Rathgeber, please.

[*Translation*]

Mrs. Maria Mourani: I hope I won't be interrupted each time...

[*English*]

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Mr. Chair, you'll note from today's agenda that the order for the day is to examine Bill C-17. I am not even remotely convinced that this line of questioning could in any way, shape, or form fall under an inquiry with respect to Bill C-17.

The Chair: Thank you, Mr. Rathgeber.

I try to give as much latitude as I can to the line of questioning, but I'll tell you, relevance is something that we do try—especially on legislation—to keep. So I would ask you to be relevant to Bill C-17 and to the idea of terrorism. I'll give you some latitude, so continue, Ms. Mourani.

[*Translation*]

Mrs. Maria Mourani: Mr. Chairman, if Mr. Rathgeber let me finish my remarks, he would perhaps understand their relevance. Furthermore, I hope that this will not be taken from my time.

[*English*]

The Chair: No.

Mrs. Maria Mourani: Thank you.

[*Translation*]

As I was saying, Mr. Fadden told the media that elected municipal officials in British Columbia were agents of influence. I am sure that you followed that closely. Do you really think we should give additional powers to an agency like that headed by a person like that?

[*English*]

Ms. Carmen Cheung: I'm not sure if that's precisely what's at issue here. Certainly I think that CSIS has an important function in this society and in protecting Canadians. The accusations made by Mr. Fadden with respect to potential foreign influences from the Chinese community or Chinese people is deeply troubling, but what we are concerned about really is whether these powers are even strictly necessary. It's not so much an issue of should they be given to CSIS or RCMP or whoever, but whether these powers are necessary at all.

[*Translation*]

Mrs. Maria Mourani: You were referring to discrimination earlier on and that is what I would like to focus on. Mr. Mia, you may also respond to this question.

I have heard of a number of situations, in particular in Montreal, but this must also be happening elsewhere throughout Canada. You can tell me if I am mistaken. I have heard that young Muslims are being harassed by CSIS in its investigations. In some cases, someone went to their homes and left a card with simply their first name on it, etc. I will admit that I am concerned about this bill which would grant even more powers to an agency that already seems to have too many. These young Muslims told me that they had not been advised of their rights, nor had they been accused of anything.

There is already discrimination against the Muslim community. Can you tell me how this bill may make it even worse?

[*English*]

Mr. Ziyaad Mia: Madame Mourani, thank you for your question.

That is a real concern in the Muslim and Arab communities since September 11, 2001, since the Anti-terrorism Act came into play. We're not discounting the fact that, yes, people are suspicious. There are issues in the world today that might lead a normal human being towards.... That's what we call prejudice and discrimination; we all do it. The point there is that we need to check that. I think we all agree that we want to prevent any harm coming to anyone in Canada from illegal acts of any violence—including terrorism, because it's a mass scale of violence.

But to your point, I know that in previous testimony, if I can give a bit of a preamble, people have said: these powers haven't been used, so how can they be discriminatory? It's not really the hard use. You'll probably see that they won't be used a lot. But what we have found in the last ten years is that CSIS, the RCMP, other police agencies, but mostly those two agencies, will demonstrate the “soft abuse” of these powers. They go to vulnerable people—immigrants, refugees, those who are the most vulnerable, but also to other Canadians who are Muslim, or Arab, or maybe seem to be those things—and they are told, “You know, we have these new powers, so if you don't cooperate...”. So it's “play ball with me, or else I have this big stick”.

Not everybody is schooled in the law. I've been to many mosques and community centre events where young people, older people, anyone...their computers were taken. CSIS does not have any police powers. They don't have the right to seize property, arrest, search—nothing. You can tell them to go away. I had people tell me they just handed over their computers to CSIS because they were told they needed to do this.

● (0945)

[*Translation*]

Mrs. Maria Mourani: That is because they do not know their rights.

[*English*]

Mr. Ziyaad Mia: Exactly.

[*Translation*]

Mrs. Maria Mourani: Many of these people are not even Canadian citizens. They do not know their rights and are afraid of CSIS—someone walks into their house, gets a suspicious look on his face when catching sight of the Koran and asks if they are involved in jihad. Well, I find it absolutely incompetent to assess risk like this, to assess a person's likelihood of committing a terrorist attack based on symbols. I have concerns about CSIS. I have been watching them for a while. They are watching, but I am watching them too and this incompetence worries me. If we have to count on these people to protect us, I am wondering if we will be protected the way we should be. In my opinion the current risk analysis for terrorism is based on cultural criteria rather than clear intelligence. That is what I am seeing out in the field. Am I wrong?

[*English*]

Mr. Ziyaad Mia: I think you're correct in your assessment. We're not saying CSIS and the RCMP aren't needed. They're needed to do certain things, as Ms. Cheung has pointed out. CSIS has to protect Canada from threats to Canada. Yes, that is their role.

But CSIS actually arose from a wrongdoing of the RCMP. The McDonald commission gave rise to CSIS. The Emergencies Act came out of the misuse of the War Measures Act, because we wanted to control, when we needed to do things to protect Canada in extreme cases.... We have rule-of-law-based mechanisms to do that.

The problem I have with this type of legislation and security certificates and the others is that there's not a lot of oversight. The Supreme Court struck down security certificates because there wasn't that oversight. What happens is the abuse of these powers. My cart-before-the-horse argument is essentially this: CSIS and the RCMP have major problems; they need to go down to the basement and have a little bit of a think and bring in a facilitator and work things out, before they come out and we give them more powers.

Justice Mosley, in the Almrei decision—

The Chair: Go very quickly, please.

Mr. Ziyaad Mia: —some of it is quoted in Craig Forcese's paper —roundly thrashed them. They don't even understand what jihad is. They made mistakes between a Chechen rebel and al-Qaeda. They were making fundamental mistakes in cases in which all you need to do is read a newspaper or know a little bit about the region. But they don't want to work with the Muslim community in this country, and that's why they don't get it.

So while they're chasing red herrings, real terrorists may be getting away.

The Chair: Thank you, Mr. Mia.

We'll now move to Mr. Davies.

Mr. Don Davies (Vancouver Kingsway, NDP): Thank you, Mr. Chairman.

I have to make a couple of points that seem evident to me from the beginning. One is that I'm also concerned about what I perceive to be a circular argument, which is that in order to protect civil liberties we may have to violate civil liberties.

Excuse me, Mr. Chairman, I can't even hear myself.

The Chair: Could we have some order, please?

Go ahead, Mr. Davies.

Mr. Don Davies: Thank you.

So it seems circular.

I also think that we go down a dangerous slippery slope when we start saying that in order to protect our way of life and our civil liberties, I may have to violate the civil liberties of other people.

The second concept that comes to my mind is the question of onus. It seems to me that a fundamental feature of the fabric of Canadian society and western democracies is that we as individuals have certain fundamental rights. Those rights are primary, and the onus is on the state to make a case as to when those rights are properly abrogated.

I heard mention of the Charter of Rights and Freedoms. Yes, we are given fundamental rights as individuals, and those rights may be abrogated, if the state can justify an abrogation of those rights "as may be justified in a free and democratic society". It's not for individuals to justify why they're entitled to their rights. As a matter of being Canadian citizens, as a matter of fundamental liberty in our concept of democracy, we have those rights until the state justifies otherwise.

I want to talk a little bit about what we're dealing with here. We're dealing with the concept of giving police officers the right to preventatively arrest based on suspicion, and we're talking about compelling testimony from people—forcing people to testify. Both of these are significant departures from our current legal system. In fact, I'm going to quote the CBA, which says:

> These powers, especially the power to conduct an investigative hearing, represent a significant departure from powers traditionally available to investigate criminal offences.

I'm going to try to go to some fact. If we're talking about a justification for these powers, I think the place we must all start from is the objective evidence. Now, we all know some basic facts, but I think they bear repeating.

This is what we know so far: that these powers were introduced in 2001, and in ten years they have been used precisely once—once in a decade. We know that since the original bill sunsetted—since 2007, when these powers have not been in place at all—we have not had any occasion to utilize these powers. We also know that since those provisions were allowed to sunset, Canadian criminal law has continued to operate effectively.

I also want to quote from the Canadian Bar Association submission that we received, and then I'll ask for some comment on it, if I can. It said we must:

> ...recognize that rules and procedures in Canadian criminal law, as they existed prior to the addition of sections 83.28 and 83.3, were effective in protecting people within Canada from the harm caused by criminal offences, including those associated with terrorism.

And CBA has identified themselves as the national voice of the legal profession.

Here's my question. If we put these laws into place, which were used once, we have the Canadian Bar Association, the national voice of the legal profession, telling us that the criminal laws we had at that time and since are totally effective in preventing terrorism. We also know that, standing in distinction to the fact that they were used only once, I can name you five cases of serious violations of Canadians' human rights: Messrs. Arar, El Maati, Almalki, Nureddin, and Charkaoui.

Can any of you comment on the evidentiary basis, the objective base that we as parliamentarians would possibly have to proceed with a law that so fundamentally alters our Canadian legal system?

● (0950)

The Chair: Thank you, Mr. Davies.

Go ahead, Madame Des Rosiers.

Ms. Nathalie Des Rosiers: That's the reason for the sunset clause. When it expires, you evaluate the evidence you have in terms of the dangers the changes seek. I think it's no coincidence that at the same time as we are doing this exercise—and we should do it thoroughly, by looking at the evidence we have of abuses on one side and at the lack of these provisions.... Particularly since 2007, when these provisions were sunsetted and so haven't been in force, prosecutions for terrorism acts have occurred. So it's not as though the police have been unable to act. On the contrary, I think they have been able to act.

It's no surprise that now, in the U.K., they are re-evaluating whether the strong and difficult and dangerous tools, such as control orders, ought not be re-evaluated.

The idea of stepping back, saying that this was not necessary, is no longer necessary, and is not the best way to go—that it's better to invest in better intelligence than to simply give more powers—I think may be a better assessment at this stage.

● (0955)

Mr. Ziyaad Mia: Thank you for your question.

I agree with Ms. Des Rosiers.

I don't like prognosticating forward or backward. But if I can use one example, you've been told by the minister and security agencies, such as the RCMP, that they need these new powers. They have a lot of powers, and they're not using those very well.

Let's look back 25 years. The real, significant terrorist attack Canadians suffered—and as an Indo-Canadian, I can tell you, that was not acknowledged for ten years as a Canadian tragedy, which, as an Indo-Canadian, I find a bit insulting—was the Air India terrorist attack. Let's pretend that we can go back in time and give CSIS and the RCMP these powers. Would that have saved those Canadians and others? I don't think so. Let's look at what Justice Major, in his findings, said. I'll just give you a couple of little snippets that caught my eye. He said that CSIS surveillance was ineffective, that "Surveillants were unable to distinguish one traditionally attired Sikh from another."

The Chair: Be very quick, Mr. Mia.

Mr. Ziyaad Mia: He said that “CSIS failed to include important information...”; that “The RCMP wasted resources...”; that “The concept of 'specific threat' was misunderstood...; that there was a “lack of cooperation” between the RCMP and CSIS.

The RCMP failed, failed, and failed.

The Chair: Thank you.

Mr. Ziyaad Mia: At the end of the day, that's the problem, not new cops.

The Chair: Thank you, Mr. Mia.

I'm sorry, Mr. Vernon. I'm going to have to cut it off there.

We'll go to Mr. Rathgeber, please.

Mr. Brent Rathgeber: Thank you, Mr. Chair.

Thank you to all the witnesses for your attendance today and for your interest and concern on this very important and sometimes difficult topic.

To Mr. Mia, would you agree with Mr. Vernon's statement, and a statement that's been said by others, that the first duty of the state is to protect the safety and ensure the security of its citizens?

Mr. Ziyaad Mia: I don't think it's an either/or situation. I think it is in a bundle of things the state has to do. If all the state has to do is protect your security, you could take away all rights, and we'd be pretty secure. But I don't think that's the society we live in.

I think the real issue is that the state needs to provide security to its citizens so that they can enjoy liberty. Security is the fundamental basis for the things we take as valuable: liberty, freedom, and the right to come and do these things without fearing that we're going to be persecuted for speaking freely.

Mr. Brent Rathgeber: Okay, but you will agree that without safety and security, there is no enjoyment of life, liberty, security of the person, pursuit of happiness, or anything.

Mr. Ziyaad Mia: That's a foundational thing. I don't want to walk into the “baby and the bathwater” thing, where we throw out the baby with the bathwater trying to keep us so secure. You can have a total security state where we give up all rights. We would be physically very secure, but I think in a democracy such as ours we decide to take some risks in society. We all agree to take some risks. Otherwise, we'd just have the police stopping everyone on the street making sure that they're not criminals. We tolerate some amount of risk in society. That is the nature of living in the world. This building could collapse tomorrow. There's a probability of risk. We built it to 98% but not to 100%, because you couldn't do that. That's just the nature of life.

Mr. Brent Rathgeber: Are you or any members of the panel aware that on January 20 of this year, an individual was arrested in my city, the city of Edmonton? He was wanted by U.S. authorities based on terrorist charges and charges for murder based on actions that allegedly occurred in Afghanistan.

Mr. Ziyaad Mia: I don't know the details of it, but I'm generally familiar. I heard about it on the....

Mr. Brent Rathgeber: Is anybody else aware of that situation?

Now, with respect to this concept of preventative arrest, I'm troubled by a number of your comments, Mr. Mia, and also by yours, Ms. Cheung. You state that this proposed legislation, Bill C-17, is not necessary and is open to abuse. You cite correctly a number of Criminal Code provisions that deal with charges that can be laid for conspiracy and for attempts. But you'll have to agree with me that those existing provisions of the Criminal Code deal specifically with issues and allegations that have occurred in the past.

Mr. Ziyaad Mia: No.

Mr. Brent Rathgeber: You don't agree?

Mr. Ziyaad Mia: I don't agree with that.

Mr. Brent Rathgeber: You believe that the existing provisions of the Criminal Code will allow the law authorities, be it the RCMP or CSIS, to detain an individual based on information regarding something that might occur in the future?

Mr. Ziyaad Mia: Yes, they will, if someone's in preparation of a criminal offence. If I'm in a conspiracy with someone to blow up Parliament, and the police have information on it, they don't have to wait for me to blow Parliament up. That is criminal law 101.

● (1000)

Mr. Brent Rathgeber: Now with respect to the abuse issue, this legislation—essentially the same legislation—was brought in by a different government after the tragic events of 9/11. We've talked about that legislation. It was used only once in different circumstances, in the Air India inquiry. You'll have to agree with me that this type of legislation, at least historically, has not been abused by Canadian law enforcement.

Mr. Ziyaad Mia: I'll agree with you that it's been used once. Yes, that's a fact, and the Supreme Court ruled on that case. I would not agree with you that it has not been abused.

Mr. Brent Rathgeber: If it had been abused, I would have thought that there would have been multiple deployments of this legislation, and that tens, if not hundreds, of individuals would have been detained and brought before judges to provide information on what they might know. But that didn't happen.

Mr. Ziyaad Mia: I believe it's a matter of soft abuse. The goal is not to scoop up all sorts of people, although that is a risk we're concerned about. The real risk is the insidious nature that these powers may acquire. We've seen it. Our organization, the International Civil Liberties Monitoring Group, CARE Can, and other civil liberty groups have heard this from the community. I've heard it myself. I have a colleague, a lawyer who works with community members who get calls from CSIS and the RCMP. Not every single officer or agent does this, but we have heard that it's used. It says if you don't work with me.... It is especially applied to vulnerable people, refugees or migrants.

Mr. Brent Rathgeber: You're not talking about the former Bill C-36, you're talking about other tactics—

Mr. Ziyaad Mia: I'm talking about Bill C-36, sir.

Mr. Brent Rathgeber: Bill C-36 has not been in law since it was —

Mr. Ziyaad Mia: It has been the law for ten years. Only two provisions have been sunsetted. Bill C-36 is a whack of legislation. I have a concerns about that. And Bill C-36 implemented inchoate offences, a whole lot of them. Facilitation, enabling, participation—these are offences that are far removed from actual criminal activity. I agree with you that we need to catch people when they're preparing something. We have to prevent harm. But how do you think the Toronto 18...? Facilitation, participation in a terrorist group, combined with a conspiracy to commit a criminal act—those are all there. They're still in law. Those provisions from the Anti-terrorism Act are in the Criminal Code right now. I have them here if you want to look at them.

These two are the excessive provisions. Even the government of the day recognized they were so exceptional that they needed to be subject to a sunset. But if we keep renewing them, knee-jerk and ad hoc, we will have a permanent situation.

Mr. Brent Rathgeber: Mr. Vernon, you no doubt are watching with great interest the events as they unfold in Egypt.

Mr. Eric Vernon: Yes, of course.

Mr. Brent Rathgeber: We all hope that the transition of the current regime is peaceful and that it leads to a regime based on respect for the democratic rights of its citizens. But I guess we all fear that this may not be the case. Is that correct?

Mr. Don Davies: I have a point of order. We're studying Bill C-17, the Anti-terrorism Act. How is a question on the political events in Egypt relevant to this issue?

The Chair: I gave Madame Mourani some latitude.

Mr. Rathgeber, would you bring this thing back as soon as you can?

Mr. Brent Rathgeber: I'm almost out of time, and I'm just curious to know what you believe the risks are for Canadians and for your community within Canada if events unfold in Egypt as they did in, say, Iran a couple of decades ago.

Mr. Eric Vernon: The fundamental thing that we're concerned about, aside from the possible risks to the safety and security of Israel, is the development of rogue regimes in thrall to Iran. We've seen the results of that through their proxies in that region and through their state sponsorship of terrorism in the Middle East and internationally. Let's not forget that the bombing of the Jewish community centre in Buenos Aires in the 1990s has been directly placed at the feet of Hezbollah, acting on behalf of Iran.

So the greatest threat to our community, and to all Canadians, is unstable regimes committed to systems that are antithetical to our way of life.

The Chair: Thank you, Mr. Vernon.

Thank you, Mr. Rathgeber. Your time is up.

We'll now move back to Mr. Kania, please.

Mr. Andrew Kania (Brampton West, Lib.): Thank you, Mr. Chair.

I will agree with Mr. Rathgeber and I will say that I think one of the primary functions of the national government is to protect its citizens, but I think what we're doing here is trying to examine whether or not this legislation is necessary to do that and whether it's necessary to impinge on civil liberties to make that work within Canada.

After 9/11, I understand fully why this was passed, but we've had the benefit of experience, and in fact, in terms of the sunset provisions, we've not actually had them since February 2007, when they expired. So my question to everyone is, since we've not had them since February 2007, how have we as Canadians suffered in any way by not having them? That's my first question.

● (1005)

Mr. Eric Vernon: The absence of this authority for the last three or four years doesn't mean that it's not something that the security and police forces should have. You could easily make the argument that—

Mr. Andrew Kania: I only have five minutes. I don't want to theorize. I'm asking if you're aware of how we have suffered. Since we've not had them since February 2007, how have we suffered, if you're aware of any way?

Mr. Eric Vernon: I think the thing to keep in mind is that these powers are necessary to interdict activity before it happens. There are, as has been stated, powers that do permit that, but these powers I think will provide extra authority to make sure that these kinds of activities don't happen.

We've talked about the failures of the security forces with respect to certain individuals—

Mr. Andrew Kania: With respect, sir, again, I asked—

Mr. Eric Vernon: Just let me finish my thought.

The Chair: Let him finish his answer, please.

Mr. Eric Vernon: I would not want to sit here and say that these powers are not necessary and look back later on a catastrophic security failure because of the absence of these powers that led to the blowing up of a synagogue or a Jewish day school full of children.

Mr. Andrew Kania: Mr. Vernon, thank you for your theory, but my question was are you aware of any examples of how we as Canadians have suffered because we've not had these provisions in place since February 2007? I'm not asking you to theorize about how maybe at some point in the future, hypothetically, we might need them. I'm asking you whether you're aware of any specific examples where we would have needed them since they expired.

Mr. Eric Vernon: But the fact is that—

Mr. Andrew Kania: That's fine.

Mr. Chair, I'm going to go to the other people, because I have the answer.

Mr. Eric Vernon: These powers have been on the books—

Mr. Andrew Kania: Mr. Vernon, I have other people who I need to have the question answered by. No is the answer, thank you.

Anybody else?

Ms. Carmen Cheung: We are unaware of any specific examples. I understand that this committee has not heard of any specific examples either.

Mr. Andrew Kania: Anybody else?

Ms. Nathalie Des Rosiers: I think we should mention also that there were some successful prosecutions of terrorism before it occurred, in the Toronto 18, for example. So I think we have the evidence on the other side.

Mr. Andrew Kania: In terms of our Criminal Code or other legislation, are you aware, Madam Cheung, Mr. Mia, of any reason why that legislation would not be sufficient to protect Canadians under these circumstances? Once again, I agree with Mr. Rathgeber. It is our job to protect Canadians. It's one of the highest things we must do. But the issue is whether the current legislation is sufficient to do that or whether we need to have legislation in place that does impinge on civil liberties.

We now have the benefit of experience. This was passed years ago. We've had sunset provisions that expired in February 2007, so we haven't had this legislation for a few years. Once again, now that we have this wealth of experience, do we need more? That's the question, as opposed to what we currently have under our law.

The Chair: Mr. Mia, please.

Mr. Ziyaad Mia: I don't want to play the game of "what ifs", as Mr. Vernon.... We can imagine a number of scenarios and will come up with a giant book of laws to prevent every possible scenario of "what ifs", but let's look at the facts, as you've mentioned.

For the Toronto 18, Mr. Khawaja, and just recently a number of others, we didn't use any of these extraordinary powers, even though we had them. Why not? Because we used the Criminal Code, and by doing that they get a fair trial. So we know what we're getting in evidence and in cross-examination, and the adversarial process is right and correct and we convicted the right people and it's an open process that creates confidence in the public and does not compromise the role of the judiciary and a host of other things.

If you're going to pass this legislation, I have a number of amendments I think you should make, imminence and others, a two-year sunset clause, not five years—I don't want to go there, and I'll talk to you about those if you want—to implement what the Supreme Court had said. So there's a lot of work still to be done on this, but I don't think we need them. As I mentioned, there are all those other provisions—facilitation, participation, enabling—and those were used and used successfully and it didn't erode our rule-of-law traditions and confidence in the system.

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

We will now move to Mr. Norlock, please.

● (1010)

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much to the witnesses for attending.

I guess I'll start off by saying that I usually ask my questions and direct my comments to the men and women who are at home, especially the young people who are at home, watching the proceedings, to remind them that most of the people in this room —most of the people around this table—have already made up their minds, just by their statements, as to whether or not this kind of legislation should or should not be enacted. But many of the folks at home have not made up their minds and are listening to us, trying to make those decisions—

Mr. Don Davies: Excuse me, Mr. Chairman, as a point of order, are we televised?

The Chair: Yes, we are.

Mr. Don Davies: It doesn't say that on the notice.

Mr. Rick Norlock: It does on mine, sir.

Mr. Don Davies: Does it?

Mr. Rick Norlock: I hope that wasn't taken from my time.

The Chair: We'll give you an extra minute.

A voice: An extra minute?

Mr. Rick Norlock: Thirty seconds would be more than enough.

The Chair: Go ahead, Mr. Norlock.

Mr. Don Davies: I apologize, Mr. Norlock.

Mr. Rick Norlock: No, that's okay. I appreciate it.

As I say, I don't think any of our witnesses here are being disrespectful or anything else. These are their true feelings and their true views. I just made a few notes here on some of the thoughts that were mentioned.

Who are the "real terrorists"? I guess my question would be, to the average Canadian.... Well, we do know that there have been prosecutions of terrorists. One of the greatest terrorist acts suffered by this country was the Air India one. I have to say that the terrorists don't belong to any one group of people from any one religion. They're right across the board, and they exist around the world in every way, shape, or form.

Then we hear, of course, from more than one witness and more than one political party at the table, that CSIS is dysfunctional, that the RCMP have huge troubles, etc. I think we all have a responsibility, if we say those things, to ask whether these agencies are capable of making Canadians safe. I would say the evidence that they are capable, and that they have kept us safe, is the fact that we have not had the kind of terrible terrorist acts that they have had in Great Britain, the United States, and many countries throughout the world. It's because of these agencies that we are safe.

Have they made mistakes? Of course they have. They're made up of men and women who are human. They make mistakes. No one agency or group of people, whether they be learned judges...would ever say that they are not capable of making errors in judgment and mistakes.

I think Canadians need to know why we have the Anti-terrorism Act and these laws. We have them, as was mentioned, because the United Nations directed all of its members to look at their laws and regulations to ensure that they are made in such a way that they can prevent, or attempt to prevent, terrorist acts like 9/11, but not just restrict it to that one act. Canada took on that obligation and constructed the Anti-terrorism Act under a previous government that this party and I think all parties... I forget how the votes were, but at least the two major parties in Canada agreed with it.

But because we were unsure, and because there were some significant changes to our law, we put a sunset clause in. We revisited that. I was part of the subcommittee on anti-terrorism. I can tell you that we looked at it, we had a wholesome debate, and it was the majority view that we should maintain, with a sunset clause, these provisions.

We were talking about the Toronto 18. The comment that the police and other authorities have not used these existing provisions is evidence, I would suggest to you, of the fact that the police are very much aware, and CSIS and those other authorities are very much aware, that you only, only, only use these provisions when the Criminal Code may not apply...but that but there is sufficient evidence to have you believe that you need, in order to prevent an occurrence, the benefits of Bill C-17.

I go further to say that their authority is extremely restricted, because they may only hold a person for 24 hours, and that's if a judge is not available. If a judge is available, we constrain that judge by saying they may not detain more than 72 hours.

So my comment is that we need this legislation because it does indeed add a measure of safety to every man, woman, and child in this country.

● (1015)

The Chair: Thank you, Mr. Norlock.

We'll now move back to Madame Mourani.

[*Translation*]

Mrs. Maria Mourani: Thank you, Mr. Chairman.

I have a question for Ms. Des Rosiers, and afterwards for Mr. Vernon.

Ms. Des Rosiers, exceptional powers would be granted under this act. You were referring to abuse of these powers, as others have on this panel, except perhaps Mr. Vernon. As you know, and it is not the first time we have discussed this, CSIS has acknowledged having used information obtained through torture. I would imagine this information is unreliable, because someone who is tortured will eventually say anything to escape the pain.

If this service is basing its risk analysis on intelligence obtained through torture, ethnic criteria, anything that can be found in newspapers of the Arab world or internationally, what you can see in the media, on TV and the Internet, on investigations whereby they apparently walk into people's homes to question them again based on ethnic criteria, do you not believe that there is risk not only that CSIS may abuse its power, but also that it may target the wrong people? I am not questioning the work of the RCMP, which, in my opinion, is better than that of CSIS, given that they are required to conduct real investigations involving wiretapping, for instance. In fact, we should address the issue of CSIS and the way that it operates in a broad-based way, so that their information is based on facts rather than on ethnic criteria or on biased information obtained through torture.

Should we not be looking into the operations of CSIS to ensure it performs better in the field, rather than extending this legislation?

Ms. Nathalie Des Rosiers: It is the view of the Canadian Civil Liberties Association that there is a great deal of work to be done in the area of accountability. We have seen it. Reports have consistently, systematically recommended improvements. There are two ways to look at the issue. We can say that it is important not to set aside the reports from public inquiries and insist that the recommendations be implemented as a priority, to give Canadians better value for money. Public inquiries were held. People have addressed the issue and made very specific recommendations on improvements to be made regarding powers and techniques. Obviously the Canadian Civil Liberties Association considers the implementation of these recommendations crucial.

Mrs. Maria Mourani: Very well. Thank you.

Mr. Vernon, you were saying earlier on that you are in favour of this bill and believe it is necessary to grant these exceptional powers, even if it means setting aside individual rights somewhat. Is that correct? I am not mistaken?

Mr. Eric Vernon: No. You are right.

Mrs. Maria Mourani: England, Spain, France, the USSR and even the United States all have very harsh antiterrorism legislation. They even tend to set aside individual freedoms. That, however, did not prevent terrorist attacks from happening. In fact, I visited Whitemoor prison in England. I asked the warden what kind of clientele he had and he said 60% to 70% of the inmates were Muslim. The entire penitentiary is filled with so-called or real terrorists, who committed terrorist acts. It is a huge jail.

Do you not believe that at the end of the day, creating this type of legislation makes no sense? It is useless because terrorist attacks are still happening. You can fill jails up with alleged terrorists but it does not change a thing. Should we not look for the solution elsewhere? Yes, we need legislation, but legislation that respects the rights of individuals. We need to strike a balance. There may be other solutions we could consider. What other solutions could there be?

● (1020)

[*English*]

The Chair: Thank you, Madame Mourani. Unfortunately, we'll have to get in that question with another one, because you're well over five minutes.

[*Translation*]

Mrs. Maria Mourani: Can I have an answer?

[*English*]

The Chair: We'll now move to Mr. Lobb.

Mr. Ben Lobb (Huron—Bruce, CPC): Thank you, Mr. Chair.

I'd like to thank the guests for appearing here this morning before our committee and addressing this serious legislation.

One thing that caught my eye or caught my ear in Mr. Mia's testimony was that he said that laws shouldn't be put in place or laws shouldn't be made on the basis of fear. I'm probably paraphrasing a little bit. Yet some of the testimony we've heard today from Madame Des Rosiers and Mr. Mia are presenting fear. They're slamming the RCMP. They're slamming CSIS. They're bringing their activities into question. They're talking about setting precedent in Canada that will set a precedent for international law.

In my mind, they're as much talking about fear as anything, and slightly twisting the facts. I think it's unfortunate, because as I always say, it's not easy being a police officer. It's tough work. The RCMP and CSIS come to work every single day and they do a good job and they try hard. We see them every day on the Hill here, and they do a darned good job.

My point and my question to Mr. Vernon is on the fact of investigative hearings. Other countries have investigative hearings. This isn't just a new concept for Canada. England, Australia, and the United States have investigative hearings. So my question is, and for the people at home who are watching, if a person refuses to answer a question, they have the ability under investigative hearings, correct?

Mr. Eric Vernon: Yes.

Mr. Ben Lobb: That's correct. In 2004 a Supreme Court ruling recognized the constitutionality of investigative hearings. Is that correct?

Mr. Eric Vernon: Either it's charter-proof or it's not. You can't be a little bit pregnant. It's been proven to be charter-proof, yes.

Mr. Ben Lobb: So some of our witnesses here today are questioning the constitutionality of it, they're questioning some of our most sacred institutions, like the RCMP and CSIS, and referring to the courts, yet when the Supreme Court rules the constitutionality of investigative hearings, they're still not satisfied with that.

Mr. Eric Vernon: Could I just make one comment on that?

Mr. Ben Lobb: Yes, certainly.

Mr. Eric Vernon: It goes back to something Mr. Norlock said as well. The attacks here on CSIS and the RCMP I think are unfounded in the way they connect into dealing with this legislation. We would be led to believe that it's *Get Smart* and *Dudley Do-Right*. The fact is, as Mr. Norlock points out, we haven't had a major, serious terrorist attack, but it's not for lack of trying. CSIS has clearly indicated that vigorous, robust terrorist activity is going on in Canada by cells and groups that are fund-raising, organizing, contributing to the training of terrorists right here in Canada.

The experience the Jewish community has had with both CSIS and the RCMP with respect to the security of our community has been nothing but exemplary. They've been diligent and professional in dealing with us, in understanding the seriousness of threats, and in making sure our community is safe.

Mr. Ben Lobb: Do I have a little bit of time left, Mr. Chair?

The Chair: Yes, you have two minutes.

Mr. Ben Lobb: Mr. Vernon, another question I want to bring to your attention is proposed section 83.28 talks about if a person or an individual during an investigative hearing does produce some information or produce some testimony, this cannot be used against them. The only thing that can be used against them is if they lie during the investigative hearing or give contradictory evidence. Would you agree?

Mr. Eric Vernon: Yes, and I think that again the overall issue is whether this minimal impairment of civil rights is sufficient to throw away the value we might get from the RCMP and CSIS having these powers. Yes, they haven't been used extensively in the time they've been around. Yes, we haven't had them since the sun set on them, but that doesn't mean these powers aren't important, and they could be used very effectively in the future to prevent a catastrophic failure of intelligence.

● (1025)

Mr. Ben Lobb: Just to set Canadian minds at ease, if this were to be used, federal and provincial attorneys general will produce an annual report indicating and explaining to Canadians where investigative hearings were used.

Do you agree with that, and do you think that's a good practice to put in place?

Mr. Eric Vernon: It's excellent to have that in place. There needs to be some transparency in this. But of course we're dealing with intelligence matters, where public information can be extremely detrimental. But that doesn't mean we're developing a scenario here where these investigations are the star chamber.

On the point Mr. Rathgeber made about fear—or perhaps it was you—we should not be alarming Canadians about the potential consequences of these actions. I think we should be telling Canadians that we have a very serious issue here. We have serious and real credible threats against our security and we need to make sure our police and security forces have all the authority and powers they need to make sure this doesn't happen.

The Chair: Thank you, Mr. Vernon.

Madame Mendes.

[*Translation*]

Mrs. Alexandra Mendes (Brossard—La Prairie, Lib.): Thank you, Mr. Chairman. Thank you to our witnesses.

I would like to get back to what Mr. Vernon was saying about not alarming Canadians as to any potential infringement of their rights. Looking at this bill, I would say that we should not alarm Canadians about the potential for terrorist attacks. Our country, it must be said, has not experienced terrorist attacks that were so serious that it would be justified to abuse their rights.

I would like to hear what you have to say, Mr. Mia, Ms. Cheung and Ms. Des Rosiers, about the Toronto 18, a relatively recent event still fresh in our minds. None of the provisions of this bill were used and yet the plot was foiled.

I would like to hear what you have to say on the fact that both at the RCMP and at CSIS, we do have extremely competent and capable people doing their work, and these people, without resorting to exceptional measures, were able to foil a terrorist plot, thereby ensuring the safety of Canadians, without any need for egregious violations of the fundamental rights of our fellow citizens. I would like to hear what you have to say to this.

[*English*]

The Chair: Thank you, Madame Mendes.

Madame Des Rosiers.

[*Translation*]

Ms. Nathalie Des Rosiers: Obviously it is far better for Canadian society to have Criminal Code powers used appropriately. Police officers know how to make use of them because they know them well, the system knows them well and the guarantees work well in the context. Some mistakes have been made and there will be others but at least the system works in such a way as to provide enough guarantees of good results. It is reassuring for Canadians to know that there was evidence and that people were found guilty based on sufficient evidence. That is why it is a better approach, not only in terms of protecting human rights, but also ensuring that we are arresting the right people. It is of no use to incarcerate, arrest or detain the wrong people.

The idea of protecting the presumption of innocence is not simply in the interest of incarcerated people, but also that of the general public; we want to bring to justice the right people not the wrong ones.

[*English*]

The Chair: Mr. Vernon.

Mr. Eric Vernon: If I could just add, there's a wonderful Latin phrase—*post hoc ergo propter hoc*—and it means that just because something happened doesn't mean it had to happen that way.

With the Toronto 18, we got very lucky. That was a conspiracy waiting to be discovered. The next group may be—

Mrs. Alexandra Mendes: They were very professional. They did their job.

Mr. Eric Vernon: Who did?

Mrs. Alexandra Mendes: Our security, they did their job.

Mr. Eric Vernon: Exactly, that's right.

Mrs. Alexandra Mendes: But we weren't lucky.

Mr. Eric Vernon: No, but we were lucky that they didn't need to use those powers. The next group might very well be much more sophisticated and much more difficult to penetrate. I wouldn't want our authorities not to have these powers to deal with them.

Mrs. Alexandra Mendes: Madame Cheung.

Ms. Carmen Cheung: The only thing I would add to my colleague, Ms. Des Rosiers, is that the Toronto 18 prosecution was a very good example of disrupting a future terrorist attack, so it doesn't go to only prosecuting acts of terrorism that have already occurred, but preventing future attacks.

● (1030)

Mr. Ziyaad Mia: Mr. Vernon, if we prepare for every what-if scenario, we won't have much left and we'll have laws as high as a quarter horse. We don't design laws that way. We use logic and the rule of law.

Madame Mendes, yes, CSIS and the RCMP worked well, as well as local police forces in the GTA. Toronto 18 was done well. I'm not saying they're always making mistakes, and I don't want to be characterizing them as that. But what we need to do is we know, and it's not.... Madame Des Rosiers and I are not peddlers of fear; that is incorrect. We're telling you what the Arar commission said, what the Air India commission said, what Justice Mosley said in the Almrei case, that there are serious problems here. To respect our agencies, we need to just be honest that there are serious problems. For all the moms and dads watching out there in TV land, when your kid does something wrong, you don't just cover it up, you tell them, “Let's correct this so you'll be better at what you do.” We need to always have continuous improvement. You all have an ombudsman, an oversight. I do, as a legal professional. We need oversight of these agencies to make them do their jobs better.

The Chair: Thank you, Mr. Mia.

We'll now move to Mr. McColeman.

Mr. Phil McColeman (Brant, CPC): Thank you, Mr. Chair.

I would like to thank the witnesses for being here. I would also like to point out that Mr. Vernon is appearing on short notice.

We had two family members of victims scheduled to testify. Unfortunately, they both have the flu and couldn't make it. I think it's good to get on the record. It's not that your presence is not significant. It's very significant, and I don't mean to diminish it. But we want to listen to the victims of terrorism and get their views on this issue. We hope that this can happen down the road.

As I listen to the discussion today, it's quite apparent that our law enforcement has taken a major hit from those who wish not to have this bill go forward. I want to underscore my colleague's comments that these are human beings, men and women. They make mistakes from time to time, but on balance and in the scheme of our national security they do a fine job. Thank goodness we're a country that has not had to experience a terrorist attack such as those experienced by a lot of other western democracies.

As I look at terrorist organizations and the reason we need to give law enforcement the tools that this bill contemplates, I see that al-Qaeda and the like survive on two major resources: money and personnel. They are like any major organization. They have to have money and they have to have recruits. They also have to have training grounds for those recruits. Those recruits are preparing for something. Whether you think it's a terrorist attack or just to engage in a debate is up to you.

One of the reasons we've had testimony before and why it is appropriate to go forward with this is that we need to stop terrorism in its tracks by finding the money trail. We need to find and get those people who are suspected of fund-raising in our country and other countries around the world. For this, our law enforcement agencies need to have all the tools available, not just partial tools. They need all the tools at their disposal to disrupt that. That's for sure. This is another tool.

We had testimony earlier, on December 15, from Professor Forcese of the University of Ottawa. He has done an extensive study of this legislation and has compared it with legislation in other countries. Countries like the U.K. and Australia have far more stringent holding powers. He identified a gap in our system.

We asked the department officials who drafted the laws what were they attempting to do. Were they trying to close that gap and trying to do it with a balanced approach to human rights? They said that was exactly what they were doing—trying to close the gap.

The other thing we've been misled about here today is that, actually, CSIS is overseen by a civilian board.

● (1035)

Ms. Nathalie Des Rosiers: We didn't say that.

Mr. Phil McColeman: But one of my colleagues from across the table was indicating that they're not, that they need some kind of civilian oversight. Actually, they are overseen by an arm's-length government civilian board called SIRC, the Security Intelligence Review Committee. I want to point that out.

I'd like Mr. Vernon to respond to the comments I've made.

The Chair: Please be brief.

Mr. Phil McColeman: Mr. Vernon, we as a country are taking a weaker approach to the stringency of these conditions than are other countries. What are your views on that?

The Chair: Actually it would be interesting to hear your views, but we are out of time.

Thank you.

We'll now move to Mr. Holland, please.

Mr. Mark Holland: Perhaps I can start by continuing what Mr. Forcese said.

Mr. Forcese went on to say, "I'm not sure that Bill C-17 is useful in filling that gap...". That's the gap you were referring to earlier, Mr. McColeman. He continued:

> I'd be unprepared to have those extra-aggressive provisions imposed via this legislation in the absence of very robust checks and balances to enhance the civil liberties....

He went on to say he doesn't agree and certainly wouldn't proceed without the addition of extra checks and balances.

Let me come back. A comment has been made several times that we appreciate and we like the work done by the men and women who are police officers and CSIS officers. Let's agree that everybody around this table, both witnesses and politicians, all deeply and profoundly respect the job that is done by men and women who serve this country. That's a given, and I think everybody would agree with that.

What is at question is that in any human society there are errors, flaws, weaknesses; that's why we need oversight. I think we've all seen examples that when we erode that, when we let it go, it leads to bad and dark places. That's the point here.

Witnesses, on that issue of oversight, how imperative is it that we fix what's broken first, before extending those additional extraordinary powers?

The Chair: Thank you, Mr. Holland.

Madam Cheung.

Ms. Carmen Cheung: I'll be brief; I think we all want to speak on this subject.

I think it's imperative that we have proper oversights. Of course we appreciate that there is a civilian oversight over CSIS in the form of SIRC, but I think the recommendations by previous inquiries are that there be cross-agency oversight on issues of national security simply because of the nature of those investigations and how national security investigations are undertaken. It's absolutely crucial that we have those mechanisms in place prior to expanding on the already very broad powers of investigating terrorism and terrorism-related offences.

The Chair: Mr. Mia and then Mr. Vernon.

Mr. Ziyaad Mia: First of all, I want to correct any misunderstanding. I think CSIS and the RCMP are doing a relatively good job in most cases and that they're needed, to some extent, within the bounds of law that created those entities. But what Mr. Holland has been reiterating is the oversight.

My organization has been calling for cross-agency national security oversight of all agencies. After 9/11, everything was integrated—sharing information—and you had a toothless complaints commission at the RCMP, SIRC, and others. Bring it all together. If we're going to integrate national security, we need integrated oversight and accountability. The Arar commission pointed out significant mistakes. As human beings we make mistakes, and that's why we need checks and balances. We paid Mr. Arar some money, and I think that was right. We harmed his interests and his liberty. He was tortured because of things that our agencies did.

At the end of the day, we need to look at Arar. Nothing has been done on that. No one who was identified as doing things that gave rise to Mr. Arar's plight have suffered; many of them have even been promoted in the RCMP. I think that's the kind of thing we need to think about.

Let's fix this first. This legislation can't go forward as it is; it needs fixing. I believe Mr. Forcese and others have mentioned things that need to be fixed, but first start with the oversight. Fix the agencies so they work for us, and then see if we need new powers.

● (1040)

The Chair: Thank you, Mr. Mia.

Mr. Vernon.

Mr. Eric Vernon: Thank you very much, Mr. Chair.

First of all, I'm not clear how we can talk about the erosion of our civil liberties when in the past ten years there has been zero evidence of that with respect to these two provisions. I'm not clear that we're in that kind of crisis mode.

Having said that, we believe that the checks and balances in this bill are good. If there are others that can be proposed, we'd be prepared to look at them.

From the larger perspective of oversight, we've been supportive of expanding the role of Parliament in having that kind of oversight authority over the security apparatus writ large, possibly having an officer of Parliament established to look into that and make sure all elements of the counter-terrorism regime are being implemented effectively and properly. You could have a subcommittee of this committee focusing on that. There are methods and modalities that can be investigated to enhance oversight.

The Chair: Thank you.

Mr. Eric Vernon: But that doesn't mean these powers need to be thrown out.

The Chair: Thank you, Mr. Vernon.

Madame Mourani.

[*Translation*]

Mrs. Maria Mourani: Thank you, Mr. Chairman.

Mr. Vernon, do you have a solution other than legislation?

[*English*]

Mr. Eric Vernon: There are numerous discussions in countries like Canada and the U.K. with regard to what 21st-century multiculturalism looks like. I think there are certain elements of how we approach diversity within our communities, how we promote integration and the notion of maintaining one's identity while adhering to an overarching set of core national values. I think these are aspects of how we conduct ourselves here as Canadians that could certainly be looked at.

In order to deal with the issue of second-generation radicalization, I think we have to look into these situations and ask ourselves why there are elements within certain communities that don't seem to have the attachment to Canada that perhaps their ancestors did when they arrived here.

So these kinds of socio-economic components of the situation need to be looked at, but at heart, terrorism is a criminal act, and we need the authority and the power to interdict it, and unfortunately, if something happens, to make sure the perpetrators are caught and punished.

[*Translation*]

Mrs. Maria Mourani: Do you also believe there needs to be more justice on a global scale? Should we work towards the resolution of certain conflicts throughout the world, mainly in the Middle East?

[*English*]

Mr. Eric Vernon: I think it's a bit of a red herring to suggest that a lack of justice is at the heart of terrorism. Certainly if you take a look at the people involved with the 9/11 attacks, they were not people coming out of abject poverty. Certainly we're all in favour of justice and the promotion of human rights for all peoples, but I don't think this notion of root causes for terrorism can take away the fact that there are people out there with evil agendas. We need the powers to make sure, first of all, that they're put out of business altogether—because these are people who are associated with values that are completely antithetical to our way of life—but certainly to make sure that we here in Canada are protected from the ravages of these attacks.

[*Translation*]

Mrs. Maria Mourani: Do you think torture is a good thing? Are you in favour of torture?

[*English*]

Mr. Eric Vernon: One certainly can't be in favour of torture.

[*Translation*]

Mrs. Maria Mourani: Do you believe an agency like CSIS, or any other agency, is entitled to use torture to obtain information?

Mr. Eric Vernon: No.

Mrs. Maria Mourani: Very well. Do you think the fact that CSIS used information obtained through torture is a sign of competence?

● (1045)

[*English*]

Mr. Eric Vernon: I wouldn't say it's a sign of competence or incompetence. I would say it is a sign that perhaps there were some individuals who exceeded their mandate or perhaps were over-zealous in pursuit of important intelligence.

[*Translation*]

Mrs. Maria Mourani: In the Omar Khadr case, you might have seen footage of his interrogation in Guantánamo Bay. He is a minor, a child. No matter what crime he was being accused of, would you say that the attitude of CSIS officers was acceptable?

[*English*]

Mr. Eric Vernon: With great respect, I'm not sure that my attitude toward what they did is particularly relevant here.

I think there's a huge gap between the kind of intelligence that's gathered through torture and the kind of intelligence that's proposed to be gathered through these two measures that are part of the bill today. There's a lot of daylight between them.

I think it does us a disservice to lump all of that together into the category of—

[*Translation*]

Mrs. Maria Mourani: Do you have an opinion on this matter?

[*English*]

The Chair: Go very quickly, Ms. Mourani.

[*Translation*]

Mrs. Maria Mourani: It is your opinion I would like to hear. When you saw footage of this young boy being questioned, what did you think?

[*English*]

The Chair: Thank you, Madame Mourani.

Go ahead, Mr. Vernon.

Mr. Eric Vernon: My opinion is that what happened to him is unfortunate. But I suppose there are situations in which these things will happen, and we have to do what we can to make sure that these sorts of activities aren't repeated.

That being said, he's been accused of some very serious charges. We need to let the justice system work its way through.

The Chair: Thank you very much.

I want to thank all witnesses for appearing before our committee on this very important piece of legislation. Certainly your input is appreciated here today.

Seeing our time is up, the meeting is now adjourned.

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