



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Public Safety and National Security

SECU • NUMBER 061 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Monday, November 26, 2012

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Chair

Mr. Kevin Sorenson

Standing Committee on Public Safety and National Security

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•(1530)

[English]

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

This is meeting number 61 of the Standing Committee on Public Safety and National Security on Monday, November 26, 2012.

Today our committee is continuing our study of Bill S-7, An Act to amend the Criminal Code, the Canada Evidence Act and the Security of Information Act. We are reducing the time we spend today with each panel by several minutes in order that we can have the last 15 minutes of the meeting for committee business.

On our first panel we are hearing from the Canada Border Services Agency. Geoffrey Leckey is the director general of intelligence and targeting operations, and Sébastien Aubertin-Giguère is executive director of the risk management and foresight division in the program branch. I understand that you have some opening statements and that you would be willing to take some questions afterwards.

Mr. Craig Scott (Toronto—Danforth, NDP): I have a point of order before we begin.

The Chair: Mr. Scott.

Mr. Craig Scott: I was wondering if we could clarify what will be happening with the witnesses from the last meeting who either presented and were not questioned or who did not present at all.

The Chair: That is probably what we'll be discussing in future business.

Mr. Craig Scott: Will that be in camera, or not in camera?

The Chair: All our future business is in camera.

Mr. Craig Scott: I wanted to be on record that we also suggested that the CSIS witnesses appear before us. It's not only government witnesses whom we have not had a chance to question.

The Chair: For sure.

Welcome, witnesses. We look forward to your comments.

Mr. Leckey.

Mr. Geoffrey Leckey (Director General, Intelligence and Targeting Operations, Canada Border Services Agency): Thank you, Mr. Chair. Thank you, honourable members. My colleague and I are pleased to be here today. My name is Geoff Leckey and I am the director general of the enforcement and intelligence operations directorate in the operations branch of the Canada Border Services Agency.

I have with me today Sébastien Aubertin-Giguère, who is the executive director of the risk management and foresight division in the programs branch.

[Translation]

As part of the public safety portfolio, the CBSA is responsible for ensuring Canada's security and prosperity by managing the access of people and goods coming to and departing from Canada.

Though the agency's involvement in Bill S-7 is minimal, our day-to-day operations support the government's counterterrorism objectives. Today, I will focus my comments on the role that border management plays in the national security continuum.

[English]

Since its creation, the CBSA has been an integral component of Canada's national security policy by ensuring effective border management. To this end, the agency maintains close and productive relationships with its portfolio and other law enforcement partners at home and abroad.

Managing the border in today's complex world calls on our people to use a variety of skills and technology efficiently and effectively behind the scenes and when dealing directly with traders and travellers.

As you may know, the agency is responsible for enforcing the Customs Act, the Immigration and Refugee Protection Act, and over 90 other acts of Parliament, including the Anti-terrorism Act. To deliver effectively in these responsibilities, the CBSA recently opened a new state-of-the-art training facility in Rigaud, Quebec, to train border services officers in interviewing, examination, and investigative techniques. The college is key to our ability to perform our duties in providing excellence in border services.

As I stated earlier, the agency's role in this legislation, Bill S-7, is minimal, but we are supportive because the justice system and the law enforcement community need improved tools to interdict those individuals within Canada who engage in terrorist activity.

• (1535)

[Translation]

The CBSA plays a key role in Canada's counterterrorism strategy as a border security agency. While the agency is not directly mandated to investigate, identify, arrest or prosecute terrorists specifically, it does perform two essential security activities: denying terrorists entry into Canada and collecting and reporting on counterterrorism targets.

[English]

To achieve these outcomes, the CBSA collaborates on immigration security screening and admissibility screening of known or suspected terrorists with the Canadian Security Intelligence Service and with Citizenship and Immigration Canada. It also employs intelligence-based targeting to assist in counter-terrorism and strategic export controls of commercial shipments. The CBSA liaison officer network works to prevent inadmissible persons from coming to Canada. Border services officers also enforce export controls on goods and currency.

In addition, BSOs have participated in extensive program development and training and the use of detection technology so that they can conduct effective, non-intrusive examinations where possible. For example, the agency uses digital fingerprint machines to capture fingerprints, which are then sent electronically to the RCMP central registry for verification. Faster and more efficient front-end security checks ensure that those who may be criminally inadmissible to Canada are not permitted to enter.

Agency officials regularly work with immigration organizations overseas to identify emerging trends in irregular migration and document fraud. They also participate in joint activities designed to prevent the proliferation of weapons of mass destruction and their delivery systems.

The CBSA processes a staggering number of travellers and goods entering Canada each year. In the last year, the CBSA processed 93 million travellers, 29 million vehicles, and released 13 million commercial shipments. In order to balance the joint mandates of facilitation and national security, the CBSA applies a layered risk management approach to its intelligence and enforcement activities. The agency works with its key partners such as Citizenship and Immigration Canada, the RCMP, CSIS, and U.S. Customs and Border Protection so that it can effectively focus its efforts on areas of high or unknown risk.

[Translation]

As you can see, partnerships are key to the CBSA's effectiveness in border management and national security. The CBSA is a critical law enforcement partner because of its ability to turn the information it collects into intelligence about possible national security threats, including terrorism. The CBSA shares this information with its key domestic partners such as the RCMP and CSIS.

[English]

The CBSA also partners with international customs and immigration organizations to implement the terms of international agreements. The Beyond the Border action plan with the United States is a prime example of such a partnership. It assists the CBSA

and its U.S. counterparts in ensuring that the border remains open to secure trade and travel but is closed to crime and terrorism.

Mr. Chair, while our role under this proposed legislation is minimal, the agency's mandate continues to be the first line of defence to ensure the safety and security of Canadians.

This concludes my opening statement.

Mr. Aubertin-Giguère and I would be pleased to answer any questions the committee may have.

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

We'll move into the first round of questioning. It's a seven-minute round.

We'll go to Ms. Findlay, please, for seven minutes.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): Thank you, Mr. Chair, and thank you both for being here.

I just want to get it straight in my mind: what are your respective positions again with CBSA?

Mr. Geoffrey Leckey: My position is the director general within the operations branch. There are two main branches within the CBSA: operations and programs. Within operations I'm the director general of what we call enforcement and intelligence. Enforcement comprises our criminal investigations division and our inland enforcement division.

• (1540)

Ms. Kerry-Lynne D. Findlay: And Mr. Aubertin-Giguère?

Mr. Sébastien Aubertin-Giguère (Executive Director, Risk Management and Foresight Division, Program Branch, Canada Border Services Agency): I'm the executive director of the risk management and foresight division within the program branch.

Ms. Kerry-Lynne D. Findlay: Thank you.

When Professor Martin Rudner testified on Bill S-7 before the Senate committee on April 2, 2012, he noted that various terrorist organizations see it as necessary to reach out and get human resources for the struggle for the downfall of the apostolate regimes and to prepare in fact for the next stage, which is the declaration of a caliphate, to be followed by the total confrontation with the infidels.

They see themselves reaching out to citizens of western countries in particular, in part to gain passports—their right to travel freely—in part to get local knowledge and networks, and in part to get skills. The kinds of people they target are young, single, physically fit people with higher education, especially in science and technology, and people who have become highly motivated through radicalization and are committed to jihadist ideology.

If your opinion, do you agree that terrorism remains the greatest threat to Canada's national security at this time?

Mr. Geoffrey Leckey: My answer to that would be yes.

As I explained in my introduction, we take a risk-based approach to the work we do and to deciding where we need to concentrate our resources to interdict people and groups from entering Canada that may threaten Canada and Canadians.

When we talk about a risk-based approach—and my colleague is more of an expert in this than I am—we mean a threat. There are any number of potential threats to Canada and Canadians that could be identified. When we say “risk”, we mean “threat” placed within the context of probability and impact.

Now there are many threats that are highly probable but would be of low impact. There are many threats that are extremely improbable but would be extremely high-impact; 9/11 would be an example of that.

So we work on a constant basis to reassess threats and to place them within a risk-profiling paradigm to identify where we need to place our resources to best protect Canada and Canadians.

Ms. Kerry-Lynne D. Findlay: Thank you.

We also heard in the Senate committee on Bill S-7 testimony about the radicalization of some young Muslim Canadians.

I'm wondering if you are aware of any situations where Canadians have travelled or attempted to travel from Canada to other countries—I'm thinking of Afghanistan, Somalia, Pakistan, and Yemen—to join terrorist organizations and engage in terrorist-related activities. Is this something you've been aware of?

Mr. Geoffrey Leckey: This is a reality.

Within the Canadian security intelligence community, there are a number of people who are aware of such travel having taken place in the past. The existence of legislation such as S-7 could help to prevent it, to the extent that such travel could be learned about in advance.

Ms. Kerry-Lynne D. Findlay: It's already illegal to knowingly participate in the activities of a terrorist group for the purpose of enhancing the ability of a terrorist group to carry out an act of terrorism, and that might include receiving or providing training, say, at a terrorist training camp. We certainly know that in 2008 Mr. Khawaja was convicted of that offence for receiving training in Pakistan, and his conviction was subsequently upheld by the Ontario Court of Appeal. Leave to appeal before the Supreme Court of Canada has been granted.

Our government decided to create new offences, of leaving Canada or attempting to leave Canada for the purpose of committing a terrorism offence.

Do you see this as a useful new offence? Do you support this?

Mr. Geoffrey Leckey: Yes, absolutely, we support it.

You're correct, of course, that it's already an offence to take training for the purpose of supporting the activities of a terrorist group, and Mr. Khawaja was convicted for that very offence.

I'd refer you to the Government of Canada's counter-terrorism strategy, called *Building Resilience Against Terrorism*. It has four pillars: prevent, detect, deny, and respond. In the case of Mr. Khawaja, we were mainly in the world of responding. I think the

government is trying to move its resources in the security intelligence community more into the world of “prevent, detect, and deny”, because those are worlds that it's much better to be in. Anything we can do that would forestall or nip in the bud or cut off a potential terrorist activity before it happens, even before an individual leaves Canada, we consider to be a strengthening of the tools we have at our disposal.

• (1545)

Ms. Kerry-Lynne D. Findlay: In other words, you're talking about law enforcement and the intelligence community being able to intervene at an earlier stage in the planning process. Is that correct?

Mr. Geoffrey Leckey: That's correct; that's the ideal place to be.

Ms. Kerry-Lynne D. Findlay: Thank you.

The Chair: Thank you very much.

We'll now move to Mr. Scott, please, for seven minutes.

Mr. Craig Scott: Thank you, Mr. Chair.

Thank you both for coming.

I'd like to focus a bit on where I think Madam Findlay was going, which is on the new offence, however much it overlaps with existing offences, of leaving Canada or attempting to leave Canada for the purposes of committing certain acts.

There was some testimony before the Senate on this, including some from the director of CSIS, Mr. Fadden. I'm wondering—once I tell you what he said—how much of it is true or how much you need to tweak what he said. He's basically talking about there not being a generalized exit control system in this country. My question is basically around how this new offence will intersect with exit control: will we be looking for some new system, other than what we have? Do we have systems that were going to be brought together? That's the general nature of what I'd like to hear.

I'll try not to say much more than that.

Let me just quote one thing Mr. Fadden said:

I emphasize that we have not developed the protocols yet [between different agencies]. What we will need to do is work closely with the Mounties and make sure we are communicating at all times with border services.

The other complicating factor...is that Canada has no system for controlling exits. We do not even have a system to be aware when people are leaving. This will involve more than CBSA; it may involve CATSA, the agency of the Department of Transport that regulates security.

Then he says: “I should not say much more because I will get myself into a situation I will not be able to get myself out of.”

I'm not exactly sure what he was thinking of with the last sentence, but the question is, could you please tell us what exists and whether you are aware of any discussions or plans around some kind of generalized exit control system, perhaps one that would build on the U.S.-Canada declaration from last year?

Mr. Geoffrey Leckey: Are you referring to the Beyond the Border declaration?

Mr. Craig Scott: Yes.

Mr. Geoffrey Leckey: Well, while trying not to put myself into the place that Mr. Fadden didn't want to get into, let me answer to the best of my ability.

There is no plan to establish a formalized exit control system. Under the Beyond the Border initiative, which we've agreed upon with the United States, Canada will be establishing an entry/exit system whereby the entry into one country will become the exit record for the other country. Of course, that will mean that the Canadian government will only learn about the departure of an individual from Canada after the fact—very soon after the fact, but nevertheless after the fact.

The way Bill S-7 would operate would for the most part be based on intelligence indicators or information that was available before an individual left Canada.

Mr. Craig Scott: Could I just ask you to specify, as you are probably about to, how that information gets to you? You're talking about intelligence tracking a person to the airport. Is there another system, in that you are told a name, you look for the name, and you grab the person?

How is this going to work?

Mr. Geoffrey Leckey: We exchange information all the time with our two primary partners within the security and intelligence community: CSIS and the RCMP.

Mr. Craig Scott: Can you just take us through how it would work if somebody were under suspicion of intending to leave the country for this purpose? Would you be getting a call at the border from CSIS with a name? What would you do with the name? Or would that person actually be literally under some kind of surveillance?

Mr. Geoffrey Leckey: If that individual were under CSIS or RCMP surveillance, that would continue. By no means would they pass surveillance to the CBSA.

Maybe I should go more deeply into the kinds of authorities CBSA does and doesn't have when it comes to the exit of individuals from Canada.

At the moment, the Customs Act does not confer peace officer powers to Canada Border Service officers. That's because the wording of the Customs Act does confer peace officer powers whenever BSOs are operating within their normal duties at a customs office.

Our legal advice is that conducting exit controls does not fall within the definition of the normal duties of a border services officer, because the Customs Act does not confer any authority on CBSA officers with regard to travellers leaving Canada. We have certain specific powers to conduct exit controls on strategic exports and currency, but not people.

Also, the Customs Act is quite explicit that border services officers may not use the powers conferred on them under the Customs Act for the sole purpose of looking for evidence of a criminal offence. That is spelled out in so many words in subsection 163.5(4) of the Customs Act.

For CBSA to intervene in a more active fashion, when it is known to the security intelligence community in advance that someone is intending to leave Canada for a terrorist purpose, would require

amending the Customs Act and possibly IRPA. A more active fashion would include, for example, having powers to arrest or to search.

What we can do is provide information to our security partners in the same way we provide it at the present time. In other words, we can provide supporting information that is already in our possession, such as the travel history of an individual we receive an inquiry about. Or we can provide information about the immediate whereabouts of a target, if we are aware of him or her. Also, on request, we issue lookouts on targets and persons of interest to our security partner agencies.

Moving a bit further down the timeline, we're also responsible for removals. Whenever someone is found inadmissible to Canada because of his or her association—

• (1550)

Mr. Craig Scott: That's a different kind of leaving.

The Chair: All right. Our time is just about up.

We'll go to Ms. Bergen and then to Mr. Scarpaleggia.

Ms. Candice Bergen (Portage—Lisgar, CPC): Thank you, Mr. Chair. Thank you to both of the witnesses for being here.

Mr. Leckey, I think it is important that you reiterate for all of us the difference between this and the Beyond the Border framework we have with the U.S., under which we are establishing in certain places an exit/entry sharing of information. Can you please explain how that is different from what we're discussing with regard to this particular bill on people wanting to leave the country for the purpose of engaging in terrorist activity?

Mr. Geoffrey Leckey: The entry/exit system that we're discussing, that we're working on, that we are developing actively, together with our American counterparts, is an exchange of information on individuals who have entered one country. That information will then be shared. In fact, under a pilot project that's under way as we speak, it is being shared back to the country the individual just departed from. It's an exchange of data. It reflects the fact that an individual has left your country, which we wouldn't have known about before.

What this does for us, which we couldn't do before, is to close the loop on an individual's travel history. It allows us to track individuals, to be aware that persons are overstaying their visas. It allows us to monitor the departure of persons subject to removal orders. It allows us to verify that residency requirements are actually being met by applicants for eligibility in immigration programs. It will also serve the purpose of establishing a history of compliance for legitimate travellers.

To that extent, it is not an exit control system, in the sense that there's any sort of authority being exerted to prevent someone from leaving or to permit someone to leave the country.

• (1555)

Ms. Candice Bergen: Thank you very much for that clarification.

I want to go back to Bill S-7 now, to three of the main parts of the bill and the changes, basically the updates, that come back to law enforcement in order to effectively counter terrorism and keep Canadians safe. I think it's important that we hear again your role. Some would think that you are just at the border, so if terrorists come in and if you're not aware of who they are, how can you actually help stop them? Can you please talk about the integrated approach you have with other law enforcement?

Specifically, you talked about a layered approach and risk management. I think it's important that we hear about the role CBSA plays in countering terrorism and about why these specific changes are necessary.

Mr. Geoffrey Leckey: Thank you for that opportunity.

The agency is responsible for refusing entry up front to foreign nationals who are known or suspected terrorists. Also, a permanent resident or foreign national may be found inadmissible for reasons of terrorist associations, under section 34 of IRPA, if they've engaged in or there are reasonable grounds to believe that they may engage in terrorism.

If they have entered the country and they are found to have terrorist associations, then the CBSA's removals program prioritizes the removal of high-risk persons in Canada who pose a threat to national security. They are the number one priority for removal.

Key CBSA programs that support the identification and removal of terrorists would include screening up front, which I've spoken about; international operations, that is, information collected by our liaison officers overseas in some 49 countries; and our targeting program, which is based on data analysis of information on passengers on inbound flights to Canada. There's, of course, the port of entry examination, and then there's our removals program.

At every point of the travel continuum, there's a different layer of activity on the part of CBSA.

Ms. Candice Bergen: Two of the things that Bill S-7 reinstates are recognizance with conditions and investigative hearings. We've heard testimony so far to the effect that it's important that those be reinstated, since they are important tools for law enforcement to use in fighting terrorism and stopping terrorist activity.

Is that something CBSA supports? Specifically, I'm thinking of the recognizance with conditions. There may be times when your intelligence will discover that there are certain activities taking place or are going to take place, and I would think the ability of law enforcement to stop those activities in a timely manner is very important. Would you agree? Does CBSA support those parts of the bill?

Mr. Geoffrey Leckey: Yes, we do support those parts of the bill. We support all parts of the bill, though that particular part of the bill is one that CBSA is likely to be involved in marginally.

Ms. Candice Bergen: You would not be directly, yet you would be indirectly. I would think that would be because you would potentially be finding out who might be coming in, also through the intelligence.

The other witness may want to speak to the risk management. If my understanding of your role is correct, is there some connection

between what you're doing and possibly the recognizance with conditions?

Mr. Sébastien Aubertin-Giguère: My job is to look at how the CBSA allocates resources at the border and use a risk approach to allocate the resources where it matters the most, so I have a more detached view. But I would say that more generally, the more accurate the information, the more we are able to identify very early on in the travel process, the travel continuum, individuals who pose a national security threat to Canada.

So the answer is yes.

The Chair: You have 40 seconds.

Ms. Candice Bergen: That's all I have right now.

Thanks.

The Chair: We'll now go to Mr. Scarpaleggia, please, for seven minutes.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Like everyone here, I'm trying to wrap my mind around what is a very complex system.

If I understood correctly, at the moment, if you're alerted to the fact that someone is leaving Canada to train in a terrorist organization, you don't have the authority to stop them?

• (1600)

Mr. Geoffrey Leckey: That's correct.

Mr. Francis Scarpaleggia: So this will grant you authority to stop them.

Will these new offences have a significant impact on how the CBSA operates, or is it really a minor change to how you will react in certain circumstances? Will it have a more significant effect than just giving you the authority to stop somebody from boarding a plane?

Mr. Geoffrey Leckey: I'd just like to point out that Bill S-7, as currently drafted, does not give the CBSA the authority to stop people.

Mr. Francis Scarpaleggia: Oh, so you'd have to call in the RCMP.

Mr. Geoffrey Leckey: That authority would still remain with the RCMP.

In fact, the impact of Bill S-7 on the activities of CBSA will be minimal.

Mr. Francis Scarpaleggia: So it gives you the power to alert the RCMP that you've heard that this person is leaving to, I don't know, go to a terrorist camp or something.

Mr. Geoffrey Leckey: It doesn't actually give us any new powers. That's an authority we already have. If we obtain or develop information or intelligence that an individual is planning to leave the country for terrorist purposes—which is unlikely, because there are two other organizations that are primarily mandated to do that—we would pass that information to the RCMP and CSIS.

Mr. Francis Scarpaleggia: Right now you wouldn't be allowed to pass it on to them?

Mr. Geoffrey Leckey: Yes, we are allowed to pass it on to them now. We have a number of authorities for exchanging information.

Mr. Francis Scarpaleggia: You'll have to forgive me if I'm still unclear as to what difference this bill makes to your day-to-day operations.

Mr. Geoffrey Leckey: This bill doesn't give us any new authorities that we don't already have, and it will have very little—minimal—impact on our daily operations. The way it would involve our daily operations is if the RCMP or CSIS has an operation under way; then they may ask for our assistance at the port of entry or port of exit.

Mr. Francis Scarpaleggia: But at the moment they can't ask for that?

Mr. Geoffrey Leckey: They can. They can ask for it.

Mr. Francis Scarpaleggia: Okay, so there is very little change to the way things operate.

Now, you used a phrase that caught my attention. With this new bill, when it becomes law, you'll be able to “create a history of compliance for legitimate travellers”. Could you elaborate on that? In other words, will it allow you to create a database of how many times I've left the country without incident?

Could you just explain what you mean by creating a history of compliance for legitimate travellers?

Mr. Sébastien Aubertin-Giguère: Yes.

Since there are no records of your exiting the country, we don't know if you've left or not. So if you are, let's say, a refugee claimant and your claim has been denied, we don't actually know if you've left the country, yes or no. For the integrity of the immigration program, it is important for us to know if you've left the country, let's say to go to the United States, so we can close the loop and know that you've left. It's the same for people who have overstayed their visa, if we would know that.

So it is to ensure the integrity of the immigration program, not to build some kind of statistics-based risk assessment tool.

Mr. Francis Scarpaleggia: But it will allow you to investigate if this rejected refugee claimant has left the country. It will allow you to simplify it. You could be presented with a list of people whose visas have run out and you could then do a search. If you did a search, what would you be searching for?

Mr. Sébastien Aubertin-Giguère: I'm not sure I understand what you mean by searching?

Mr. Francis Scarpaleggia: Well, suppose the government gives you a list that says these refugee claimants have been rejected. We don't know where they are or whether their visas have expired. What would you do with that information? Would you go to a database and see if these people have left the country recently?

Mr. Sébastien Aubertin-Giguère: The information that would be collected in the exit information would be used to close that loop and to find out which individuals have left the country. Enforcement would put those who haven't left on a list of people we're looking for.

•(1605)

Mr. Francis Scarpaleggia: It sounds like you will be compiling a database that you can go to if the Minister of Immigration gives you a list of people whose visas have expired.

What kind of information do you share with the U.S. on a daily basis?

Mr. Geoffrey Leckey: We share information with the U.S. in a number of ways. We share intelligence information. We share information on arrivals who have come to the attention of our targeting program. We share information in a number of ways for a number of reasons under a number of memoranda of understanding.

Mr. Francis Scarpaleggia: There's not routine sharing, then. It's on a targeted basis.

Mr. Geoffrey Leckey: It's on a case-by-case basis.

Mr. Francis Scarpaleggia: I'd like to shift to port security. There have been a couple of articles recently about differing points of view on how safe our ports are from entry of dangerous goods or sabotage. There are those who say that only 1% of the cargo is being inspected, but that's fine, because the threat to waterways or a terrorist threat at port of entry is not great.

The Chair: Thank you, Mr. Scarpaleggia.

Unfortunately, we're going to have to work that into another answer somewhere else here. We're over our time.

Mr. Scott.

Mr. Craig Scott: Mr. Garrison will start us off.

The Chair: Oh, I'm sorry, Mr. Garrison.

Mr. Randall Garrison (Esquimalt—Juan de Fuca, NDP): Thank you for being here today.

You've been precise in saying that this legislation does not change anything that might relate to the exit procedures. We also have before the House Bill C-45, which amends subsection 107.1(1) of the Customs Act. Mr. Champagne was here from the Canada Border Services Agency, and he pointed out that this amendment will allow CBSA to get information before the departure of conveyances coming to Canada. I guess my question, maybe unfairly to you today, since you're not Mr. Champagne and it's not C-45, is whether the reverse applies. Does that amendment in Bill C-45 allow CBSA to get early information about people departing from Canada?

Mr. Geoffrey Leckey: I'd rather not venture an answer on that, if you don't mind. I can undertake to get back to the committee with an accurate response.

Mr. Randall Garrison: If it does, then the narrow parameters you've set here may be affected by Bill C-45. It may provide greater opportunities for exit control than what's in this bill.

I'll turn the rest over to Mr. Scott.

The Chair: Bear in mind that we're studying S-7 today, but if there is a relationship between the two, that's fine.

Mr. Scott.

Mr. Craig Scott: That was a clear potential relationship. I'm wondering if two existing systems are applicable to this leaving-the-country issue or could be made to be. One is something I know almost nothing about, the advance passenger information, the passenger name record program. The second is the no-fly list. Could you tell us whether either could partly or more extensively be drawn upon as a way of looking for people leaving the country who might have been drawn to your attention earlier by CSIS or RCMP?

I wanted to turn to our friend Mr. Fadden with one quotation from his Senate testimony. He says that the "current structure of the no-fly-list program is such that you have to be a threat to aviation".

That obviously doesn't fit perfectly here. He goes on to say that his "understanding is that officials are preparing a series of proposals for the ministers to try to make this list a little more subtle", but that he does "not know where they are on it".

I'm not assuming you have inside information on what cabinet is considering, but do you know whether discussions or studies are taking place on changing the nature of the no-fly list in relation to this leaving-the-country issue?

Mr. Sébastien Aubertin-Giguère: I'm afraid I'm not in on the secrets of the gods, as they say.

All I can say is that API/PNR is a series of data information that is provided by the airline companies to Canada, but that's on the way in.

Mr. Craig Scott: It's only on the way in.

Mr. Sébastien Aubertin-Giguère: Yes. This is the information the CBSA uses and applies risk assessment methods to in order to identify high-risk individuals so that they are examined when they come to goods and conveyances.

• (1610)

Mr. Craig Scott: I'm sorry to interrupt, but is there nothing about that system that can be tweaked for it to work the other way around? By definition, in that system of planes leaving the country, at some point you are providing that information to their destination countries, and you would just have to speed it up a bit for that information to be available before you leave. Correct?

Mr. Sébastien Aubertin-Giguère: That information, if it was provided before wheels up—before the plane departs—would allow us to identify individuals who are on the plane who are suspect, but this doesn't exist at the moment.

Mr. Craig Scott: This procedure doesn't exist, but there's nothing —

Mr. Sébastien Aubertin-Giguère: We do not have the technical capability at this point.

Mr. Craig Scott: At this point, but that is obviously a potential way to expand on that a bit.

Do you see the no-fly list as relevant at all at the moment to the question of this leaving-the-country offence?

Mr. Sébastien Aubertin-Giguère: The no-fly list identifies individuals who might pose a potential threat to the conveyance itself.

Mr. Craig Scott: So it's not directly relevant.

Mr. Sébastien Aubertin-Giguère: It could be potentially relevant. I would have to study this a bit more, but the idea of the no-fly list is to identify individuals who, if they go onto that plane, will cause a threat to the plane itself, not because they are going overseas to carry out some terrorist-related activities.

Mr. Craig Scott: Mr. Leckey, did you have something to say?

Mr. Geoffrey Leckey: The thing about the no-fly list that may be worth pointing out is that it applies to an individual who is on the list no matter where he boards a plane, which could be in Canada in order to leave Canada just as well as it could be from abroad to come to Canada.

The Chair: Thank you.

We'll now move to Mr. Leef, please. This is our second round for five minutes.

Mr. Ryan Leef (Yukon, CPC): Thank you, Mr. Chair, and thank you to both our witnesses for being here today.

Earlier in testimony we heard from Ms. Beauregard from the Integrated Terrorist Assessment Centre. She said that clearly the need for cooperation and information sharing across the Government of Canada is vital to our national security.

Would you agree with that comment, sir?

Mr. Sébastien Aubertin-Giguère: Yes, we do agree with this comment. We have two officers seconded to ITAC. We're fully participating in this venture of organizations, and we're providing all the information that is available to us and would be of relevance to the role of ITAC.

Mr. Ryan Leef: That certainly coincides with some of the testimony we heard, where she mentioned that they acquire information from across the Government of Canada, which includes CBSA, the Communications Security Establishment Canada, the RCMP, Foreign Affairs and International Trade, CRA, the Financial Transactions Reports Analysis Centre, and the Privy Council Office. The list goes on and on.

Mr. Scarpaleggia was asking a bit about your role here. Would you agree, then, that even if bills or legislation don't directly impact your day-to-day operations or your day-to-day mandate, it is essential, given the integration of cooperation in the intelligence community and the security service community, that you're up to date on those changes that are occurring, that you're available and free to comment on those kinds of changes, as you are here today?

Mr. Geoffrey Leckey: I would agree that there are such a number of information-sharing arrangements already in existence between the different parts of the security intelligence community in Canada, and they operate so well on a daily basis, that it's not every time there's a change in legislation that a new MOU is required—because a brand new field of exchange of information has opened up. Very often existing arrangements will suffice.

Does that answer your question?

Mr. Ryan Leef: Yes, and you make it common practice, obviously, when there are legislative changes, whether or not they directly impact on your mandate, to keep abreast of those changes, so you know how that impacts your partner agencies and the people you work with.

Mr. Geoffrey Leckey: Yes, absolutely.

Mr. Ryan Leef: With the specific changes you will be dealing with, is there any cost at all that you know of that's going to impact CBSA?

Mr. Geoffrey Leckey: We haven't been able to identify any increased costs that would be incurred by the CBSA as a result of the implementation of Bill S-7.

Mr. Ryan Leef: On the investigative hearing section, do you see a benefit where the agencies tasked with dealing with investigative hearings...where information potentially coming out of those hearings about past terrorist behaviour and potentially future engagement of Canadian security and terrorism behaviour would benefit the CBSA?

• (1615)

Mr. Geoffrey Leckey: Yes, absolutely, in a couple of ways that I can think of. First of all, CBSA issues lookouts, which are warnings or red flags concerning an individual. If you are the subject of a lookout and your passport is swiped when you enter Canada, you are automatically referred to a secondary examination. It's not a final judgment. It's an indication, often based on intelligence information, that this is an individual who needs to be subjected to a closer examination before being admitted to Canada. The kind of information you are talking about that we frequently receive from our intelligence counterparts can form the basis of a lookout.

The other way that information received from our partners helps us to do our job is in our role as the hub for the security screening system for the Government of Canada. Applicants for visas to Canada, whether as temporary or permanent residents, go through a system at the centre of which sits a CBSA unit that, after consultation with our security intelligence partners, comes up with a recommendation on admissibility or inadmissibility. Obviously, intelligence information received from our partners helps us greatly in making those recommendations.

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

Now we will move back to Mr. Garrison for five minutes.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

If I understood Mr. Leckey correctly, he offered to send us information that might answer the question about the relationship between the amendments in Bill C-45 and Bill S-7. To be more specific, I would be interested in not only your assessment of that relationship, but also a bit of speculation that has been done on this side that it may in fact have an impact on the ability to collect pre-departure information earlier, and therefore provide a capacity for instituting at least some form of exit controls. If you are willing to get that back to us, that would be greatly appreciated.

Mr. Geoffrey Leckey: Yes, I have made a note of that request and will certainly respond to every aspect of your question.

The Chair: Just as a reminder, it's to the clerk of the committee, and we will circulate them.

Mr. Randall Garrison: Thank you very much.

I believe we're going to go back to Mr. Scott, then.

The Chair: You have four minutes.

Mr. Craig Scott: I wonder if you could give me a “dummies” guide to exactly how it would work. You went over it fairly clearly and quickly at the beginning as to how it would work when an investigation by the RCMP or CSIS has identified an individual, say, a young person, they believe is intending to leave to participate in some offence abroad. The name is known, but they are not actually tracking the person. They don't know where the person is, but they think he may be looking to leave the country. In terms of that set of facts, what happens? What goes to you, and what does CBSA do with that information? Or what will you be doing with it in light of this new offence?

Mr. Geoffrey Leckey: I'll give you a couple of examples of what might happen in that scenario. If CSIS or the RCMP tell us they are interested in a certain individual who may be a terrorist target, who may be planning to leave the country to conduct terrorist activities overseas, they can come to us and make an individual request. For example—I'm just taking this as an example of one type of information we hold that they don't necessarily—they can ask us for that individual's travel history. At the moment, travel history means half of your travel history. We only know when you enter the country. If you have entered the country from a variety of foreign countries nine times in the last three years, that can be an important part in helping them to build their investigation.

Mr. Craig Scott: Including knowing which airline you might be using to leave.

Mr. Geoffrey Leckey: Yes, that can often be important, too.

Also, if they have immediate suspicions that the individual may be on the point of leaving, and we're at an airport and they're not, they may be able to ask us if we can identify an individual in those kinds of cases. Where we don't have authority at the moment, as I explained, is to actually intercept, arrest, or conduct a search.

• (1620)

Mr. Craig Scott: Right.

Monsieur Giguère, is there anything you wanted to add to that?

Mr. Sébastien Aubertin-Giguère: Only to say that since we do not know in advance that a person is about to leave on a plane, we will not have a systematic way of monitoring that, so we would have to rely on precise information given by law enforcement authorities or CSIS.

Mr. Craig Scott: Okay.

Do I have one minute?

The Chair: You have a minute and a half.

Mr. Craig Scott: I'll go back to my earlier question.

It seems fairly obvious how a no-fly list, if it were changed in its orientation, could become a useful tool that's outside the scope of your role. It seems you do know a lot about the advance passenger record information system. You said something very interesting, that as long as the wheels are on the ground and the information is available, one could actually figure out.... You could let the RCMP know. They could actually enter the plane to grab somebody before the wheels are up. Is that right?

The question is, why does the system we have now mean that the information for departing planes isn't generally available until after the plane departs? Is it simply standard procedure, or are there real logistical barriers to having that information before the plane is in the sky?

The Chair: Thank you, Mr. Scott.

Go ahead.

Mr. Geoffrey Leckey: At the moment it is simply a matter of standard procedure. We receive passenger data wheels up, after the plane has left. This means that on a trans-Atlantic flight, for example, we have six or seven hours to examine passenger data and to identify anyone on board who may represent a threat, terrorist or otherwise, who would then become subject to secondary examination on arrival.

Mr. Craig Scott: It would happen somewhere else.

The Chair: Thank you. We'll leave it at that.

Our time is up. We want to thank you for coming. We appreciate your comments and your testimony.

We are going to suspend now and wait for our next witnesses to take their place.

•(1620) _____ (Pause) _____

•(1620)

The Chair: I call our meeting back to order.

We're on our second panel today. We're continuing with our consideration of Bill S-7, An Act to amend the Criminal Code, the Canada Evidence Act and the Security of Information Act. We welcome our guests from the Royal Canadian Mounted Police. We have Mr. James Malizia, assistant commissioner, national security, criminal investigations and protective policing branch. As well, we have testifying for the Toronto Police Service, Inspector Stephen Irwin, with the intelligence division.

I understand you have brief opening statements before we proceed into a round of questioning.

Mr. Malizia.

A/Commr James Malizia (Assistant Commissioner, National Security Criminal Investigations and Protective Policing Branch, Royal Canadian Mounted Police): Thank you, Mr. Chair.

Thank you for inviting me here to speak about Bill S-7, the combatting terrorism legislation. I appreciate the opportunity to provide answers to your questions about the implications for law enforcement arising from this bill.

The RCMP believes that Bill S-7 contains important tools that could enhance our ability to detect, prevent, deny, and respond to terrorist threats. With terrorism, even more so than with other forms of criminal activity, it is imperative that we work to prevent attacks before they occur.

•(1625)

[Translation]

Canada's national security remains a key strategic priority for the RCMP. We have had a number of successful prosecutions under the

Anti-terrorism Act since its inception in 2001. The three most commonly used Criminal Code provisions have been section 83.18: participating in the activity of a terrorist group; section 83.2: committing an indictable offence for the benefit of a terrorist group; and section 83.19: knowingly facilitating the activity of a terrorist group.

[English]

Radicalization of Canadians to criminal extremism is a continuing challenge to our society, and the RCMP works assiduously to counter the extremist message through our outreach efforts with a number of vulnerable communities across the country.

The proposed new offences of leaving or attempting to leave Canada to participate in the activities of a terrorist group will assist law enforcement to stop the activities of prospective terrorists at an earlier stage of their preparations, before they leave Canada to join a terrorist training camp or do harm elsewhere.

This will provide law enforcement with a preventive tool consistent with Canada's counterterrorism strategy. We understand and appreciate the responsibility these amendments entail for law enforcement with respect to subsection 6(1) of the Charter of Rights and Freedoms—the right of Canadian citizens to enter, remain in, and leave Canada.

Concerns have been raised about the potential for abuse of the investigative hearing and recognizance with conditions provisions as a way of compelling individuals to testify or otherwise give information. It has been argued that these are unnecessary instruments because they were never previously used.

We recognize that the investigative hearing provision is likely to be used in rare situations where we know a witness has critical information, but who is unwilling to cooperate with police. For instance, they may not want to assist the authorities, or they may be involved in or aware of a terrorist plot.

Current RCMP operational policy describes the steps, controls, and accountability processes in place to ensure that powers assigned to peace officers are used lawfully and appropriately.

With respect to the investigative hearing provision, the RCMP had previously written into policy a number of safeguards for its use, and we believe there is considerable oversight built into its prospective use.

Should the provision be reinstated by Parliament, the RCMP will expeditiously update its policy and continue to emphasize its potential impact on the rights and freedoms of Canadians, and insist that caution and discretion be exercised when considering its use. Training will also be updated accordingly. Our centralized oversight of national security criminal investigations at national headquarters would ensure vigilant responsibility and accountability over these powers.

The recognizance with conditions provision allows a person to be detained for a maximum of 72 hours, potentially a critically important time period necessary to prevent a terrorist activity from being carried out. As with the investigative hearing provision, a number of safeguards are linked with its use, including Attorney General consent, judicial authorization, and annual reporting.

In summary, the various proposals for change provided by this bill since the statutory reviews of the Anti-terrorism Act in 2001 are welcomed by the RCMP because procedural rights, appeal rights, and accountability to Parliament have been enhanced, all contributing to public assurance about these measures.

Preserving the open court system and trial fairness is a fundamental dimension of the democratic traditions that we all cherish in this country.

[Translation]

The words of the International Jurists Commission in their 2009 report on terrorism, counterterrorism and human rights are significant to bear in mind when states invoke new anti-terrorism laws. An effective criminal justice system based on respect for human rights and the rule of law is, in the long term, the best possible protection for society against terrorism.

[English]

Again, thank you for inviting me to participate in these important hearings.

The Chair: Thank you very much, sir.

Mr. Irwin.

Insp Stephen Irwin (Inspector, Intelligence Division, Toronto Police Service): Thank you very much for inviting me to come and address the members of this committee.

I come as a Toronto police officer. I have the unique circumstance of being seconded to the RCMP; I work in their national security program. My background is such that I have worked in the area of terrorism from a municipal perspective since 1995, when we first created a subsection in our intelligence unit that addressed the issues.

I don't have a lot to add to what Assistant Commissioner Malizia has said. I think he certainly addressed it very, very well—reinstating or bringing back these sections of the Criminal Code and the value to law enforcement. I've attended today in the hope of addressing questions that deal with how it would impact municipal policing, and in Toronto specifically, as a Toronto police officer, not in my secondment to the RCMP.

The position of the Toronto Police is that sections of the code will be very useful in our efforts to work with the RCMP in an ongoing relationship and partnership in dealing with national security and the threat of terrorism, both against and towards Canada as well as those who are here, and what we're seeing with the radicalization of those who are looking to go elsewhere to commit terrorist activities or involve themselves with terrorism in other parts of the world.

Again, I thank you, and I look forward to your questions.

• (1630)

The Chair: Thank you, sir.

We'll move into the first round of questioning, and we'll go to Ms. Bergen, please, for seven minutes.

Ms. Candice Bergen: Thank you very much, Mr. Chair.

Thank you to both of the witnesses for being here.

I want to begin with either one of you. Inspector Irwin, you spoke just briefly about the radicalization of youth. Can you talk a little bit about how that has changed? You said you began doing this in 1995. Is that correct?

Insp Stephen Irwin: That's correct.

Ms. Candice Bergen: Can you talk about how it has changed between 1995 and 2007, and then even between 2007 and 2012, and how that is even more of a threat?

Insp Stephen Irwin: Well, certainly I can go back to when I first came to intelligence, the Toronto police intelligence unit, in 1993, which was when our hate crime unit was established. The issue of that day was a domestic concern, a national one: white supremacy. A group in this country was very involved with its ideological beliefs, and it was growing within a very short period of time. By 1995, it had peaked and was falling off.

Up until 2001, as we look at terrorism and why Toronto put an anti-terrorist section in place, it was because of the first attacks on the World Trade Center. One of my former superiors recognized that that was an issue that we would have to deal with. We worked very hard differentiating between criminal extremism and terrorism. The events of September 11, 2001, certainly changed. I believe the shock that we all experienced from that event in North America ultimately impacted on us, looking in North America to preserve our own safety. Our concern at that time was the threat towards us.

As we're now 11 years beyond, we're seeing—and certainly the trends are such—that there are a number of individuals and communities that are affected in Canada, that have members who are with terrorist entities or terrorist groups going elsewhere to join in conflicts in other parts of the world. That is not to say that we are not aware of those who are here and a threat to us. They do not get the same publicity and there are not a lot of statistics about them. Certainly we do have incidents where we are seeing, in my experience, an increase in those who are targeting and looking at where Canada has a presence in other parts of the world, our political position, and looking to harm us, and those who are going elsewhere to support other terrorist groups.

It is growing. There are certainly greater incidents. We are seeing more extremist behaviours and activities. As we see them and identify them to be an issue of national security, they are passed to the RCMP for criminal investigation, when a criminal threshold is met, or information is passed to CSIS, as it is an intelligence issue.

• (1635)

Ms. Candice Bergen: I understand you testified before the Senate committee in May of this year. At that time you expressed that you were disappointed when these sections, which we are now looking to reinstate, were lost. Can you talk about why they are important? I think what we need to hear is why it is important that they are reinstated now. I think it's important that we hear that.

Insp Stephen Irwin: I have given much thought to circumstances that we are seeing and we are wrestling with in relation to Canadians who are being radicalized, who are perhaps being lured to other parts of the world to support conflicts and other terrorist acts. There are a number of people who are, I think, led astray.

I think certainly by having this legislation back in place...with the recognizance, it provides with an opportunity to perhaps prevent people from engaging, from going elsewhere.

There are a number of scenarios that I could offer as examples. Say we were to learn that a group of young people were leaving Canada—perhaps the information comes from intelligence, from an international partner. They're a group of young people who are getting on a plane to go for what they believe is education. But we now know or learn, on relatively short notice, I will say, that there is an issue with where they are going and with what in fact will happen once they arrive in another part of the world, where they will be radicalized and then perhaps forced into combat or to join a group. Certainly, the recognizance and the ability to arrest for that purpose would be very helpful.

So they might not know exactly what the end result is, but we may know, and certainly it would be more in the RCMP realm and through the RCMP that they would learn about it through international partners. But certainly it provides a very useful tool.

There are other individuals for whom, if they return to Canada having been associated or involved with terrorist groups—or if information comes to us that they are closely associated—there might not be sufficient evidence to prosecute them for criminal offences here because of the parts of the world they're coming from. Certainly, there may be sufficient information that we would want to take them before a court and have conditions put on them to ensure they are not a threat to the public safety in Canada.

A part of what I would look for is conditions that would also impose, perhaps, counselling or some other help that is court-ordered, and ultimately the individuals will perhaps move further away from their extremist belief or the terrorist aspect of their belief.

The other part that I believe—

The Chair: Very quickly, please.

Insp Stephen Irwin: Okay, sorry.

The other part that I believe is very important with these sections is again the prevention, the threat of being held accountable for behaviour here. There are conditions put on people who have crossed the line and come into the criminal realm. It would also be very beneficial as a deterrent.

The Chair: Thank you very much.

We will now move to Mr. Scott, please, for seven minutes.

Mr. Craig Scott: Thank you Mr. Chair.

I would like to continue with that discussion with respect to folks leaving the country. We do know, from what you said and from other testimony, about a certain trend for youth to leave for terroristic purposes. At least, that's the fear.

I'm just wondering what kind of evidence is going to be needed to prove the whole "intent or attempt to leave the country" crime. You immediately gave as an example that we might have intelligence. I want to present to you the following problem. It's been a problem throughout, say, the last couple of decades of history—Air India being one example. When sources of information come from the intelligence side, it all gets very messy in court. Law enforcement agencies and intelligence agencies don't like to see certain kinds of intelligence sources, etc., evidence that reveals sources, appearing in court.

We have a recent case, Harkat, but there are other reasons to think it's even dodgier that intelligence sources might necessarily be kept secret in court proceedings.

All that leads to a dynamic whereby if intelligence is one of the main pieces of evidence for knowing that people intend to leave the country for a certain purpose, what are the chances that when you stop somebody and arrest them there is actually going to be a prosecution? If there is not going to be a prosecution, isn't the system a form of prevention that's a disruptive system? It's not really about prosecution.

Can you convince me that the kind of evidence that will be available can and will lead to prosecutions?

• (1640)

A/Commr James Malizia: Sir, to answer your question, there are certainly different ways in which we collect information. On an ongoing investigation, if we do have a wiretap authorization and we do intercept through technical means a conversation involving an individual, yes, there is information that comes from security intelligence forces, but there is information that comes from police investigations as well. Also, when we do receive information, we also look to validate through other types of information. That would be one instance where on an ongoing investigation we would be able to utilize our own information to be able to firm it up.

How would that bring a case towards court? Every case will be unique in itself. It will depend on the totality of the circumstances. If anything, it's to have a tool that would allow us to prevent a terrorist act and to allow the person to be represented by a lawyer, to be brought before a judge, to have conditions placed and all of that, after the Attorney General's consent, of course, has been received.

There are a lot of oversight and safety mechanisms in place to ensure that the information is valid and credible, not only from our perspective, but from the perspective of the Attorney General and the judge, and then going forward.

Mr. Craig Scott: I understand. You are assuming that the normal system will be able to operate and prosecution can be the end goal.

You mentioned conditions. I'm just wondering, is there any kind of a blurring here of the arrest for the crime of attempting or intending to leave the country, prosecuting for that, and securing recognizance with conditions for somebody who you believe is leaving the country for that purpose? Is the intent to use the recognizance provisions as a way to control their exit? The U.K. has control orders. You actually take passports away from people, etc. Is there some jibing of leaving the offence provisions and the recognizance with conditions provisions that you see as crucial to this piece?

A/Commr James Malizia: The recognizance with conditions, as you know, would only be utilized in the rarest of cases, when there is an imminent threat to public safety. If we were to receive information that there was an imminent threat to public safety—

Mr. Craig Scott: Of Canadians, or could it be abroad?

A/Commr James Malizia: In this case here, it would be.... Is your question, would the threat be from abroad?

Mr. Craig Scott: No. The whole point is if the real concern is that somebody is going to leave the country to commit a terrorist offence, would that fall within your understanding of where recognizance with conditions could be applied?

A/Commr James Malizia: I think recognizance could be applied to a situation like that if someone was attempting to leave the country to commit a terrorist act. Yes, I could see it.

Mr. Craig Scott: I have one minute?

The Chair: You have two minutes.

Mr. Craig Scott: Minister Nicholson, before the Senate, talked about both of these new reinvigorated provisions that have lapsed, investigative hearings and recognizance conditions, as potential sources of evidence to discern the intent of a person to leave the country. There was a serious focus of attention in the Senate about how you are going to prove this. Both of you will be at the operational end, or at least people down the system from you will be, of asking for investigative hearings or suggesting they're needed. The clear implication...I can't imagine that the minister is talking about using this as a way to be disruptive. He must be thinking about calling in people who have information about somebody else who may be leaving or is possibly suspected of leaving the country, gathering evidence to that, and then using that evidence as the way to prove they have the intent. It brings up a lot of concerns about what circle of people you would be bringing into an investigative hearing to search for that kind of evidence—family, community, neighbour.

I'm just wondering if you could address those comments, and the danger, especially since you are emphasizing that these shouldn't be used lightly.

• (1645)

A/Commr James Malizia: You bring up a good point, sir.

As you know, there is no mechanism right now to compel the attendance of a witness with respect to a terrorism investigation. Of course, the investigative hearing could be utilized to compel a witness with respect to a terrorist act about to be committed.

But it does come down to a strategic decision at the time of the investigation, so we would have to assess, first of all.... Let's say that it was not an imminent threat, but there was information to be

gleaned with respect to the investigative hearing, or there was information to be gleaned from a witness regarding either a past terrorist attack or one that's about to occur. We would have to assess whether taking that approach would put the investigation at risk.

Many factors have to be taken into account, of course. If we have sources involved and if there are police agents and wiretaps, we have to take into account the safety of those people. There are many factors that come into play. So we would look on a case-by-case basis at whether we would go towards an investigative hearing for a witness or for a person of interest at that point.

The Chair: Thank you very much.

We'll now move to Mr. Norlock, please, for seven minutes.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much, Chair.

Thank you to the witnesses appearing today.

Some of my first questions will be short, but feel free to expand on them if you see the need.

I notice, by your uniform, that you have approximately 30 years' service with the Toronto Police, so I suspect very strongly that you've seen some changes there. My questions are going to be around the ethnicity of the Toronto Police Service, as we move to some of the questions that have been asked of other witnesses concerning not only this bill but some of the other legislation the government has brought down.

I gather that the Toronto Police Service has an outreach program to the very varied ethnic community in Toronto, and that part of that outreach includes people of the Muslim faith.

Insp Stephen Irwin: Yes, sir.

Mr. Rick Norlock: I gather that currently on the Toronto Police Service you have a good number of officers who would describe themselves as adherents to that faith.

Insp Stephen Irwin: Yes, absolutely, sir.

Mr. Rick Norlock: Do you believe that the Muslim community at large in Toronto, and specifically police officers, perceives this legislation—or any other legislation you've seen recently concerning terrorists and terrorism and making Canada a safer place in that regard—as unfairly or unjustly targeting adherents to the Muslim faith?

Insp Stephen Irwin: I would go back to my beginning in the hate crime unit in 1993. Certainly there are a number of communities that feel impacted by legislation and certain enforcement initiatives and certain legislation like this.

Certainly, right now, as the threat comes from the concern with Islamic extremists or those of the Muslim faith, the efforts in fact to move closer to them, not only by the Toronto Police, but as I said earlier... I won't go far into the RCMP, but I am very familiar, on a day-to-day basis, with the outreach program in Toronto, in Ontario actually with the "O" Division national security enforcement team. In fact, we have worked very closely with them on a number of outreach initiatives we've done specifically with the Muslim community in both their private schools and their mosques.

Even last Saturday in Toronto, in the Trethewey Drive and Black Creek Drive area, there were some 200 members of the Muslim community who came out with what was a joint outreach program with the RCMP national security, with the local Toronto Police, and with CBSA, the Canada Border Services Agency.

I think the important part is the outreach, so that they better understand who we are, as people, and what we're doing, and how this law is not specific to them but to the issue. It is through outreach and that communication.

Within the Toronto Police we have a number of outreach initiatives with the Muslim community and other affected communities, not only in the national security realm. The chief has consultative committees. In fact, there is the Muslim consultative committee, which I have addressed a number of times over the years, particularly on hate crime and hate-related issues.

● (1650)

Mr. Rick Norlock: What was the message you heard and what was the message you delivered? Please be as concise as you can because I have a follow-up question.

Insp Stephen Irwin: Okay.

Certainly, the whole issue of this law being specific to them—and we're quite clear that it is not. A large number of members of that community are very supportive of law enforcement, of this country, of Canada, of our initiatives, and they ultimately want to work and build better relationships with us so that the community as a whole better understands that we are not targeting them.

Mr. Rick Norlock: Do you feel that the message is getting across?

Insp Stephen Irwin: Yes, I do. In fact, it is improving. I'd say that every four or five months you see another inroad that is very significant for us.

Mr. Rick Norlock: Thank you.

When you testified before the Senate committee on Bill S-7, you noted there were a number of young Muslim Canadians becoming more and more radicalized in Toronto and leaving Canada to join terrorist camps in places like Somalia and Pakistan.

Are you aware of any situations where Canadians have travelled or attempted to travel from Canada to other countries, such as Afghanistan, Somalia, Pakistan, or Yemen, to join terrorist organizations and to engage in terrorist-related activities?

Insp Stephen Irwin: My short answer is yes, I am aware of that, but I am limited in what I can say. There are ongoing investigations.

Mr. Rick Norlock: I realize that.

I guess what I'm trying to ascertain is whether there appears to be an increase in that kind of recruitment and activity, from your perspective.

The assistant commissioner can also chime in, if he feels it's appropriate.

Insp Stephen Irwin: My short answer again is yes, we are seeing that, and it's limited in what I can provide.

I'll look to the assistant commissioner to add more detail.

A/Commr James Malizia: Well, sir, there's no doubt that international events do influence the number and types of investigations you're referring to. We are seeing a consistent volume of individuals being radicalized who are looking to travel abroad to either participate in, train for, or conduct terrorist acts.

The short answer is yes, we have. It is a serious concern for us, in the sense that individuals who do depart Canada right now, if we're not in a position to prevent them from leaving and they do end up in areas of the world where we might lose track of them.... The question is, once they've received training, what harm will come to either our allies or to ourselves if they decide to return to Canada? That is definitely a continuing concern for us.

Mr. Rick Norlock: Thank you very much.

I'm glad you mentioned the preventative side of this legislation, because it is a preventative measure.

If you don't mind me going back to the inspector, I would think, Inspector, that the community at large—in particular the parents and loving relatives of some of these youth who may be attracted to this—when you made the presentation, would be supportive of it.

Would you say that's occurring, once they know in actual fact what the legislation does?

The Chair: Thank you, Mr. Norlock.

Very quickly, please.

Insp Stephen Irwin: Yes, I absolutely believe that, sir, and I believe that's an important factor when the parents realize what their sons or their daughters have done—mostly their sons. Of course, there's a concern that some of them may actually die overseas in conflict, supporting what is a terrorist organization.

● (1655)

The Chair: Thank you, Inspector.

We'll now move to Mr. Scarpaleggia, please, for seven minutes.

Mr. Francis Scarpaleggia: Again, I'm trying to clarify this point for myself

In the Criminal Code at the moment it is an offence to leave Canada to commit a terrorist offence, but I guess the burden of proof, or the standard of proof, is a little higher than under the new offence that is being created, because the new offence doesn't say you necessarily are going to commit an offence imminently; it simply says you're going to train. That's really the value of this new offence: the burden of proof is not as high, and, as you say, it allows you to keep track of individuals who otherwise might get lost overseas and you wouldn't know where they are.

Is that a correct interpretation of this?

A/Commr James Malizia: Yes, I would agree with that, sir.

Mr. Francis Scarpaleggia: In the past, under the existing Criminal Code offence, have you been able to charge people with going overseas for the purpose of creating an offence if they haven't actually gone ahead and done it? Have there been cases where you've been able to use that part of the code, or are these cases few and far between?

A/Commr James Malizia: Sir, the cases I'm aware of are individuals who actually departed Canada, trained, and then at that moment we gathered sufficient information—specific to this example, of course—to charge them after the fact.

Insp Stephen Irwin: Respectfully, if I could, there is one person

Mr. Francis Scarpaleggia: Sorry.

Is this after the fact of committing the offence?

A/Commr James Malizia: After going through training, yes.

Insp Stephen Irwin: There is actually one individual from Toronto—he was leaving and was apprehended at the Toronto airport—who is before the courts as we speak. Assistant Commissioner Malizia has arrived just recently in this program and might not be familiar with the case. It was initiated by the Toronto Police and turned over to the RCMP, and the individual is before the courts.

Mr. Francis Scarpaleggia: But are you saying that you were able to achieve the same goal without the new provision?

Insp Stephen Irwin: He's before the courts. It has not gone through successfully in a prosecution, but certainly he is charged with attempting...

Mr. Francis Scarpaleggia: So you're saying that rather than their subsiding—because there's been talk that al-Qaeda is not what it used to be, that it's really more disparate now, and so on—your experience and knowledge tells you that in fact there are more and more young people who are pursuing the terrorist option, who want to enlist in this kind of activity?

Insp Stephen Irwin: I would use the term “increasing”. An increasing number are coming to our attention.

Mr. Francis Scarpaleggia: Assistant Commissioner Malizia, you mentioned that in terms of the two new provisions that we're reinstating, the one on investigative hearings and recognizance with provisions, there are more safeguards now than when these were first brought in a few years back. Did I understand you to have said in your initial remarks that our democratic system has evolved new safeguards to better ensure that these aren't abused? Is that true?

A/Commr James Malizia: Yes, that there's adequate—

Mr. Francis Scarpaleggia: Could you elaborate on that?

A/Commr James Malizia: In regard to the number of safeguards that are in place, if we start at the most basic level, of course, we would require Attorney General consent before proceeding. There would be a judicial authorization required. Internally, within the RCMP, we did have a policy—which we would need to bring up to date—that required the investigator to receive internal approvals and support before going to the Attorney General. So there are safeguards in place to ensure that the provisions are being utilized appropriately.

Mr. Francis Scarpaleggia: Originally, way back when, when they were first introduced, one didn't need the consent of the Attorney General?

• (1700)

A/Commr James Malizia: No, I was referring to internal RCMP policy. There was, I believe, one area where we did not have in our internal policy...specifically with respect to some of the requirements of one of the provisions. So, of course, should these provisions be approved, we would need to update them accordingly.

Mr. Francis Scarpaleggia: Some people from time to time raise the possibility that these provisions will be used when you're not dealing with an imminent terrorist threat, when you're dealing with maybe a situation of public disturbance or a riot, that somehow they could be used in those circumstances where it's technically not terrorism, as we would understand it, but a kind of civil disruption.

Have you heard this argument? I've read it. I don't know how credible it is.

A/Commr James Malizia: Certainly any offence that would be brought forward under these provisions would need to meet the test of section 83, so the actual definition of what a terrorism offence is.

Mr. Francis Scarpaleggia: Right. I see.

Insp Stephen Irwin: I think the second part of that is also the Attorney General's consent. Certainly having dealt with the hate propaganda sections of the Criminal Code, which require Attorney General consent, they are the gatekeepers of what that threshold is. Without their consent we could not go forward.

Mr. Francis Scarpaleggia: Very interesting.

The Chair: Very quickly.

Mr. Francis Scarpaleggia: That's fine, I'm done.

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

We'll now move back to Mr. Garrison, please, for five minutes.

Mr. Randall Garrison: Thank you, Mr. Chair, and thank you to Assistant Commissioner Malizia and Inspector Irwin for being here today.

I want to go back to the point about the cases before the Toronto courts, without going into the case. I think that's a very important case, and it's something I intended to raise. To me, what it seemed to indicate was that the existing powers are sufficient to get a case in court. So whether or not that case succeeds is about the merits of that case and not something we would discuss today. But there doesn't seem to have been a problem in terms of a lack of legal capacity to get that case into court. Would that be correct?

Insp Stephen Irwin: I think what I would say is that the threshold to lay a charge has been met and it has yet to be tried. I think that will be a good indicator of whether we were stretching...and certainly if it meets the threshold according to the courts, who will rule on that. Certainly this legislation and the reimplementation of these sections would make it clearer what a criminal threshold is and that it certainly would allow for enforcement.

Mr. Randall Garrison: But the case is definitely there, and it's up to law enforcement authorities to satisfy the burden of proof at this point. It was not that there was a legal obstacle to actually doing this, as far as I understand it. Without going into details of the case, the authority to bring the charge has not been challenged.

Insp Stephen Irwin: No, and it's the type of investigation and what was required for the evidence to be gathered to meet that threshold, and that's the part we can't speak of.

Mr. Randall Garrison: That's right. I know I'm putting you in a somewhat difficult spot there.

I guess it just raises that question in my mind as to whether even the exit provisions, which are the new provisions in this bill, are actually necessary.

Normally, if you want to stop someone from leaving the country for anything that is already illegal, you simply issue a warrant at that point for their arrest. Right?

Insp Stephen Irwin: They would need to have committed an offence in order to get a warrant.

Mr. Randall Garrison: That would be the normal procedure, and that's what would happen now, and in a way that's what happened in this case we're not talking about.

Insp Stephen Irwin: Yes.

Mr. Randall Garrison: So I'm at a loss as to why we need the additional offence.

A/Commr James Malizia: If I may, sir, are you referring specifically to the offences or the recognizance and the investigative provisions?

Mr. Randall Garrison: I'm referring to the offences here in this case—trying to stick to those. Whether or not it's an offence of going abroad to participate in terrorist activities or any kind of illegal activity—any of those things that already fall under the Criminal Code—you can seek an arrest warrant and prevent the person from going to engage in those illegal activities. That's whether it's organized crime, whether it's a threat to assassinate someone....

A/Commr James Malizia: I guess what I could say to that is that each case is very specific, and to use one case to determine whether the preventative application of it would be wide enough for the majority of cases has yet to be determined.

The second piece to that... If you're looking at the actual imprisonment period, someone who's liable to imprisonment, I believe under the attempt it would be 50% of the actual sentence. So let's say they were being charged with an indictable offence that would usually carry 14 years—

• (1705)

Mr. Randall Garrison: So different penalties?

A/Commr James Malizia: —the penalty would be seven years for an attempt to participate, as compared to the new legislation being proposed, which would be 14 years.

Mr. Randall Garrison: In our discussions today I've heard the word “young” and the word “Muslim” used a lot of times. One of the concerns about this legislation does come from both youth and Muslim communities, that whatever the values for preventative

action and terrorism, there's a danger of falling into racial profiling and drawing too many people into the net.

The example I'm aware of is Israeli security profiling, which is behaviour-based rather than characteristic-based, so they would look for certain behaviours. Their argument is always that if you use words like “youth” and “Muslim”, you have way too much work to do. You have to weed out way too many people who have nothing to do with this and would never fall into this lens. You need a lens that is much more precise and much more behaviour-based.

I guess my question about these provisions is, how do we not fall into that broader profiling? How do we develop a behaviour-based lens that would work with this?

A/Commr James Malizia: That's a great question, because certainly it's always in the forefront of our investigations with respect to our community outreach work and our policing. Simply said, we take an approach based on threat right now.

As we look at the threat environment, the threat is al-Qaeda; A-Q affiliated, that's what we focus on. It transcends many communities. We also work very closely with our communities to ensure that we can also learn from each other in that respect.

The Chair: Thank you very much.

I'll just remind each one of you that we're on a five-minute round, so it's a little shorter than the first round.

Mr. Hawn, please.

Hon. Laurie Hawn (Edmonton Centre, CPC): Thank you, Mr. Chairman, and thank you to both of you for being here.

Before I go on, I want to thank both of your forces for doing such a great job in Toronto this weekend. Things stayed under control, and you were lenient enough to allow people to have fun. I was not one of the ones who needed leniency; I just want to make that clear.

Voices: Oh, oh!

Hon. Laurie Hawn: Obviously, in policing and anti-terrorism and so on, awareness and early intervention is critical. Suffice it to say that you both support these two new measures, because events are ongoing and time marches on and so on. What's your assessment of the urgency or the timeliness required to pass these and get them in place?

I'll start with Assistant Commissioner Malizia.

A/Commr James Malizia: Sir, I really can't speak to the timeline for this. This will be a decision, of course, for the committee and for Parliament, but maybe I can speak a bit about the threat environment and what we're seeing out there.

As I mentioned earlier, the threat environment is evolving, based on international events, incidents, technology, and the ability for people to exchange or receive information and learn from each other through the Internet.

Again, the number of people travelling abroad is still very real and a very serious concern for us, as is the number of people who could potentially fall off the radar once they've left. Then again, there's the work required to be able to work with security intelligence agencies, to have tripwires to determine whether they've come back in, and if so, what their intention is.

As you said, the advantage of having preventive measures allows us to be able to interdict and disrupt potential threats at an earlier period, and for public safety that's a big advantage, not only for our own public safety, but for that of our allies as well.

Hon. Laurie Hawn: Okay.

Inspector Irwin, if I heard you correctly, you mentioned that some people head overseas thinking they're going for education, but really it's indoctrination and so on. Do they unwittingly go, in your experience?

Insp Stephen Irwin: In my experience, what we're seeing, or have seen to some degree, is some elders in the communities who come and look for youth to go and support the cause in the name of nationality—in some instances. Certainly, we have seen some youth who have gone, and the information coming back is that they didn't know what they were getting themselves into. It's almost a naïveté, that they were taken advantage of or led down the path by elders who have manipulated them.

Currently we talk about the Muslim community and that threat, but I think back to the white supremacists and the neo-Nazis and the Hitler Youth who have been present in Toronto since 1993; the same methods were used with the same influence on young, disenfranchised people. I see it with street gangs and why some of our youth get involved in street gangs: they belong to something.

• (1710)

Hon. Laurie Hawn: Of course, it's true that you don't know what you don't know.

Assistant Commissioner Malizia, how much confidence do you have in interagency arrangements, national or international, with respect to sharing information? Will the passage of these two measures have any impact on that, or is that a separate issue?

A/Commr James Malizia: I think that's a separate issue. I think the sharing of information has never been better. I can speak with CSIS. The relationship is excellent. I think of the integrated units we have, which we call INSETs, Integrated National Security Enforcement Teams, with which Inspector Irwin is an operations officer, where we have integrated police forces of various jurisdictions and CBSA. It works extremely well.

I think we've made huge strides, and we're at a place now where we've had several convictions before the courts, and in that regard, I think things are going fairly well.

Hon. Laurie Hawn: Inspector Irwin, you talked about some of your outreach programs in Toronto. I know you can't speak for other police agencies, but do you coordinate with other police agencies across the country on that, and are you going into schools?

Insp Stephen Irwin: Yes, we are going into schools, certainly within the greater Toronto area and across the province. The INSETs

unit is for all of Ontario—it's in transition, I think—excluding the national capital region. But absolutely, we are. We've been to Hamilton. We've been to Windsor and Niagara. The RCMP also has a similar successful outreach in British Columbia. So yes, it's growing.

Hon. Laurie Hawn: Thank you.

The Chair: Thank you very much, Mr. Hawn and Mr. Irwin.

Mr. Garrison, I will give you another two minutes, and then I remind everyone that we'll go to committee business.

You won't get your full five, but go ahead.

Mr. Randall Garrison: I just have one question.

Based on comments that Mr. Norlock made earlier, and in the follow-up by Assistant Commissioner Malizia.... Both of you used the term "preventative".

In my experience, as a police board member and as a city councillor, preventative measures were more of what Mr. Irwin was talking about. What both of you were talking about, when you used the term, was attempts to disrupt terrorist activities rather than remove causes. Preventative usually looks at the causes, in my experience in policing. There is that intermediate category that often becomes problematic for policing in terms of disruption of activities. You see it in the controversies about organized crime—do you participate, do you not participate?

I wonder if you see a distinction between the preventative and the disruptive, whether there's a useful distinction we can make there.

A/Commr James Malizia: You're right in saying that there's a duality there, where provisions can be utilized. Inspector Irwin touched on it before, in a case where youth might be involved. Maybe the recognizance would be useful in helping the youth obtain proper counselling. But then that same recognizance could be very useful for someone who's about to conduct a terrorist attack. So I think there's a duality there. It's a matter of recognizing that and seeing where that could be useful.

Mr. Randall Garrison: Thank you very much.

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

We want to thank both of you for attending today.

Inspector Irwin, I know you delayed your departure on a holiday so that you could appear before this committee. I just want to say that we're very pleased that you availed yourselves of the opportunity to appear before us today. We very much appreciate it. Both of you have aided us a great deal as we deliberate and study this bill.

Enjoy the rest of your holiday, and thank you for attending.

I ask that the committee not go too far from the table. We're going to move in camera.

For everyone else, we need to be in camera when we go to committee business, so we'll suspend for a couple of minutes.

[Proceedings continue in camera]

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