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THE SPECIAL SENATE COMMITTEE ON BILL C-36

EVIDENCE

OTTAWA, Tuesday, December 4, 2001

The Special Senate Committee on Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities, in order to combat terrorism, met this day at 2 p.m. to give consideration to the bill.

Senator Joyce Fairbairn (*Chairman*) in the Chair.

The Chairman: Honourable senators, we are into our second day of hearings on Bill C-36, the anti-terrorism act.

As many who will be watching will know, we in the Special Senate Committee on this bill did a pre-study a few weeks ago. We were asked by the government to put forward some views, concerns and recommendations. We did that. Some of those recommendations have come back to us as part of the bill that we are now studying. There were amendments made. Other of our suggestions did not quite make the cut, but nonetheless, we have a new version of the bill.

We are very happy this afternoon to have with us representatives from the Canadian Association Of Chiefs of Police -- Mr. Bevan, and Mr. Westwick. From the Canadian Police Association, we have Mr. Griffin and Mr. Niebudek. Welcome, gentlemen. Thank you very much for coming. We will begin our hearings now with opening comments from you. I can assure that you there will be vigorous interest in what you have to say and questions from our senators. In the spirit of advancement, I suggest to both our witnesses and our senators to be as crisp as we can so that when you are finished with your statements we can have the maximum exchange with you through questions. Please proceed.

Mr. Vince Westwick, Co-Chair, Law Amendments Committee, Canadian Association of Chiefs of Police: Honourable senators, I will begin by clarifying a small misrepresentation. I am not a chief, but a mere lawyer. I will happily bring the nameplate home because my children will be very impressed.

Senator Bryden: You are not a chief. What is your relationship to the chief sitting on your left?

Mr. Westwick: In my day job, he is my boss. In relation to the Canadian Association of Chiefs of Police, Chief Bevan is the vice president of the association, and I am the chair of law amendments committee and a legal adviser to the Canadian Association of the Chiefs of Police.

Senator Bryden: You are employed by the police chiefs association.

Mr. Westwick: I am employed by the Ottawa Police Service, as is Chief Bevan. We are both members of the Canadian Association of Chiefs of Police and active participants in the work of the CACP.

(French follows - Mr. Westwick continuing: Mesdames et messieurs…

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(après anglais)(M. Westwick)

Madame la présidente, je m’appelle Vince Westwick et je suis le co-président du Comité de modification des lois de l’Association canadienne des chefs de police. Je suis accompagné cet après-midi par M. Vince Bevan, chef du Service de police d'Ottawa et vice-président de l'association.

L'Association canadienne des chefs de police représente 950 chefs, chefs adjoints et membres de l'exécutif du service de police, et plus de 130 services de police à travers le Canada. L'association s'engage à modifier progressivement les lois associées aux crimes et aux questions qui touchent la sécurité de la communauté. C'est un honneur et un plaisir d'être ici aujourd'hui pour vous parler du projet de loi antiterroriste.

(Mr. Westwick: The Canadian Association of chiefs...)

(anglais suit)

(Following French - Mr. Westwick continuing)

The Canadian Association of Chiefs of Police is pleased that Bill C-36 has passed the House of Commons and calls on the Senate to give speedy deliberation to this important piece of legislation.

Having said that, we understand the concerns that have been raised in some quarters, and we are grateful for the opportunity today to address these and the concerns of the members of this committee. We recognize the need for a full debate on the issues raised within the provisions of this bill.

Mr. Vince Bevan, Vice President, Canadian Association of Chiefs of Police: What can you say about terrorism? I have seen firsthand the devastation from September 11. I have attended a memorial service for a colleague from the New York Port Authority Police who died inside the World Trade Center. Along with Commissioner Boniface and Chief Fantino from Toronto, I have visited ground zero, spoken to rescue workers and to those who were there on the frontline when it all happened.

It was a most sobering experience, and provides the background against which we must consider the issues within this bill. Above and beyond the human tragedy and grief, the lesson from September 11, 2001 is that terrorism can happen in North America.

The clerk has advised us that the committee is interested in submissions related to the major amendments made to the bill at the committee stage in the House of Commons.

We would like to get right to the point by commenting on the four areas of major change.

Mr. Westwick: Investigative hearing and recognizance with conditions. The CACP has always supported a full and complete review of Bill C-36 and, in particular, with respect to the provisions in respect of the investigative hearing and recognizance with conditions. The House of Commons has decided that these clauses ought to be subject to a sunset clause, and we accept that decision.

We are concerned, however, with further calls for additional oversight in respect of these provisions, not because we wish to avoid greater scrutiny, but rather because we believe that police actions are currently subject to several levels

of public, administrative and judicial review. It is the position of our association that further provisions would be duplicitous, rather than productive.

While the details vary from province to province, police in Ontario, for example, are subject to an array of judicial and statutory accountability mechanisms such as: The police services Board, which is made up of members of the public appointed by the provincial government and municipal elected representatives; the Ontario Civilian Commission on Police Services -- a civilian-appointed quasi-judicial tribunal, which oversees police discipline and public complaints; the criminal courts, which will dismiss the charge in question and directly sanction police misconduct; the civil courts; the Human Rights Commission at both the federal and provincial levels; and the professional ethics of every police officer.

In addition to the reporting provisions associated with the investigative hearing and recognizance with conditions, there are built-in protections and safeguards. With respect to the hearings, it is critical to remember that the evidence of the witness and any derivative evidence are not admissible against that witness. That will give rise, in our submission to you, to important strategic considerations in the conduct of an investigation with respect to the application of an investigative hearing.

In respect of the recognizance with conditions it is important to remember that, ultimately, the person who is the subject of the recognizance, or of the provision, must go to court before a judge. The process is already subject to a built-in judicial scrutiny.

We believe that there is a need for specialized legislative training relevant to these important provisions, and we ask honourable senators to help us to strongly deliver that message.

Changes to the reporting requirements: We accept the changes that were made to the reporting requirements in Bill C-36, as introduced at the committee stage in the House of Commons. The police community is familiar with stringent reporting requirements, and will be able to track and provide the information sought in these provisions.

Changes to the definition of "terrorist activities:" The Canadian Association of Chiefs of Police does not want to see the provisions of Bill C-36 used for other than terrorist activities. We accept the legislative intention, and we well

understand that if police try to broaden the scope of application of this bill, we are certain that the courts and the public will not accept it and nor should they.

Changes to the ministerial permits: These changes do not directly impact on the police function, and we take no position on the changes that have been made.

Mr. Bevan: Honourable senators, with your permission I would like to highlight a few important points that the Canadian Association of Chiefs of Police believes are critical to effective counter-terrorism. The first is law enforcement co-ordination. There is a new harmony within policing. Inter-agency communication at the executive level has lead to cooperation at the frontline. We need to reinforce and formalize the shared focus and to build partnerships with those departments and agencies that share in the responsibility of keeping Canada safe.

That progress began with work on organized crime and was further mobilized on September 11. I wish to compliment Commissioner Zaccardelli of the Royal Canadian Mounted Police and CACPs President, Commissioner Boniface, for demonstrating police leadership in these difficult times.

However, the long-term challenges of defeating terrorism demand that Canada have a model that expands, formalizes and institutionalizes the focus and collaboration of our law enforcement and intelligence agencies. The implementation is simple.

The Canadian Association of Chiefs of Police submits that Bill C-36 be amended to include a provision to create a small, central agency mandated to ensure cooperation, co-ordination of activities, communication and exchange of best practices for federal, provincial and local level agencies and departments involved in intelligence and law enforcement. In order to be effective, this agency must report directly to the current ad hoc Commons National Security Committee, or to the entity that ultimately takes its place. The CACP believes that this is a critical need.

Lawful access, is the short form for a whole array of legislative, regulatory amendments and administrative actions that are needed to permit law enforcement and intelligence agencies the legal and technical access to newer kinds of communications technology. Significant consultation and planning has already been conducted in these areas and needs to be acted upon. Recent history dictates that terrorists are well-funded and equipped with high-tech communications devices. Police need to be able to keep pace with advances in technology.

Further, recent rulings of the CRTC have seriously restricted police access to certain information such as the name of the telephone company delivering service to the customer and information often referred to as "reverse directory information." These limitations present significant obstacles to police while they are investigating organized crime and terrorist activities.

With regard to identity theft, the ability of terrorists to move freely through Canada and into the United States often occurs through the use of false identification. The first step in the manufacture of such false identification is identity theft. Misuse of a credit card or compromising other identification is often the first step in the ultimate issuance of a false driver's licence or passport. Legislative steps are necessary to protect the integrity of our processes.

With regard to interprovincial police jurisdiction, police jurisdiction in Canada is determined by provincial legislation, with the exception of the RCMP. So that police can operate out of province, special provincial designation must be granted through a sometimes bureaucratic process. Even the RCMP suffer from this; every year hundreds of RCMP officers are sworn in as special constables in Ottawa to help police Canada Day by executing powers under the Liquor Control Act or other municipal bylaws.

Locally, it is merely the bridges that separate the two communities in the National Capital Region. However, the existence of two jurisdictions promotes problems and issues and often gives advantage to organized crime and to those who would engage in terrorist activities.

The issue does not exist solely in Ontario and Quebec. Frankly, this sort of jurisdictional impediment, while minor on its face, is a huge hindrance to good police work and ought to be corrected by Bill C-36. The request seems to meet with universal appeal, but it still seems to be hung up. We would ask that this concept receive priority and be included in this bill.

In conclusion, honourable senators, the Canadian Association of Chiefs of Police supports Bill C-36. We do not believe that its provisions are excessive, and we do not believe that these provisions will lead to abuse. We do believe that the provisions are necessary and practical.

Mr. David Griffin, Executive Officer, Canadian Police Association: I should introduce my colleague. To my right is Mr. Mike Niebudek. He is the president of the Mounted Police Association of Ontario and is a vice-president with the Canadian Police Association.

As the national voice for 30,000 frontline police personnel in Canada, the Canadian Police Association welcomes the opportunity to appear before the committee this afternoon concerning Bill C-36, the anti-terrorism act. The incredible and tragic events of September 11, 2001 have heightened the awareness of all Canadians and our international allies of the threat associated with terrorist activities, and our vulnerability as free and democratic nations.

Now more than ever, Canadians are acutely concerned about the safety and security of our airlines, railways, transportation systems, ports, seaways, canals, pipelines, nuclear facilities, public institutions and economic centres. Canada's police officers understand this concern and share in the view that more can and must be done to preserve our way of life.

The terrorist's greatest ally is complacency. Terrorists exploit the very freedoms and protections afforded by our democratic society to carry out their cowardly and inhumane acts of terror.

Canada must apply a balanced approach that preserves fundamental freedoms for law abiding Canadians while ensuring that those who choose to live outside our laws cannot use those same laws to seek refuge from detection or prosecution or to undermine our democratic way of life.

Bill C-36 is a comprehensive bill that endeavours to balance the public security concerns of Canadians with fundamental issues of individual human rights and protections. We commend the Minister of Justice and her officials for the reasoned approach that is contained within the original version of Bill C-36.

We find it unfortunate that it became necessary for the government to modify the important and necessary enforcement provisions of the anti-terrorism bill. We were also disappointed that this committee took an adverse position in this regard without the benefit of meaningful consultations with those who must ultimately enforce this legislation.

A number of issues have been raised in public commentary concerning this bill, some of which are obviously levied by persons not familiar with the actual contents of this legislation. We will endeavour to address briefly the more significant and substantive issues that have come to our attention.

We recognize that the protections of individual freedoms are an integral part of our democratic framework. We respect the need to balance these freedoms with the need to protect our citizens and communities.

Bill C-36 maintained this balance. Bill C-36 is clearly confined to issues of commonly understood terrorism concerns and cannot be construed so as to apply to other crimes such as organized crime or civil disobedience.

The original clause 145 of the bill provided for a mandatory review by a committee of Parliament within three years of coming into force. The amended Bill C-36 includes provisions under clause 83.32 that introduces a sunset clause for the investigative hearing and arrest provisions of the bill. This essentially means that these provisions of the bill would be rescinded in five years, unless extended by Parliament.

While the Canadian Police Association supported the mandatory revision in the bill, we opposed suggestion after sunset clause for two reasons. First, we submit that terrorism is not a new phenomenon that, contrary to recent political rhetoric, will be eradicated for future generations. Terrorism is an evolving public security and safety concern that may eventually be controlled, deterred or diminished, but will not be extinguished.

Second, these investigations are extremely complex, sensitive and time consuming endeavours that may take years to investigate, prosecute and bring to a conclusion. To suggest that the law should be repealed in five years would deter the initiation of investigations in the latter stages of that period and render the law increasingly useless.

The bill does not, as some critics have suggested, provide broad powers of arrest to the police that contravene individual rights or freedoms. The bill confers very restricted authority upon police to intervene where it is reasonably suspected that a terrorist act may be committed for the purpose of prevention, and then present the arrested party to a provincial court judge.

We are prepared to support the bill as it is now written with the expectation that terrorism is a global concern that will continue to pose threats to national and international security for future generations. We expect that the need to continue these provisions will become evident over time.

We are also confident that the concerns over the scope of the enforcement provisions, many of which have been fuelled by misinformation or misunderstanding, will prove to be unfounded. Police officers are one of the most highly regulated professions in Canada, and our actions are closely monitored and scrutinized. I would refer the committee to page 9 of our brief where we list the 11 layers of oversight by which police officers in this country are reviewed at present.

The Canadian Police Association submits that amendments to Bill C-36 should address the creation of a new crime of identity theft, strengthen Canada's telecommunications laws to curtail the commercial availability of devices that are impervious to electronic surveillance and to require telecommunications companies to provide lawful access at their cost to authorize police interceptions over telecommunications networks, to provide judicial discretion to exclude terrorists from parole eligibility and to impose consecutive periods of parole ineligibility for persons convicted of multiple murders. We also see the need for an amendment to provide interprovincial designation capabilities for local and provincial law enforcement.

We have serious reservations, however, about the capability of Canada's police and law enforcement official to meet the increased demands of anti-terrorism requirements and sustain important domestic policing and law enforcement responsibilities. This is not a knee-jerk response to tragedy but an impassioned plea to address the concerns that have been raised by police and others in the enforcement community for nearly a decade.

In successive resolutions adopted by our membership, most recently on September 1 of this year, the Canadian Police Association has raised concerns about the level of protection at our nation's borders and funding for national and federal policing responsibilities.

(French follows - Mr. Niebudek: Le gouvernement federal…)

(après anglais)

M. Mike Niebudek, vice-président, Association canadienne des policiers et policières: Le gouvernement fédéral doit agir rapidement pour réparer les failles béantes dans les capacités actuelles du Canada en matière de sécurité et d'application de nos lois. Les récentes réaffectations du personnel de la GRC en réponse à la problématique du terrorisme en sont un exemple de choix. Selon le commissaire Zaccardelli, 2000 gendarmes de la GRC ont été retirés d'autres fonctions policières pour riposter à la crise du terrorisme. On a donc retiré ces gendarmes d'autres fonctions policières également prioritaires auparavant, telles que la lutte contre le crime organisé et la surveillance policière sur le terrain et dans leur communauté. Des gendarmes autrefois affectés aux priorités du crime organisé ont dû abandonner leurs enquêtes pour assumer leur affectation antiterroriste actuelle.

Malgré que l'ACP ait adopté des résolutions à la chaîne incitant le gouvernement du Canada à assurer le financement adéquat du budget de la GRC pour maximiser l'efficacité des responsabilités policières fédérales et nationales, nos réclamations d'aide sont demeurées sans réponse. À défaut de toute augmentation significative des effectifs de la GRC, nous maintenons que la sécurité publique pourra être compromise à longue échéance.

Le gouvernement du Canada a récemment annoncé une injection de fonds pour «affermir la capacité du Canada de prévenir et détecter les menaces existantes ou émergeantes à la sécurité nationale et pour y réagir». Sur les nouveaux fonds de 250 millions de dollars, seulement 9 millions ont été affectés à la dotation en personnel dans les secteurs prioritaires de la GRC. Cette somme équivaut à approximativement 72 gendarmes à temps plein pour tout le pays. De toute évidence, ce n'est pas suffisant pour répondre de façon probante aux nouvelles exigences policières nationales imposées à la Gendarmerie royale du Canada.

Le terrorisme est une préoccupation nationale, interprovinciale et transjuridictionnelle. Pourtant, le gouvernement fédéral a résisté aux réclamations de ressources complémentaires aux niveaux local et provincial. Les répercussions des préoccupations suscitées par les événements du 11 septembre dernier se font le plus cruellement ressentir au niveau local.

Nous maintenons qu'un meilleur leadership est indispensable tant en termes de financement accru qu'en termes de coordination des initiatives policières antiterroristes. Les frontières du Canada souffrent de la même incurie. Des

agences d'immigration et des douanes manquent de ressources et de la technologie voulue pour pouvoir inspecter l'énorme quantité de biens et de personnes qui entrent au pays ou qui en sortent à chaque jour. Étant donné notre proximité aux États-Unis d'Amérique, le Canada s'avère particulièrement vulnérable. En tant que tremplin pour le crime international, les criminels internationaux reconnaissent le Canada comme point d'accès aux États-Unis pour y transporter leur contrebande illicite, comprenant le trafic de personnes, de drogues, de pornographie juvénile et d'armes à feu, sans compter l'exécution d'actes terroristes. Cependant, le pire c'est que le Canada s'est acquis une réputation internationale de refuge sûr pour les criminels et de terrain fertile pour le crime organisé.

Le gouvernement doit accorder une priorité plus urgente ainsi qu'un financement et un soutien accru à la protection de nos frontières, à la prévention de l'entrée illégale de contrebande et de criminels et à l'élimination du climat de refuge sûr présentement offert aux criminels condamnés.

L'Association canadienne des policiers préconise la création d'un service national de protection des frontières pour assurer la protection et la surveillance stratégique et coordonner des frontières canadiennes et des points d'entrée au Canada qui seraient distincts du ministère du Revenu national. Le nouveau service devrait également offrir du soutien aux initiatives déjà entreprises par la GRC.

(Mr. Griffin: In conclusion, Madame Chair…)

(anglais suit)

(Following French)

Mr. Griffin: In conclusion, Madam Chair, we believe that Canada requires a strategic, multidisciplinary approach to Canada's national security that combines effective legislation and policies, sufficient human and technological resources and training and a comprehensive, integrated enforcement strategy.

Will Canada succeed in protecting our citizens from terrorist acts? The real test lies not in political statements or new laws, but in whether sufficient political will finally exist to allocate the required priority, resources, training and support to close the gaping holes in Canada's security and enforcement capabilities. Without the tools and resources to do the job effectively, Bill C-36 is meaningless.

We thank you for your attention, and we welcome your questions.

Senator Beaudoin: The police will receive many more powers. I do not have any objection to that as a principle. My only difficulty is that if we want to do that, and we are not ready to proclaim emergency legislation, then it is perhaps a good thing to have a sunset clause. By the nature of our constitutional system, when there is an emergency, the executive may proclaim the emergency. We had many examples in our history. It worked very well in World War I and World War II. The government, as is its right, has now said that they will not proclaim a state of emergency, but they will provide more power to the enforcement agencies because it is needed.

This seems to argue in favour of a sunset clause. I understand that you are in principle against the sunset clause. If the sunset clause is to be permanent, it is good for the rights and freedoms to have something like a sunset clause to examine how the system is working after three years or five years. I would like to have your comments on that.

Mr. Griffin: From our perspective, senator, we do not see the authorities that this bill grants to the police as extraordinary or extremely sweeping. The police, under this bill, have the ability in specific circumstances to arrest an individual without warrant where there is a reasonable suspicion that that person will commit a terrorist act, and they do not feel that they have the ability to get an arrest warrant to deal with that individual. They are then to deliver that person to a provincial court judge.

In our view, that is a specific set of circumstances that will not involve the average police officer out in the street. We do not see this as supporting some of the hysteria that has been developed in the public debate over this bill. It is another tool for law enforcement to use in terrorism situations. We do not believe that the terrorism phenomenon is something that will go away.

We have come here today in support of this bill, but believe that we should voice our reservations. We also respect that ultimately it is Parliament that will determine the law and that the bill will be subject to a sunset clause. We are confident that in five years time or in four years' time that the need to extend these provisions will be evident. We believe that some of the concerns will be diminished on how those new tools would be utilized by the police because there will not be the types of abuses or problems that have been suggested in certain communities.

Mr. Niebudek: Senator, we were supporting the original version of the bill is because the original version of the bill provided a review in three years, I believe. To us, this was addressing the issue of reviewing this bill after a couple of years of enforcement.

Mr. Bevan: On one hand, we are impressed with the perception that may circulate in the government that policing and the other agencies that will work on the issue of terrorism may solve the problem in five years. I wish I were as confident as others may be that we could accomplish that.

However, that said, the issues presented in this bill are extraordinary. We appreciate the discussion that has surrounded the concerns of the passing of this bill. Certainly it the view of the Canadian Association of Chiefs of Police that government ought to remain vigilant on this issue. We are not opposed to the sunset clause as has been indicated. We had anticipated that the built-in review would prompt Parliament to review this issue within the scope of the proposed legislation in any event. We are satisfied that Parliament has the ability to either continue or to make changes in this legislation at any time in the future. We would point to those particular powers that Parliament has in responding to the issues on sunset clause.

Senator Beaudoin: You convinced me that you need additional power. I have no problem with that. The times are difficult and circumstances have changed. We have to be very prudent and secure. I agree with that.

You convinced me from the beginning. That is how it is done. We will know tomorrow if they are of the same opinion. Perhaps the opinions will differ, but they will agree because it is a permanent statute. I have nothing against additional power. However, if stay with that theory of a permanent statute, then when there is the need to choose between that and the emergency, it would be beneficial to have a sunset clause. If an emergency arises, it could last as long as three, four or five years.

The government chose to have a permanent statute, because it believes that it will take more than five or ten years. In my opinion, we should have a sunset clause. After five years, if things are as they are today, it will be renewed. It is a good principle, although some say we do not need it. In your opinion, a review after three years is sufficient.

Mr. Bevan: Yes.

Mr. Niebudek: Senator, if you look at the al-Qaeda handbook, or a Hezoballah handbook, or any other terrorist group, you will not see a sunset clause in those handbooks. You will never see an organization that has decided to stop terrorizing the citizens of the world within a three- or five-years timeframe.

Senator Beaudoin: That is not my problem.

Mr. Niebudek: This is a permanent problem. Perhaps, as you say, senator, in three years during the review, or in five years after the sunset of these clauses, perhaps we will need stronger clauses; or perhaps we will need more tools. It is a two-way street. If that is the case, perhaps a sunset clause would allow us to obtain more powers. Things change in a couple of years; and organizations change. Their mode of operation, as we saw on September 11, demonstrates that they are prepared to use anything to achieve their objectives.

Senator Beaudoin: You do not close the door permanently with a sunset clause. If in five years you think that we should have one and that we should give additional powers again, you would be prepared to do that.

Mr. Niebudek: I agree.

Senator Jaffer: I have some definitional questions and then a longer question. When you spoke about specialized legislative training, you were talking about training relevant to Bill C-36. Is that correct?

Mr. Griffin: That is correct.

Senator Jaffer: The other question I have is on the border question. In your brief, you talk about our border being a "forest" -- I will not read it directly. Perhaps some people that enter our country go to the United States. My understanding is that 85 per cent of our refugees come from that border, as well. Would you agree that it is not one-sided? We also get people from the United States. It is not a one-sided issue.

Mr. Griffin: I certainly agree we get people from the U.S. The number I heard was 40 to 60 per cent.

Our point is that we believe that all of the agencies that have a role to play at our borders have, over the last decade, seen their resources, priority and support diminish considerably -- in some cases, more than 50 per cent in the last decade, despite increased demand. Our concern is that we do not believe that the solution is to remove the economic border or to remove the notion of a border between our two countries, but rather to staff it adequately, to do the necessary checks and appropriate interventions, while allowing the efficient flow of goods and services through that border without delay.

Senator Jaffer: I respect what you say. Obviously, you are only looking from our side, because that is all we can examine. We cannot look at Hezbollah sunset clauses, because we live in Canada. We are looking at what we can do, but we also get the other side so we have to look at that as well. Is that what you are saying?

Mr. Griffin: We made an appearance a couple of weeks back before the House of Commons Foreign Affairs and International Trade Committee. There were a number of different witnesses who appeared at the same time in respect of border issues. We heard from them, in fairness, that they found there were greater delays getting into the United States than coming into Canada. That could be a result of the level of intervention. At the end of the day, it is a two-way problem in terms of the flow of people and goods across the border.

Senator Jaffer: Chief Bevan, I have a question for you, but before I ask it, I want you to know that our police force is the most sensitive in the world. I know that we train people all across the world. My question is not meant to imply that you are not a sensitive police force.

When you spoke about the emotions caused by the events of September 11, I could not agree more with you. I had close friends in that centre, and luckily, one of my friends got out. Last Sunday I was at ground zero. I am very emotional today about it, and I can agree with you that it is hard to accept those events.

The issue for Canadians, as a multicultural society, is that one of the struggles that people who resemble me have is that we do not want bin Laden to live forever, in the sense of dividing our communities. My question is with that in mind.

On the issue of targeting, since I have been sitting on this committee, I have been receiving many e-mails from people who feel they are being targeted. I am sure that you are working on assuring Canadians that that will not happen. I would like to hear from you about what are you doing to make all Canadians feel that they are not being targeted, and specifically being grouped out.

Mr. Bevan: Thank you for that question. Certainly, I can speak for what happens in the City of Ottawa. I know from discussions with my colleagues at the federal level that there are similar initiatives underway elsewhere in the country. Certainly, I can speak with some confidence about the RCMP and Commissioner Zaccardelli who regard this in the same manner.

I would hearken back to September 11. I remember clearly during the media conference that we had about noon that day when we urged all of our citizens not to rush to judgment. There are people who are terrorists who are responsible for this, and no single group, no one-faith group and no one-nationality group ought to be blamed. People should not think that they can hold that group accountable for the act of a few.

We have followed that up in our community with very proactive interfaith meetings and with work in our communities through our Hate Crimes Unit. We have tried to do outreach with as many members of our community as possible and we have been very public in our initiative to assure the people that we will be there to protect the rights and freedoms of all Canadians who live in this mosaic, especially in the City of Ottawa. I know that elsewhere in the country as well, that same basic philosophy has become the norm in policing.

Senator Jaffer: I wish to commend you on that. I will never forget the police reaction when the two mosques were bombed in Toronto. The immediate reaction was very assuring to the community.

You have said that you agreed on a review process. Have you given any thought as to what kind of information you would provide in the review process? I am referring to a review of the implementation of the act, if I did not make myself clear, or the annual report that in the new legislation is addressing.

Mr. Bevan: CACP had some discussions about that. We plan on operationalizing that information. We have already taken the liberty of scheduling on January 17, 2002 and January 18, 2002 a national session for police leaders across the country in collaboration with officials from the Department of Justice and from the Department of the Solicitor General so that we can begin to put some form around what will be presented in the annual report. As well, we will take that opportunity to begin to do some of the specialized training and to set up the broad parameters that will have to be in place to ensure the smooth implementation of this bill.

We do not, at this point, have specifics. There are plans in place to begin to deal with that.

Senator Bryden: I will start with this. A statement was made that Canada is seen as a safe haven and breeding ground for terrorism and organized crime. Canada is seen in that vein by whom? I recall, after September 11, a senator in the U.S. was haranguing his constituents by saying "and these people came out of Canada." There was not a single indication anywhere that any of these people came out of Canada.

One of the biggest problems is that we live next door to an elephant, and when it moves, the mouse better move pretty quickly as well.

Not only was the United States seriously hurt by what happened, but also they were embarrassed that the biggest, most powerful country in the world, perhaps ever, could be taken down by 19 people. They had to blame someone.

We went through an investigation not too long ago on a special committee where reheard from the RCMP commissioner and CSIS and so on. We have a reputation for this and it comes primarily from other places.

There are some facts of which we need to be. I knock on wood that it is not a fact that terrorists are entering the U.S. through Canada. There has not been a terrorist loss of life on Canadian soil for nearly 25 years. It is not to say that there have not been Canadians who have died in other places.

My concern arises from a statement we heard from other witnesses, and it relates to you guys. The statement was very clear. We were discussing the police powers under this bill, and a witness said:

We know that the police will abuse these powers.

If I heard you correctly, you were saying that we will treat this as only a terrorist bill, only be used for that purpose. Basically you were saying that you would not abuse this power. Why is it that you take that position and yet there is the view among a good part of the public that if the police are given extraordinary powers that they will abuse them?

Mr. Bevan: Thank you for the question, senator. If I can go back to deal with the first part, the perception of terrorists entering from Canada is alive in the United States.

I am a member of an association called Major Cities Chiefs. I meet on a regular basis with the chiefs of the 52 largest centres in the United States. We have the opportunity to get together from time to time. At our meeting post September 11, it was made very clear to me in a very impassioned speech by federal authorities that the perception does exist that their northern border is seen as a soft border, as they gently put it. The perception goes back to the incident involving Mr. Ahmed Ressam in late 1999. He was caught trying to get from British Columbia into Washington State with the makings of a bomb in order to execute a plan against an airport on the west coast of the United States.

There have been other things that have been in the Canadian media from time to time about our attempts to refuse entry to people who allegedly have a terrorist background. That has served to reinforce their perception that there is a problem with the northern border.

Recently, I had the opportunity to make submissions to the House subcommittee studying the border security question. I brought to them information about these perceptions and how I had heard that there is a real fear that at some point in the near future there would be members of the United States Armed Forces used to police the border with Canada. Unfortunately, in the past 48 hours we have seen some of that become reality.

The situation is such that the United States expects Canadians to take real, demonstrable steps to address what they perceive as a real threat to their national security. Certainly, we made our best presentation to that subcommittee, and we

hope that those submissions will be taken into account when they determine their issues.

We are here today to talk about the provisions of Bill C-36. This is, in my view, something demonstrable that can be offered up to show in a clear way, that Canada is serious about terrorism and is taking steps to provide the laws necessary to deal effectively with counter terrorism.

With regard to the quote saying that they know that the police will abuse these powers, senator, I have seen recent polls about what Canadians think about national security and how they regard their police. It would be my submission to you that the majority of those who responded to those recent surveys would have a counter view.

Mr. Westwick: I want to add to that final point about police abuse. I have the misfortune in my life of choosing two very unpopular careers; I was a police officer and am now a lawyer. I can assure you that the public criticism of lawyers is a great deal more strident than it is of police.

When wearing one of my other hats, I am responsible for public complaints and internal investigations within the Ottawa Police Service. Of the hundreds of thousands of telephone calls a year that we receive requesting service, both urgent 911 calls and simple inquiry -- hundreds of thousands of calls a year and hundreds of thousands of police community contacts -- we receive approximately 300 complaints a year, the bulk of which are deemed to be unfounded. There are some that are substantiated. Each of those is investigated and dealt with, and the action that we do is then reviewed by a provincial civilian body.

I take exception to comments like that because I believe that the police will not abuse power. There is no history of such abuse in Canada, but more importantly there is redundancy of mechanisms and safeguards to assure and guarantee that there will not be abuses. Where there is abuse, there is accountability at local, provincial and federal levels. Comfort ought to be taken in that.

Senator Bryden: Could I hear from the guys on the street or whoever speaks for them?

Mr. Griffin: I believe you had two questions, senator. The first was dealing with who perceives our border as unsafe. I would say that it is foremost the criminal organizations. Virtually every international criminal organization has established themselves here in Canada. We know through contact with them and

from the monitoring their activities that they perceive Canada as a place with less meaningful consequences than the jurisdictions from which they originate. They see our corrections system, our enforcement abilities and our prosecutorial ability as less severe. We know that we have major criminal terrorist groups that have established themselves in Canada.

Certainly as Chief Bevan indicated, the types of incidents, all be they infrequent, where we see people arrested in Canada, questions come to mind on how those people have established themselves this is Canada. We seek the checks and balances that were in place to deal with them.

We know from dealing with immigration officers and customs officials, and our own members that are on the frontlines, that in many of these cases they feel that they are tackling this problem with one hand tied behind their back. Certainly, they do not feel that they have the resources, the priority or the support to do the job that they believe they are being asked to do.

We were here October 1, 2001 in this same room dealing with the immigration bill. We heard from immigration officers about the cuts that have gone through. Looking at the bill and the new expectations that would be created, they were wondering how they would deal with such a new law.

In terms of abuse, I read this bill and I can only ask, "how?" How would it be abuse for a police officer walk someone into the station and say that he has just arrested a person because he suspects the person will commit a criminal, terrorist act as defined in this bill. I do not know how they could do that under circumstances of abuse when they have to first deliver that individual to the officer in charge of that police station. They have to deliver that person within 24 hour to a provincial court judge. Ultimately, if they wanted to lay a charge, it requires the consent of the Attorney General of Canada. How could that be police abuse?

I would ask them, how do they see that this bill would be abused.

Senator Bryden: If I had the time which I do not have, I could lead you through this clause, and I can show you how that can be abused. I have been in situations before where a simple thing like a warrant to search under a Liquor Control Act was used abusively to do all kinds of things, including obtaining information for other purposes.

I want to make one point, and then I will be quiet. That is, I would think that if you really believe that this proposed legislation will not be abused, but, in fact, will

be used for the purpose for which Parliament is putting it there, that as against being opposed to a sunset clause, and you were saying you accept it because it is there, that you who be leading the parade. I would think that you would encourage us to look at it after five years of the police having dealt with the legislation. You should encourage us to see how scrupulous and careful you have been to live by the terms of that.

Mr. Griffin: May I respond?

Senator Bryden: If the sun sets, review it. I do not understand why you would be not be leading the requirement for review. There would be an outcry in this country saying that law enforcement has done such a wonderful job for these five years that the act should not be undergo sunset. Why would you not be doing that if you were so sure that there would be no abuse?

Mr. Griffin: With due respect, senator, the members that we represent, and who are on the streets every day, see a great deal of political rhetoric. They see announcements from people who are leaders in the country concerning the political will that supposedly exist to deal with this problem but what we do not see meaningful change.

We do not see the resources in place to do the job effectively. We do not see people in place to replace the RCMP members who have been reassigned to these cases.

This signals to our members and international groups and terrorist organizations a continuation of the same complacency that they exploit in these circumstances.

Do we believe that the sunset clause is workable? Yes. Are we here today to say that we support it? No. We are here to say that we want to see this bill move forward so that the tools will be in place to do the job. Ultimately, we need more than just law. We need the resources and the people in place to carry out what is intended.

Senator Furey: I wish to follow up on Senator Bryden's point with Mr. Griffin. I am somewhat intrigued by your comments that the bill does not expand police powers. My understanding is that the normal standard of police work for laying informations and making arrests is a belief on reasonable and probable grounds. This bill changes that considerably. In my view, it lowers the standard to a belief on reasonable grounds or a suspicion on reasonable grounds. Does that not indirectly expand police powers in your view?

Mr. Griffin: Yes, it expands powers with respect to suspected terrorist activity, not for any other offence under the Criminal Code of Canada. Our point is that there is a broadening of police powers but for a specific purpose, that is dealing with people who are suspected to be about to commit a terrorist act.

Mr. Niebudek: To complete that line of thought, there is something important here. That power to arrest someone on suspicion on reasonable and probable grounds that a person will commit a terrorist act must be reviewed by the judiciary within 24 hours, which we already have in the Criminal Code. There is accountability here.

Senator Furey: You now have it with a much lower standard. The standard is no longer reasonable and probable grounds.

Mr. Niebudek: The objective is to allow more time to the investigative body to get that evidence, to prove those reasonable and probable grounds and to lay charges. If there are no grounds, there are none. This is in there to save lives.

Senator Furey: Mr. Griffin was saying that the bill does not expand police powers. Indeed, it does. As you are saying, officer, rightly so, you need to get in there quickly to save lives and to prevent a terrorist act. That is presumably why the bill is drafted as it is. Therefore, your powers are indeed expanded in that regard.

Mr. Westwick: Senator expanded, not expanded. Let me introduce another term to the conversation. These are not concepts that are new to the Criminal Code or new to policing. Suspicion is the first investigatory step in relation to impaired driving. The legislative circumstances and regime in place under the Feeney bill is similar in concept to what is found under the so-called preventive arrests.

I find the whole concept of recognizance with conditions, discouraging in the general public debate, because "preventive arrest," in my submission to you, is somewhat misleading. The entire concept of this provision is preventive in nature and is founded upon the old peace bond, which has now been expanded under the Criminal Code with section 810 for sexual offenders and for high-risk offenders. The concept in place to address those situations is the same conceptual statutory notion that is brought to bear with preventive arrest. The so-called preventive arrest is only available to a police officer in exigent circumstances -- urgent, special circumstances -- and thus has a narrow scope.

The entire intention is to bring the individual before the court to prevent something from happening, not to put the person in jail. It Is clear, under the act, that once the person is brought to court, the judge can only put in provisions or let him go.

Senator Furey: My point is not that they are new provisions or that they have never been heard of before. My point was simply that they create a lower standard, forgetting that process started, than is the normal course.

Mr. Westwick: It is not a lower standard, sir. It is a standard that is within the hierarchy of standards that are available to a police officer to apply the Criminal Code and the criminal law. Suspicion is the lowest standard and is applied in the Criminal Code in few places, but it is in the Criminal Code now.

Senator Furey: It is now here.

Mr. Westwick: Yes, it is.

Senator Furey: That is my point.

Mr. Griffin: Just to clarify, and I apologize if there was a misunderstanding because I did not intend to say that there was not a change in powers. Our point is that it is not extraordinary. We do not believe that this is an extraordinary, broad change in police powers that will change, to any great degree, how most police officers do their job.

Senator Tkachuk: If it is not extraordinary, do you have any problems with it being applied to other acts?

Mr. Bevan: If I may respond to that, the provisions of this bill, and perhaps one of the misnomers that I have detected in the public debate around this proposed legislation, is that it will be your average front-line police officer who will be enforcing the provisions of this bill. That is not the case. This requires a good deal of specialization. All across Canada you will see a considerable investment being made in training people to deal with the provisions of Bill C-36. This will be treated by us and will certainly, I would think, be looked upon by the courts as being the extraordinary law and powers that they are.

The provisions of this bill will not come into play typically for the officers on the front line. The provisions will be implemented by officers who are specially trained for this purpose.

Senator Tkachuk: You can count on members on our side looking forward to the budget of the Minister of Finance to ensure that resources are in place for both proper policing action and customs and immigration to ensure that foreigners, who are the main concern that we have, are not in Canada to create terrorist acts.

The police have appeared before us and you have said that you supported Bill C-36 as it was presented originally. There have been a number of amendments passed since then. Have the amendments diminished your capacity to do your job? If they have diminished your capacity to do your job, as you see it, why did you support the original bill?

Mr. Westwick: They have not diminished our capacity to do our jobs, in my view.

Mr. Griffin: I do not wish to beat a dead horse, but in year three, four or five, when decisions are being made about the priority for different types of investigations and resources to be allocated, will someone make a decision to proceed with the complex investigation when the sunset clause is imminent? We would hope that Parliament will deal with this within sufficient time to ensure that it does not run up against the clock.

Mr. Westwick: If I may add to my answer, I said, "No," to your question, but at the same time I would like to add that we would like to have a discussion about some of the other suggestions that we have made that would enhance the bill and would enhance the opportunity for police, in a reasonable and less controversial way, to address some of these serious and significant issues that we are facing.

Part of the frustration that you hear from this table is not directed towards resisting the issue of a sunset clause, but rather to looking forward to an opportunity to discuss some of the other issues that we would like to see addressed in this bill.

We are somewhat frustrated that we do not seem to progress beyond the discussion of the sunset clause.

(French follows -- Senator Poulin: Je n’ai pas senti de résistance…)

(après anglais)

Le sénateur Poulin: Je n’ai pas senti de résistance de votre part. Ce que je ressens -- et vous l'avez très bien dit -- c’est que vous avez donné votre appui au projet de loi C-36, et je pense que nous l'apprécions énormément. Ce que j'entends de vous, c'est votre inquiétude sur l'implantation du projet de loi C-36, d'un bout à l'autre du pays.

Une des choses qui m'a frappée après les événements catastrophiques du 11 septembre, c'est que les attentes des Canadiens et des Canadiennes ont augmenté face à nos différents corps policiers de façon incroyable et de façon subite. En d'autres mots, depuis ces événements, lorsqu'un Canadien ou une Canadienne marche sur la rue, dans le nord de l'Ontario, ils s’attendent vraiment à être protégés. Donc, pour vos membres, -- et vous représentez quand même 30 000 membres au Canada -- cela veut dire qu'il y a beaucoup plus de stress.

Dans le passé, j'ai connu plusieurs travailleurs sociaux qui ont travaillé dans vos casernes individuelles au travers du pays. Je pense qu'on sous-estime le stress sous lequel travaillent nos différents agents de police partout au pays. Qu'est-ce que l'association ou les chefs ont fait depuis le 11 septembre pour donner plus de soutien à leurs membres?

M. Niebudek: Si je peux répondre au nom de l'Association canadienne des policiers et policières, depuis le mois de septembre, on ne cesse, tant au niveau local, régional que national, d'expliquer à tous le besoin de renforcer nos ressources humaines sur le terrain. On parlait plus tôt de 2 000 policiers et policières de la gendarmerie qui ont été assujettis à des enquêtes en matière de terrorisme. Qui fait les travaux, qui fait les enquêtes de ces 2 000 personnes? Où sont rendues ces enquêtes? Est-ce que les criminels qui étaient enquêtés continuent de commettre leurs infractions?

Les associations peuvent décrire la situation relativement au manque de ressources humaines. Par contre, la responsabilité revient au service de police et au gouvernement de voir à ce que des outils soient en place pour aider les policiers et policières. On parle ici des policiers et de leur famille. Plusieurs de ces hommes et de ces femmes ont dû délaisser leur famille depuis le 11 septembre pour protéger les Canadiens et les personnalités venant d’autres pays et travaillant au Canada. Alors, il en incombe à l’employeur de soumettre aux membres les programmes d’aide nécessaires de même que le support médical et psychiatrique adéquat.

Le sénateur Poulin: Le poids des responsabilités autant pour les individus que les équipes est beaucoup plus lourd. Je suis contente de voir que vous le reconnaissiez.

Je ne trouve pas que le gouvernement a été présomptueux, contrairement à ce qu'on a pu entendre. Aujourd'hui, le 4 décembre, moins de trois mois après les événements tragiques du 11 septembre, le Sénat est saisi d'un projet de loi antiterrorisme qu'il espère adopter avant Noël. Un dépôt du budget se fera exceptionnellement lundi prochain. Tous les pays nous félicitent d'avoir agi aussi rapidement, de manière prudente et équilibrée.

La prévention représente un des grands objectifs de cette législation. En ce qui concerne la circulation des informations, les différents corps responsables de la sécurité au pays communiquent-ils suffisamment entre eux? Les rapports qu'ils entretiennent entre eux sont-ils efficaces? Selon des sources policières, le partage de renseignements d'un corps policier à un autre d'une province à l'autre causerait toujours certains problèmes et cela depuis des années. Il y aurait des chasses gardées. Par exemple, la police provinciale de l'Ontario qui voudrait des informations sur un individu qu'elle a arrêté entre Toronto et Sudbury, mais qui viendrait du Manitoba, aurait de la difficulté à obtenir les renseignements voulus.

Y-a-t-il eu amélioration sur le plan des communications de l'information disponible, même si elle est confidentielle, entre les différents corps policiers?

M. Bevan: La coopération entre les corps policiers s'est améliorée depuis le 11 septembre. Les chefs des grandes villes, les commissaires de la police provinciale de l'Ontario et M. Zaccardelli de la GRC participent hebdomadairement à une conférence téléphonique. Les membres de la GRC et du service de police d'Ottawa travaillent conjointement à l'enquête de différents cas reliés au terrorisme.

À Toronto, Montréal et Vancouver, des enquêtes semblables ont cours. Tous les membres qui ont participé aux enquêtes à travers le pays ont collaboré en partageant quotidiennement l'information recueillie. Nous avons apporté des changements dans la lutte contre le crime organisé. Nous adaptons les mêmes principes dans la lutte contre le terrorisme.

Le sénateur Poulin: Plusieurs Canadiens nous ont transmis leurs craintes quant aux abus qui pourraient survenir de la part des représentants des forces de l'ordre. La peur nous fait parfois réagir de façon imprévisible et abusive.

À quelles informations un individu qu'un policier vient d'arrêter sur la rue peut-il avoir immédiatement accès pour s'assurer qu'il n'est pas victime d'un abus de pouvoir de la part du policier? Cette législation risque d'ouvrir la porte à des abus de toutes sortes.

M. Niebudek: Mes collègues de l'Association des chefs de police en ont parlé un peu plus tôt. Cette loi ne s'adresse pas à tous les policiers, mais à ceux de nos unités spéciales qui ont une grande expérience dans ce genre d'enquête. Une nouvelle législation nécessite habituellement une formation en conséquence et de nouveaux effectifs. On ne suit pas de nouvelles instructions à tort et à travers.

Une connaissance des pouvoirs législatifs est requise de façon à prévenir les abus que craignent les citoyens canadiens tels que ceux provenant d'un manque de jugement ou d'expérience d'un policier. Si nous respectons ces priorités, nous sommes d'avis que les abus seront minimes. Chaque nouvelle section se rapportant soit à l'arrestation ou aux interrogations est rattachée au domaine judiciaire. C'est très important.

(Mr. Westwick: May I comment...)

(anglais suit)

(Following French)

Mr. Westwick: May I comment on the previous question? In our submission to you, we recommended that consideration be given to a central agency that would assist in achieving and guaranteeing a new level of cooperation and collaboration that exists in policing now. However, it is not just policing to be effective against terrorism, but it is intelligence agencies that need to be examined. Those are what I call "law enforcement, customs and immigration agencies" -- and they must all work together.

To be successful in this kind of situation, we need a new and enhanced level of cooperation. The police community is working well in that direction, but we need some help. We are asking that you help to formalize that cooperation, to institutionalize that cooperation and to enhance that cooperation.

The Chairman: Thank you, for appearing before the committee today. You have given us much to think about.

Senators, I am pleased this afternoon to welcome back two people who are not strangers to us, and that is the Attorney General of Canada, Minister Anne McLellan and with her, another regularly, Mr. Rick Mosley, the Assistant Deputy Minister.

The Solicitor General of Canada, Minister Lawrence MacAulay has returned for his second appearance with us. With him is Mr. Paul Kennedy, the Senior Deputy Solicitor General.

We welcome you. The two ministers will be with us not one second later than 5:15 p.m.

Having said that, I have been using the word "crisp" all day, but in order for us to ask our questions and get our answers, on both sides of the equation, we will want to be as precise and as quick as possible.

Without further comment, then, I would call on Minister McLellan and then Minister MacAulay. We then will get right at the questions.

(French follows - Minister McLellan: Madame le presidente…)

(après anglais)

Mme Anne McLellan, ministre de la Justice et Procureur général du Canada: Madame la présidente, mesdames et messieurs les sénateurs, merci de m'avoir invitée pour discuter du projet de loi C-36, le projet de loi antiterroriste.

(Ms. McLellan: Since I first appeared...)

(anglais suit)

(Following French)

Since I first appeared before the Special Senate Committee in October, many witnesses have been heard and written submissions have been received. Your thoughtful consideration resulted in a report that was very useful in the government study of possible amendments. Let me say, on behalf of the government and myself, thank the Senate for their very important and thorough work in the pre-study phase because it was very useful to us as we considered possible amendments.

While I may not have agreed with everything that has been said about Bill C-36, it is important that this bill has been the subject of a vigorous and constructive debate. For a country that is known for its respect of rights and freedoms, for its respect of the rule of law and for its encouragement of diversity, this debate is essential.

The need for an effective response to terrorism has been a clear and common message that has emerged from the previous study of this bill. While Canadians expect an effective response, they also expect that this response will not come at the expense of our rights and freedoms.

Although Bill C-36, as first introduced, contained numerous safeguards designed to protect the rights of Canadians as a result of the work of the House and Senate committee studying the bill, significant amendments were made that reinforced this government's commitment to accountability and balance.

Before I outline some of the key amendments that were made to Bill C-36, I would like to again remind members of this committee and those who will appear before you, that while weeks have passed since the horrific events of September 11, the necessity of passing legislation to deal effectively with the threat of terrorism has not faded. In our pursuit to provide Canadians with legislation that focuses on preventing terrorist activity, the need to pass this bill is even greater. We only need to read the papers and watch the news to understand the complexity and reality of this challenge.

In his comments yesterday, while visiting Canada, U.S. Attorney General John Ashcroft reiterated the need for taking action, for working together, and for ensuring that we deal effectively and decisively with those who seek to terrorize the innocent. Bill C-36 is one element of our plan to do this.

Moving on now to the text of Bill C-36 as passed by the House of Commons, it is my intention to explain some of the amendments that have been made in response to the discussion that has taken place both in the house and in the pre-study by the Special Senate Committee on Bill C-36. First, these amendments improve and clarify the legislation and address the concerns surrounding accountability.

Before I highlight specific amendments, I would like to deal with a comment that has been made about Bill C-36. Some have said that the provisions of Bill C-36 are unprecedented and untested and, therefore, open to abuse in their application. In my respectful opinion, this is not accurate. The measures provided for in this bill, although new in the current context, are built upon existing foundations in Canadian law.

The provisions dealing with preventive arrest, for example, are similar to the existing and frequently used provisions of the Criminal Code that deal with sureties to keep the peace, or "peace bonds," as they are commonly called.

Under the existing Criminal Code provision, justice may require a person to enter into a recognizance where grounds exist to believe that a person will cause injury to or damage the property of another person. Like the provisions in Bill C-36, the duration of the order may be for a period of up to 12 months, and where the person refuses to enter into the recognizance, he or she may be imprisoned for up to one year.

Another example of a provision in the bill that has been inaccurately framed as unprecedented is the one dealing with investigative hearings. The elements of this provision are not new to Canadian law. Witnesses are already required to testify in legal proceedings, for example a preliminary inquiry, where they are not charged with an offence, and they may be arrested if they refuse to attend court in order to do so.

In addition, provisions of the Mutual Legal Assistance and Criminal Matters Act allow for a hearing similar to the one proposed under Bill C-36 to be held for the purpose of obtaining investigative evidence and information for a foreign state. An average of 40 such hearings are held in Canada each year pursuant to this act. These provisions have been the subject of challenges under the charter and have been upheld by the courts as valid.

As I have said repeatedly, where these provisions have been extended to deal with the threat posed by terrorism, significant safeguards have been put in place to guard against possible misuse or misapplication.

In addition, the House of Commons made amendments to the preventive arrest provisions in Bill C-36 to make it clear that arrest and detention are not the main purpose of the clause. The ultimate purpose of the provisions is the release of the person under appropriate conditions and supervision, to prevent involvement in terrorist activities.

I will now speak specifically about the amendments passed by the House of Commons. Let me begin with the definition of "terrorist activity" which has received, quite rightly, considerable attention. This is the definition that is the key element of the bill, and the term is used in many of the bill's other provisions and, therefore, it is important that the definition be as clear as possible. One of the main concerns expressed relates to "the exclusion of lawful advocacy, protest, dissent or stoppage of work from the scope of the definition of terrorist activity."

As many honourable senators know from my previous appearances, the government has been very clear that lawful, democratic dissent and advocacy be protected and excluded from the definition. Some have questioned whether, because of the use of the word "lawful," The definition might be construed to include unlawful activities of a type such as assault, trespass, and minor property damage. In its examination of the bill, the House of Commons removed the word "lawful" from the definition. This does not have the effect of making protests lawful that are otherwise unlawful because of violations of other criminal laws. It does, however, clarify that this specific exclusion from the scope of the definition of "terrorist activity" applies whether the advocacy, protest, dissent or stoppage of work is lawful.

It is important whether the activities meet the high standards of the definition of "terrorist activity" and not whether the particular activity is lawful under other criminal or civil law.

For similar reasons, other amendments were made to the definition to clarify that terrorist activity requires the commission of harmful conduct and that intention alone does not suffice. We have also clarified that the illegal acts of a few cannot be construed to taint the legitimacy of other protesters.

Another concern that has been raised in the Senate hearings, the House committee's hearings and elsewhere is the possibility that the anti-terrorist

enforcement measures in the bill could be used to target particular cultural, religious or ethnic groups. We must be sensitive to this criticism and the feelings of Canadians, who have no connection at all with terrorist activity, but who nevertheless may feel that they have come under suspicion merely because of their cultural, religious or ethnic backgrounds.

It has been suggested that part of the difficulty in this respect is posed by the use of the words "political, religious, or ideological purpose, objective or cause," which refer to the motivations for terrorist activity in the definition of "terrorist activity."

Nothing in these words targets any particular cultural, religious or ethnic groups or political or ideological causes. Rather, the words recognize the various motivations that underlie the unacceptable activities that are set out in the definition of "terrorism" in Bill C-36.

The words are limiting words that help to distinguish terrorist activities from other forms of criminality that are intended to intimidate people, for example, organized crime where the motivation is one of profit. These words are important to appropriately define and limit the scope of Bill C-36 from other forms of criminality.

Nevertheless, the House of Commons believed that additional measures were warranted to help ensure that the enforcement provisions in the bill are not interpreted or applied in a discriminatory manner or in a manner that would suppress democratic rights.

Therefore, Bill C-36 was amended to add a new provision that stipulates that, for greater certainty, the definition of "terrorist activity" does not apply to the expression of political, religious, or ideological ideas that are not intended to cause the various forms of harm set out in the definition.

Honourable senators, proper review and oversight of the powers provided under Bill C-36 will also help to ensure that the powers are applied appropriately. In this respect, I would emphasize that various accountability mechanisms already established under Canadian law will apply to the exercise of powers under the bill. This would include, for example, such mechanisms as the Commission for Public Complaints against the RCMP and the various complaint and review mechanisms that apply in respect of police forces under provincial jurisdiction.

Significant powers under this bill are subject to judicial supervision and, in many cases, this is in addition to explicit, ministerial review and supervision powers. As well, the provisions in the bill will be subject to a full review by Parliament within three years.

For the foregoing reasons, the House of Commons believes that the establishment of any further review mechanism was not warranted. Nevertheless, amendments have been made to assist in the collection of data about the operation of the bill, for the purpose of ensuring accountability to Parliament.

Some, and the Senate pre-study committee in particular, have made a strong case that additional monitoring is necessary. In response, and following accountability models that exist elsewhere in Canadian criminal law, we have implemented a requirement for an annual report. This provision will require that the Attorney General of Canada and those of the provinces, report publicly once per year on the exercise of the Bill C-36 powers in respect of investigative hearings that took place within their jurisdictions.

The provision would further require the Attorney General of Canada and those of the provinces, as well as the Solicitor General of Canada and the ministers responsible for policing in the provinces, to each report publicly once a year on the exercise of Bill C-36 powers in relation to preventive arrests that take place within their jurisdictions.

Detailed information to be reported in each case is now specified in the bill. It should be emphasized that these reports do not constitute a review of the legislation. Rather, they will provide necessary information to enable Parliament to conduct a review either at the mandatory three-year point, or at any earlier stage should Parliament exercise its discretion to do so.

A reporting requirement of this type is not new. In fact, this report mechanism is similar to that which exists currently under Part VI of the Criminal Code dealing with the interception of communications.

Senators, it has been argued strongly that some or all of the provisions of the bill should be subject to a sunset clause so that Parliament will be required to turn its mind directly to whether provisions of the bill are still required after a given period of time. As you know, the government has opposed the use after general sunset clause for the entire bill.

First, a sunset clause on the entire bill would negate our international obligations as pointed out by you, the Senate in your pre-study report. Second, the need to maintain vigilance against terrorism is a continuous and ongoing one. Finally, the measures in the bill are balanced, reasonable and subject to significant safeguards.

As I stated when I appeared before you in October, I consider the provisions of this bill to be constitutional. I do not think that it is necessary to add a sunset clause to make them more constitutional.

That being said, the government did recognize that certain aspects of Bill C-36 have given rise to concern. The government agrees that certain powers under the bill should be subject to especially close monitoring. The House of Commons accepted amendments to make investigative hearing and preventive arrest powers subject to an annual report.

As an additional safeguard, the House has also amended the bill so that these two measures are subject to a sunset clause under which they would expire after five years. This expiry would be subject, however, to the ability of Parliament to extend the provisions on resolutions adopted by a majority of each chamber for additional periods of time, but no period may ever exceed five years.

The parliamentary power to extend the provisions responds to the concern that the expiry could otherwise occur in urgent circumstances where it is clear that the provisions should continue. At the same time, the requirement for resolutions of each chamber requires Parliament to turn its mind directly to the issue of continuation of the powers.

Clearly, it is in the hands of a future Parliament, whether these provisions will sunset or be extended, based on its assessment of their use, need, and the circumstances at the time after a careful review of annual reports and the results of the mandatory three-year review. This procedure will allow a future Parliament to make an informed decision.

Senators, let me turn now to an area that has received some considerable attention both by you and in the House. It is in relation to certificates to be issued by the Attorney General under the Canada Evidence Act, the Access to Information Act, the Privacy Act and other acts in order to prohibit disclosure of sensitive information relating to international relations, national defence or national security.

The fight against terrorism depends largely on our ability to gather sensitive intelligence relating to terrorist activities. These certificates provide, where necessary, a bar to the disclosure of certain highly sensitive information. Since the introduction of Bill C-36, I have listened closely to the advice of the Special Senate Committee, the house committee, and the various stakeholders that have expressed their opinions on the issue of Attorney General certificates.

My officials have consulted with both the Information Commissioner and the Privacy Commissioner and their staffs on several occasions so that we thoroughly understood their concerns. Under the original provisions of Bill C-36, certificates were designed with several specific procedural safeguards, establishing a regime that ensured that certificates would be used in only the narrowest of circumstances.

These circumstances involve the following conditions: That only the Attorney General of Canada would be authorized to issue a certificate; that the Attorney General would be required to personally issue the certificate and could not delegate the responsibility to anyone else; and that the Attorney General would be required to serve certificates on all interested parties and file them with relevant decision makers.

Where certificates are issued, fair trials are ensured. For example, a judge could issue an order dismissing specified counts of the indictment or information or affecting a stay of the proceedings. Finally, the legislation ensures that certificates would only be issued for the narrow purpose of protecting our national defence, our national security or information obtained in confidence from international allies.

However, in response to concerns, amendments have been accepted that strengthen the protections. Under these amendments, the certificate would only be issued after the following conditions are met. These are significant. For example, a certificate could only be issued after an order or decision for disclosure of information has been made in the course of a proceeding before a court or body with the jurisdiction to compel the protection of information.

Under the original Bill C-36, honourable senators will remember that I could issue a certificate at any time. Now the power has been carefully circumscribed. It is only after an order or decision for disclosure has been made in the context of a proceeding as defined in the legislation.

The certificate would be published without delay in the *Canada Gazette*. Any party to a proceeding could apply to the Federal Court of Appeal for review of the

certificate. The judge reviewing the certificate would have the power to confirm, vary or cancel the certificate, and the certificate would be limited to a specific time period of 15 years.

In the original bill, a certificate could have been issued, as I have said, at any time. The Access to Information Act and the Privacy Act would not have applied and the commissioners would have been removed from the process. Now, as a result of the amendments, much of the commissioner's powers will be preserved while still remaining faithful to our original goal of protecting information, which may help in our fight against terrorism.

Briefly, I do want to turn to concerns raised by the Information Commissioner. I believe that Mr. Radwanski was here before you. I think that the Privacy Commissioner's staff and mine have worked well together. We have dealt with his concerns, and I appreciate his support now for Bill C-36.

Let me briefly turn to the Information Commissioner and the letter that he or his office sent to me November 28, 2001. It was addressed to you, Madam Chair, as chair of this committee.

It must be remembered that as originally conceived Bill C-36 did not envision any possibility of an investigative role for the Information Commissioner. Rather, the Attorney General had the discretion to issue a certificate at any time that would then completely exclude the certified information from the scope of the access act.

Our recent amendments now permit the Information Commissioner to continue his investigation up until the point that the disclosure of highly sensitive information is threatened by an order or decision for disclosure. Then the Attorney General of Canada would be permitted to issue a certificate in proceedings for the narrow purposes of protecting that information from disclosure.

In his letter to you, Madam Chair, Mr. Reed raised three principal concerns. Let me speak to each one briefly. First, Mr. Reid states that his ability to investigate complaints is unduly prejudiced by Bill C-36 and its amendments. He thinks that the certificate will have the effect of discontinuing any kind of complaint with respect to the information covered by the certificate. The effect of the certificate would be to stop the right of access to that information. That is, where there is a complaint before the commissioner, the complaint is discontinued only with respect to the certified information. The commissioner does not lose the ability to continue his investigation with respect to other matters pertaining to the original request for information to a government institution.

Second, Mr. Reid has made reference to Crown arguments in litigation to suggest that the Attorney General could use the certificate process to terminate his investigations. As you can appreciate, I cannot comment on matters before the courts. However, I can remind this committee of the original purpose of the certificate scheme, namely, to protect a narrow class of highly sensitive information following the issuance of an order or decision that would result in its disclosure.

The critical words of the bill refer to an order or decision that would result in the disclosure of the information. The critical words of the bill refer to an order or decision that would result in the disclosure of the information. This would be a critical test that I, as Attorney General, would have to be satisfied with on a case-by-case basis before issuing a certificate.

Third, Information Commissioner Reid objects to what he considers a weak review mechanism. The decision of the government to amend Bill C-36 to include a Federal Court review was made in response to a Senate recommendation and in response to concerns raised by a number of stakeholders. The Federal Court of Appeal has been given broad powers, including the power to quash or vary a certificate if information does not fall within the limited categories set out in Bill C-36. The Information Commissioner has suggested that other jurisdictions have greater review powers than those set out in the bill. However, Bill C-36 clearly provides a more than adequate review mechanism. Let me briefly inform you about some of the other countries to which we compare ourselves regularly.

For example, the courts in Australia and New Zealand do not have the power to quash, but they only have the power to refer the matter back to the appropriate minister with a recommendation that the minister give further consideration to the issue. That is it. The minister can ignore that recommendation at that time and proceed with the certificate banning the information.

In the United States, the courts have the power to quash the certificate, and the review mechanism is based on a class test very similar to the one proposed in Bill C-36.

In conclusion, having reviewed the Information Commissioner's representations, we do not believe that further amendments are required to adequately protect his important role.

There have been other amendments made to this legislation, but I think that, in consideration of the time, I will not go through them, because you are probably

well aware of them. We have done a number of things that, to us, are important to clarify the legislation and to clarify the necessity for intent in relation to certain aspects of this legislation Many of these have been based on the recommendations that you made in your pre-study. Therefore, I will conclude, because those are some of the main points in which we will engage discussion. I wanted you to know where we, on the government's side, stand right now in respect of these matters.

I would add that I have learned, as the Solicitor General has learned, effective policy usually requires compromise, and compromise has been an important part of the development of Bill C-36 to date. Not everyone's specific concerns or solutions have been adopted completely. Certainly, that would be true for the Solicitor General and for me, and we will probably discover in discussion that it is also true for Senators.

However, I would say that because of the work you did in the pre-study, we have had the opportunity to make this a better bill. The bill, as I said originally, always goes through two filters -- effectiveness and fairness. We must not undermine the effectiveness. Our responsibility to Canadians is paramount. Our responsibility to our allies is also most important. I come back to the one thing that is the paramount and transcendent responsibility of any government: to reassure and assure their citizens that their safety and security is of paramount importance.

Thank you.

The Chairman: Thank you, Minister McLellan.

Minister MacAulay, please proceed.

The Honourable Lawrence MacAulay, Solicitor General of Canada: Thank you and good afternoon.

There is no question that the horrific event in New York and Washington just three short months ago have changed our lives profoundly, as Canadians, as North Americans, and as citizens of the world.

While the goal of protecting Canadians against terrorism was a priority for this government well before the attacks of September 11, it is now crystal clear that the scope of any threat to our way of life means that more must be done now and in the future.

Canadians have been clear in their expectations of the government since that dark day. They want to see those responsible for such horrible acts brought to justice but, just as importantly, they expect us to do what is necessary and right to protect them from terrorism.

That is precisely what this government seeks to do through the integrated range of security measures in Bill C-36. At the heart of the bill, is the commitment by the Government of Canada to continuously improve the capacity, coordination and collaboration of law enforcement and security agencies, both at home and abroad. Let there be no doubt: Bill C-36 is a critical investment in securing Canada's continued pride of place in the international fight against terrorism.

Just yesterday, I joined the Deputy Prime Minister and several of my colleagues in a cross-border visit with U.S. Attorney General John Ashcroft to review the progress we have made in the fight against terrorism.

The focus of the visit was to further our common objective of keeping our shared border secure and accessible for both nations. We agreed to a number of specific, joint initiatives to make our border security efforts a model of cooperation.

As the Deputy Prime Minister noted, the Government of Canada is acting on its commitment to take swift and forceful action to introduce strong new anti-terrorism laws for the benefit of all citizens on both sides of the border. Bill C-36 is an important step forward in keeping that promise.

I would like to focus now on these provisions of the bill that deal more directly with the portfolio of Solicitor General. Some critics of the bill have warned that it will give sweeping, uncontrolled police powers, but nothing could be further from the truth. I would like to take this opportunity to repeat that strong mechanisms already in place will continue to ensure effective control and accountability.

The courts and civilian oversight bodies provide essential checks and balances to ensure the integrity of the police in all that they do. The freedom to question any perceived wrongdoing is central to a law enforcement system that reflects and protects our core values of freedom, democracy and equality.

Police efforts to deal with terrorists and their acts will be subject to the same checks and balances. Independent review bodies, such as the Commission for Public Complaints Against the RCMP will continue to perform an extremely important role in holding police services accountable to the public they are sworn

to serve. I would remind you that, as an elected representative, the Solicitor General exercises oversight of the RCMP, just as my provincial counterparts do in respect of their police forces.

Still in the area of police actions, concerns have been raised over the provisions for preventive arrest. The effects of September 11 have brought home, with horrifying clarity, the fact that we now live in a very different world from the one we knew under the existing laws. The risk of capture and tough prison sentences are deterrents, but not necessarily strong enough for those intent on terrorist acts. This makes our capacity for prevention all the more critical.

As the Minister of Justice and I have said on a number of occasions, appropriate checks and balances would be put in place to prevent abuse of this authority. There must be reasonable grounds to believe that a terrorist act will be committed, and there must be reasonable grounds to suspect that the individual will commit or assist with this act.

Identifying individuals and organizations that have intent to support or commit terrorist acts is a matter that this government takes very seriously. There are a number of terrorist groups in every developed country, and Canada is no exception.

Under Bill C-36, the Solicitor General will be responsible for making recommendations to the Governor in Council to designate these entities.

This is a substantial responsibility and one that will be exercised with strict controls, based on clear and appropriate information gathered by security and law enforcement agencies or, in some cases, by other government departments.

In the unlikely event of a mistaken identity, an individual or an organization can apply to the Solicitor General for a certificate confirming that they are not the one on the list. This certificate will be issued if I am satisfied that the case of mistaken identity has been proven.

The Solicitor General is required to review the list every two years to determine whether reasons still exist for the continued inclusion of these organizations on the list. In addition, there is a provision that enables anyone to request in writing, at any time, that a designation be reviewed.

I would like to emphasize that, in any case where an entity is not satisfied with the decision by the government in council, an individual or organization may seek and receive a review of the decision by the Federal Court.

To those who argue that the list unfairly targets certain minority groups, I would like to say emphatically that this is not true. The list targets terrorists, pure and simple. The designation of people or groups is all about their actions and intent, not ethnic origin.

The Government of Canada remains absolutely committed to making sure that the measures taken are consistent with the values of Canadians and that basic rights are protected and respected. Quite simply, as I have said before, it is not who you are but what you do.

I would like to turn now to the charities issue and the importance of this piece of the legislative package to the fight against terrorism.

The intent of these measures is simple: To ensure that charitable donations are not used, intentionally or otherwise, to support terrorist activities. The charities legislation is now tied to the definition of "terrorist activities" proposed in the Criminal Code amendments and to the list of designated entities. This connection will protect the integrity of Canada's charities, one of this country's greatest strengths, by providing charitable organizations with a clear understanding of where their resources should not be directed.

The legislation also implements Canada's G8 commitment to investigate a charitable organization where it is believed that the organization is being used by terrorists to support their activities. As well, it allows us to take steps to prevent the financing of terrorist organizations indirectly through organizations that have, or claim to have, charitable goals.

The processes for these provisions are fair and accountable. Two ministers -- the Minister of National Revenue and myself -- must concur in any decision to deny or revoke charitable status. This decision is automatically reviewed by the Federal Court. The organization can apply to the court for a publication ban in order to protect its reputation. It has one full year to transfer its assets to another charity and can return to ministers at any time to request a review.

In conclusion, Canadians want action. Our provincial and territorial partners want action. Our counterparts in the world community want action, but more, they want to know that we are committed team players in the ongoing fight against

terrorism. Let me say again that Bill C-36 is a balanced, forward-looking plan for action that builds on the solid foundation of Canada's existing public safety and national security processes, partnerships and safeguards. The measures laid out in Bill C-36 are essential tools if we are to be truly successful -- now and in the future -- in what will clearly be a long-term campaign to defeat terrorism.

Thank you, Madam Chair.

The Chairman: Thank you very much, Minister MacAulay and Minister McLellan. We have about an hour. That will mean we will have to be very tight with questions.

Senator Lynch-Staunton: Ministers, you both know that, following spirited speeches by both the chair and vice-chair and Senator Beaudoin on the committee's report, it was supported unanimously by the Senate only two weeks ago. That can only be interpreted as the Senate endorsing the recommendations in the pre-study report, something that we cannot ignore as we give an appreciation to this bill.

I mention that because I want you to reassure us that, although you have, Minister McLellan, indicated in your remarks that the two sunset clauses that you have introduced are the extent of your adopting a sunset clause, you will not accept an overall sunset clause. I think that is the way I interpret your remarks. Does that mean that any other recommendations in the form of amendments will also not be entertained by the government? Is this the end of amending this bill?

Ms McLellan: The Senate obviously controls its own processes, and it is not for me to prejudge in any way what the Senate will ultimately do.

I would say that we benefited greatly from the pre-study done by the Senate, as you can see. The government felt it was able to accept some of that. We were not able to accept other recommendations, but I hope that I have explained, at least in relation to some of those recommendations, why we felt that we were not able to accept them.

However, certainly the Senate is the master of its own processes, and I would not suggest otherwise.

Senator Lynch-Staunton: When you came here during the pre-study phase, and in front of the House of Commons committee, and in answer to questions in the House, you always stated that you and the government were open to suggestions and amendments. I want to know whether that openness is still there.

Ms McLellan: I think it is fair to say we all understand that the pre-study process in the Senate was put in place to help inform the decision-making of both the House committee and the government, and it certainly did that. We made amendments which we think have improved this legislation, amendments that have not in any way undermined its effectiveness but have, at least in some areas, increased protections in and around the fairness quotient. Obviously the Solicitor General and I, on behalf of the government, would not be here today if we did not think this legislation was effective and fair and balanced and did the right thing.

Having said that, Senator Lynch-Staunton, the Senate controls its house, and you have every right to offer suggestions. That is all I can say.

Senator Lynch-Staunton: Time is short. Will you give the work of this committee on the bill itself the same importance and the same openness that you gave its work on the pre-study phase?

Ms McLellan: This is a different phase, I think.

Senator Lynch-Staunton: No, it is a key phase.

Ms McLellan: The pre-study process was undertaken to ensure that you could inform both the House committee and the government in relation to some concerns. I would not suggest that those would be all your concerns. Certainly I am open to hear what the Senate, this committee or others in the Senate might have to say.

Senator Lynch-Staunton: Let me then turn to two specific areas of the bill I would like to discuss. I hope to get them all in during the first round. If not, I hope there will be time later.

The first area deals with a clause repeated at least three times in the bill, on pages 18, 79 and 89. The first has to do with the application in relation to the list of entities, and the other two have to do with the disclosure of information. I will read you the clause:

> The judge may receive into evidence anything that, in the opinion of the judge, is reliable and appropriate, even if it would not otherwise be admissible under Canadian law, and may base his or her decision on that evidence.

This arose for the first time here, and I do not know whether it was arose in front of the House, by the Quebec bar this morning. They termed it useless and dangerous to add “even if it would not otherwise be admissible under Canadian law." Why is that inserted, and what is the justification for it?

Mr. Richard G. Mosley, Assistant Deputy Minister, Criminal Law Policy Section: Madam Chair. This does permit the introduction of evidence that would not otherwise fit our strict rules of evidence, for example, evidence that may have been directed in a court that operates under the civil law system. This was a question that actually came up in the committee proceedings in the other chamber as well.

The record of a case, for example, which is assembled by a "juge d’instruction" in the continental system does not involve evidence in the form of viva voce testimony as we would normally receive it in Canadian court proceedings, but it is a reliable and tested form of evidence that is credible and trustworthy.

It always remains with the judge to determine whether the evidence is reliable and appropriate. I might add that this option is also open to the other party. This is not limited to the evidence proffered by the Crown but indeed may be evidence proffered on behalf of the person who is the subject of this or the other proceedings to which you have alluded.

Senator Lynch-Staunton: Is this conclusion found anywhere else in any other legislation in Canada?

Mr. Mosley: Yes, it is found in the Extradition Act and in relation to bail proceedings under the Criminal Code. Mr. Kennedy refers as well to the customs legislation,.

Ms McLellan: As well as the Immigration Act. It is quite widely used.

Senator Lynch-Staunton: It does not read well. That is the problem. When you look at it, it just does not sound right.

My other question has to do with the Canada Evidence Act, where it has been amended to allow a minister of the Crown or any official to object to the disclosure of information before a court. That is on page 78. At present, the Evidence Act reads "a minister of the Crown in right of Canada or other person interested..." "Other person interested" has been taken out and the word "official" has been put in. The definition of "official" is in section 118 of the Criminal Code and indicates

that an official means a person who holds an office or is appointed to discharge a public duty. That means many people in this room and elsewhere and not necessarily senior officials directly involved in a particular case.

The way I interpret it is that now the power of objection is being delegated to a vast array of low level government officials who do not presently have that authority or may not even have knowledge of the proceedings.

Mr. Mosley: This is to clarify that an official often makes the objection on behalf of the government. The phrase "or other person interested," was not clear and did not offer much assistance to the court as to who might, other than a minister, make the objection on behalf of the Crown. This clarifies that it is an official and there is a specific definition that describes who that official may be.

Senator Lynch-Staunton: That is my point. “Official” includes just about everyone in this room. I am an official, according to the Criminal Code because I hold an office. That means I could go to a court and object at a proceeding to the disclosure of information, even though I know nothing about the case.

I am talking as a layman, and this only came about in the last few days, but my understanding is that the courts have interpreted that "other person interested" is someone who has a direct interest in the proceedings, and someone in authority who is directly related to the proceedings. Whereas according to this provision, someone such as a Member of Parliament or an alderman who holds office can protest the disclosure of information.

Mr. Mosley: In the particular context, I think the courts would, if I may, with the greatest of respect, not entertain an objection that is brought up by someone who does not have a very close relationship to the Crown. In theory, someone who falls into the scope of a definition could make the objection. It is highly unlikely that it ever would happen.

Senator Lynch-Staunton: This bill may be with us for 50 years from now, unfortunately, if it goes into law. Your good will today may not be extended to those who succeed you. Someone deliberately put in that official has the same meanings as section 118 of the Criminal Code. That was put in deliberately. If you go to section 118, it says that an official includes means a person who holds an office. It does not say a federal office or Minister of Justice or deputy minister at a certain level; it says "any office." I cannot believe that a judge would say, "You have no interest in the case, you cannot intervene," when the person will say, "The law allows me to intervene."

Ms McLellan: The judge will have the ability to control the processes in front of his or her court as they do in relation to all aspects of who appears before them and the conditions and terms on which they are allowed to appear before them.

Senator, having said that, we will take this matter under advisement and follow up on it. I think Mr. Mosley is right that the courts will exercise their discretion and, to this time, as it relates to the Criminal Code generally under section 118, there is no evidence that the court have abused their discretion or misused it.

Senator Lynch-Staunton: At present section 118 does not apply. Would you entertain an amendment along those lines?

Ms McLellan: I am not suggesting that there is a problem with 37.1. What I am suggesting is that we will look at the argument that you have put forward.

Senator Lynch-Staunton: Could you provide us with an answer?

Ms McLellan: We will do so.

Senator Lynch-Staunton: I could find you other examples where your interpretation, however well-founded and intentioned may not be the one of the layman who is reading the bill, starting with this and there are many others. If we have time, I will go over them with you.

Ms McLellan: I take that point, senator. Ultimately, it will be the courts that interpret the legislation if there are disputes as to what a certain section, word or phrase means.

Senator Bryden: As I and hopefully a judge would read it, new section 37(1) of the Canada Evidence Act reads in part:

> Subject to sections 38 to 38.16, a Minister of the Crown in right of Canada or other official may object...

It continues. It would seem to me, in proceedings that I have been involved in, that "other official" would be interpreted in relation to the minister of the Crown who would have the right. If that minister cannot do it, then an official of the Solicitor General would.

Ms McLellan: That certainly is the intention. That is how the provision is normally interpreted. Senator Bryden, your experience before the courts is borne out by that comment.

Senator Bryden: Madam Chair, that does not save the ministers from tough questions.

Ms McLellan: Not at all, I realize that.

Senator Bryden: In relation to a brief that is being presented to us tomorrow by the Federation of Law Societies, their position appears to be that they really wish to be excluded from the operation of many of the processes that might be brought to bear on any other business as a result of the provisions of this bill and other acts. For example, there is concern about barriers to counsel that may be there, whether the implementation and use of the bill will interfere with the confidentiality relationship. I will not go through the whole list, but they would exempt their fees from any freezing that would occur. They also recommend that they be exempted from the application of part one of the money laundering bill where they are required to gather and report information about their clients and to state that information without their client's knowledge. Are you familiar with this?

Ms McLellan: We are well aware of the brief of the Federation of Law Societies. We need to be careful because there is litigation ongoing in the Province of British Columbia, in relation to assertions made by certain lawyers in the Province of British Columbia pertaining to our money laundering legislation, and whether lawyers should have a special exemption not granted to anyone else in relation to the provisions of our money laundering legislation. This issue has been hotly debated. We are in court now in relation to that issue. We presume that it will go to the Supreme Court of Canada for ultimate resolution. I have gone on record as strongly opposing the views of the Federation of Law Societies and other lawyers in relation to this issue. Our factum makes that point. As this matter proceeds through the courts in British Columbia, we will continue to make that point. We go out of our way in our money laundering legislation. There is a specific section – and, I believe it is section 11 -- that states that nothing in this bill interferes with solicitor-client privilege. We understand that what comes within that is a matter of interpretation. We look forward to further clarification by the Supreme Court of Canada in relation to that, but we believe very strongly that no group, including lawyers, can be exempted from legislation like money laundering. In fact, they are included in most other jurisdictions to which we want to compare ourselves. It would provide what I view as an unacceptable gap or loophole in our legislation.

The late and great Chief Justice of Canada, Brian Dickson, had some useful things to say about the nature of solicitor-client privilege and when it applies and

when it does not. All that will be dealt with ultimately in the Supreme Court of Canada.

No one, including lawyers, is above the law, and we expect everyone to obey the law. I find it difficult to accept the assertion that is being made by the Federation of Law Societies, namely, that, by providing legal counsel to someone charged with a terrorist activity, they could be charged with something like facilitation. This is simply an argument that cannot be sustained and is one that I cannot speak strongly enough against.

This bill has been carefully drafted to ensure that it criminalizes only those who knowingly deal in profit or provide financial or other related services with the intention or knowledge that it be used to benefit or facilitate a terrorist group. I do not understand how the Federation of Law Societies can make some of the arguments they make in relation to that. I want to put that on the record.

Having said that, I am limited, as my officials are, in talking more generally about some of the assertions and the exemptions sought because those are matters before the courts.

Senator Bryden: Do we need to do anything to this bill that we have which is not already there in order to protect the solicitor-client relationship?

Mr. Mosley: With the greatest of respect, I would suggest no, honourable senators. I had the benefit of reading the brief today. It is largely based on a brief written earlier by council to the Law Society of Upper Canada.

It does not talk about the reality that lawyers, like any other citizens within Canadian society, as the minister has indicated, are subject to the same basic principles with regard to dealing in contraband. There is no special exception for lawyers in dealing with property that is prohibited in some way by the state. For example, drugs. Lawyers cannot deal in drugs any more than any other citizen can. Since about 1974, it has been an offence to be in the possession of property which has been obtained either directly or indirectly by the commission of an offence. Since 1988, it has been an offence under the Criminal Code to be in possession of the proceeds of crime. The analogy is very much with regard to the general offence relating to dealing in property with that kind of other form of property which is prohibited by the state.

With respect to the specific question of whether it will prevent someone from having access to legal representation, the bill cross-references the existing

provisions of the Criminal Code which allow a judge, where property has been frozen or seized, to permit a variation of the freezing or seizure order in order to allow for reasonable living or legal expenses. That has been part of our criminal law since 1988, and has been used routinely in relation to the seizure of proceeds of crime, to allow for the payment of counsel. That would apply equally in this context because of the cross-reference to those existing provisions.

Senator Beaudoin: This bill contains additional powers. I do not have any problem with that. According to the circumstances, I understand them.

The government had the choice between emergency measures and a permanent bill. The government made its choice: A permanent bill. I have no problem with that as well. However, if we select a permanent bill instead of an emergency measure, the interpretation of the court in the last resort on section 1 of the Charter may be different. We have not dealt with that problem.

If it is an emergency bill, by nature it is transitory and the court will probably be more generous. If we are concerned with a permanent bill, as it is now, the court will have to interpret section 1 finally, and the chances are that they may be more restrictive. This being the case, we will see what the Supreme Court says if it is brought to the Supreme Court. However, I am inclined to think that the interpretation may be a bit different.

Is it not a reason why the bill shall be subject to a sunset clause because the bill is permanent and the interpretation of the court may be more restrictive? Logically, the sunset clause becomes more necessary in that case, having regard to the choice. The choice is there. I have no criticism of that, but I think that there is now an additional argument for a sunset clause.

Ms McLellan: As you quite rightly pointed out, we do not view the fight against terrorism as a temporary fight or an emergency. In fact, the fight against terrorism is much more like the ongoing fight against organized crime, which is fed by globalization, fed by technology and fed by those who come to countries like this one, rich and developed, to raise their money to do their deeds, be it here or elsewhere around the world.

Therefore, we are under no illusions that the fight against terrorism, as the Prime Minister has said and as experts in terrorism have said, will be a long fight and it will be a tough fight.

Senator Beaudoin: I think so.

Ms McLellan: I have made the argument that I would have preferred not to have seen a sunset clause in relation to investigative hearings and preventive arrest because I think they are important tools of prevention that our law enforcement officials will need to protect Canadians against the new horrors of terrorism as revealed on September 11.

Having said that, I was also sensitive to the concerns expressed by many who came before this committee and elsewhere, and many Canadians, that those powers are not used frequently in their exact form. The point I was making is they build upon lengthy legislation and jurisprudence, but not in the exact form, and that if we are able to provide Canadians who are concerned about those two police powers, to provide them with further assurance that their legislators, you and elected members of the House of Commons, will take seriously the obligation of reviewing the operation of those two provisions. That includes how they have been used by police across the country, how often they have been used, in what circumstances, the justification for them and so on. If it provides a greater degree of comfort to Canadians to sunset those two provisions and leave with Parliament the power to determine whether they continue to be needed in their form as they appear here or in some other form, then I certainly was willing to make that compromise.

Under section 1 of the Charter I believe, and I believed when we first introduced Bill C-36, that everything here even without the sunset on those two provisions was justifiable. They were reasonable limits that were demonstrably justified in a free and democratic society under section 1 of the Charter. My views on that have not changed. It would not be for me to suggest arguments that might be raised ultimately under the Charter if either preventive arrest or investigative hearings are challenged as to whether the provision of a sunset clause makes them more or less justifiable under section 1. My view being that I believe everything in this bill, even as originally presented to you in pre-study, is justified in a free and democratic society.

Senator Beaudoin: My argument is only this: We have nothing to lose with a sunset clause because it may always be renewed.

Ms McLellan: We do not sunset the criminal law usually. We do not sunset our fight against organized crime. We do not sunset our fight against child pornography.

I suppose you could make the argument that part-by-part the Criminal Code should be subject to sunset provisions, but I do not know why we do that. This is

the criminal law. If and when adopted, this is the criminal law of this country and but for investigative hearings and preventive arrests this is permanent criminal law to deal with a fight that will be a long one and one that will not go away.

Senator Beaudoin: It is only Bill C-36. I do not touch the other part of the criminal law.

Ms McLellan: This becomes part of the Criminal Code.

Senator Lynch-Staunton: Not all of the bill.

Ms McLellan: It is not a special legislative spread, it is part of the Criminal Code, as our organized crime provisions are part of the Criminal Code.

Senator Beaudoin: I have voted for that anyways. I restrict my remarks only to that bill. Of course, each bill has its own history. We have nothing to lose because it is permanent and I agree with you, it is permanent probably. That is all I will say.

Ms McLellan: Thank you, senator.

Senator Jaffer: I have two short questions, one question first for Minister MacAulay.

I appreciated the remarks by Minister MacAulay, especially your remarks in relation to not targeting minorities. Earlier on, the police were making presentations here and one of the things they talked about was specialized legislative training with regard to this bill. Are you contemplating any training, especially on the sensitivity of our diversity of our communities?

Mr. MacAulay: Yes, senator, any training that needs to be done, it has been indicated quite clearly will be done. I have said it a number of times in the House. Funding will be provided.

Mr. Kennedy: We are currently having discussions with our colleagues from Justice and the police community as to what can be done in that regard. With reference to your other comment about training in terms of sensitivity as to the diversity of this country, that is an issue that has been recognized by all players in the public safety system, whether it is police officers, Crown prosecutors and corrections officials, and that is built in frequently as part of the ongoing training that occurs at all levels.

We know we live in a diverse country. Toronto has been identified as the most ethnically diverse city in the world. That is a reality we have, and those institutions have responded to that reality through regular training of their members.

Senator Jaffer: It may be too early and I recognize that, but are there any plans of specific training starting right away or is that still in the works?

Mr. MacAulay: There will be much training in different areas including on the justice side and the police side. There will be some judicial training I would expect.

Ms McLellan: Mr. Mosley can tell you a little bit about what we are planning from the Department of Justice side in relation to this legislation, if passed.

Mr. Mosley: We have plans for our own counsel. In fact, we have members of the department from across the country in Ottawa this week for an awareness session on Bill C-36. We talked last week with the heads of prosecution. We have spoken with the Canadian Association of Chiefs of Police. We will be speaking to the Canadian Police Association and the National Association of Professional Police Officers. We have spoken to the Canadian Association of Civilian Oversight of Law Enforcement and expect that beginning in January, assuming of course that Parliament enacts the bill, a series of training conferences will be convened with those national associations and personnel directly from the field who will be implementing the legislation at both the federal and provincial levels.

Senator Jaffer: I assume the judges will be involved as well, the NJI?

Ms McLellan: Yes, in fact my deputy minister, Mr. Rosenberg, has already been in discussions with George Thompson, who heads up the NJI in relation to the possibility of helping the judiciary. Obviously we do not do this. This is a matter for an independent stand-alone body, but Mr. Thompson has expressed considerable interest in starting to develop materials around questions of national security.

Senator Jaffer: The question I had for you, minister, was on the annual report. I understand you have had discussions with your counterparts across the country. Are you visualizing annual reports just with numbers, as there have been 450 preventive detention investigation hearings, or whether there will be more interpretation? I am looking at say there have been 400 preventive detentions, 300 were let go after two days. Will it be more detailed or just numbers?

Ms McLellan: There is a specific provision in the legislation that deals with the kind of information that is to be collected and presented to the public. It is on page 40. In fact, I want to remind colleagues that it is important to ensure that not only the Solicitor General and I at the federal level are under an obligation to report, but our provincial colleagues are as well because, of course, many investigations will be conducted by local police and not by the RCMP.

I must say that when the Solicitor General and I met with our provincial and territorial colleagues last week, there was generally strong support for the legislation and strong support for the fact that it is important for Canadians to know how this legislation is being implemented. I had no sense that the provinces were not willing to work with us to ensure Canadians had the necessary information.

If you look at 83.31(1), it talks about the number of consents to make an application, the number that were obtained by virtue of other subsections, the number of orders for the gathering of information, the number of arrests made with a warrant issued under section 83.29, and then it speaks to numbers of cases, the number of times, the number of arrests without warrant, the number of cases in which a person was arrested without warrant.

We want this reporting to be as fulsome as possible but also to respect other interests in the criminal law, be it issues surrounding privacy or other things. These clauses outline the legislative requirements as it relates to reporting.

Mr. Mosley: This is very much on the quantitative side, but we have discussed with the provinces the importance of having a qualitative analysis of what these numbers mean. We have already begun some work with them in that regard. We proposed to meet with representatives of ethnocultural communities to discuss how we might get input from them about their experience with the implementation of the law.

Senator Tkachuk: Minister MacAulay, in the second paragraph of your brief you say that the goal of protecting Canadians against terrorism was a priority for this government well before the attacks of September 11. How so?

Mr. MacAulay: We were never very strongly in favour of terrorism. We provided funding for technology to our police forces. I cannot say that we were fully aware of what might be used by terrorists. I think that caught the entire world community off guard. The most powerful country in the world was caught off guard.

It is fair to say that over the last many years Canada has provided its police forces and security intelligence agencies with what they needed in order to provide the proper security, or so we thought. The fact is that no country in the world anticipated what happened. We never suspected that people would have such unconcern for their own lives. It is a different focus. Prevention is much more important because it has become obvious that there are individuals is the world who do not mind dying in order to kill a lot of people. It is now happening frequently. We are experiencing a different form of terrorism and violence.

Senator Tkachuk: It was you who stated that, not I. I am just trying to get an idea of what the government's philosophy and approach was before September 11.

Mr. MacAulay: I did say that, senator, and fairly so. It is fair to say that we have a very efficient security intelligence service that was put in place in 1984. We have the very efficient RCMP and the Canadian Security Establishment. We have a number of agencies that are very capable of infiltrating groups that wish to cause harm.

I said that it is a new day. We provided our agencies with the technology and funding necessary to enable them protect us. In fact, although we were not directly attacked, when the terrorists attacked the United States they attacked us all.

Ms McLellan: Senator, Ward Elcock, the head of CSIS, informed our provincial and territorial colleagues last week that before September 11 two-thirds of his intelligence-gathering resources were already directed to counter-terrorism. Two-thirds of their resources were expended on gathering intelligence about terrorist organizations and possible members and supporters thereof in this country, including al-Qaeda.

We are among a relatively small group of the world's nations that have signed all 12 of the UN conventions. We did that well before September 11. We had implemented 10 of the conventions and the drafting had been done to implement the eleventh on terrorist bombing. The policy work was well underway, but not the drafting, in relation to the suppression of terrorist financing.

I can assure you, senator, that when I meet with counterparts in Europe and elsewhere, three themes have dominated our discussions since I became minister of justice. They are terrorism, organized crime and cyber-crime, all of which are related in very key and important ways. That is why we were already doing a lot domestically to deal with those three issues that are absolutely dominant in dealing with crime globally.

Senator Tkachuk: I brought that up because we heard testimony on Bill C-11 from custom officials and immigration officials, and from police officials today, that over the last decade they have experienced a tremendous cutback in funding and personnel that has made it very difficult for them to do their jobs. Your priorities are reflected by what you do, not by what you say. I have tried to find evidence from ministers and others on not only what you say about terrorism but on what you do about terrorism. The Canadian people have the right to know that you will allocate the resources to fix this problem and that we will not have a bill that does not do the job.

Mr. MacAulay: Senator, are you absolutely correct.

Senator Tkachuk: I do not like it when you agree with me. I must have asked the wrong question.

Mr. MacAulay: The national counter-terrorism plan is very important. It coordinates the approach federally, provincially and territorially for terrorism attacks and domestic accidents. I must concede that we were not aware of what would take place when we started this coordinating program.

You are right to ask about the funding. Since the last budget, just under $2 billion has been put into public safety. This year alone, more than $100 million was allocated to the Canadian Police Information Centre. Within the last two years, we announced $115 million to ensure that is the most efficient database possible for police forces. That database is the envy of police forces around the world. The RCMP and provincial and municipal police forces use this very efficient database.

A new day arrived with September 11 and it is true that there is a new emphasis, but there is a new emphasis worldwide. It would be incorrect to suggest that the government was not providing the required funding and technology for our police forces before September 11.

In the last budget, $584 million was allocated to the RCMP. A lot funding and a lot of technology has been put in place. There is a new budget coming and we can all be hopeful.

Senator Furey: Thank you, ministers, and your officials for appearing here today. My question is directed to Minister McLellan.

The bill goes a long way to criminalize activities of parties dealing with terrorist groups. I refer specifically to clause 83.08 where it is an offence to deal directly or indirectly with any property owned or controlled by a terrorist group, to facilitate directly or indirectly any transaction of that property and to provide any financial or other related services in relation to the property.

Apart from some obvious constitutional hurdles, which no doubt other sections will have as well, why not go the extra step and criminalize membership in those groups?

Ms McLellan: As we have said before, we believe that the better way to deal with this issue is to define the conduct. What is it that causes harm? It is not the status or the label that you give to someone in criminal law, it is the conduct. It is what they do, either to another person, society at large or whatever the case may be.

Our criminal law generally takes the approach that you do not have status-based offences but you have conduct-based offences. What is the conduct that society wants to prohibit or condemn? Define that conduct and make that the prohibition. That is what we have done here. We are continuing the approach of that in the criminal law, of dealing with the conduct that that is harmful to someone else.

I will be quite candid here. You probably would attract constitutional challenge in and around the right of association. Quite truthfully, if we do not need those arguments or need to do those battles, if we believe we can get at what we want to get at, which is the harmful conduct without attracting that constitutional challenge, then why would we do that? It is a bit of preventive medicine as it relates to possible challenges.

Our prosecutors, who work in the organized crime area, and this is the same approach that we have taken to organized crime, have pointed out that we do not prohibit membership. We define and target the conduct.

Membership can be perhaps hard to prove. Membership in what? People and groups change their names. They may change their names to circumvent the law. The kinds of organizations that are out there may recast themselves overnight, quite truthfully, to avoid a successful membership charge.

We feel that the better approach, and our tradition in the criminal law in this country, is to address the conduct? It is what hurts someone. It does not matter to Mr. Mosley of which groups I am a member, but if I hit him that is conduct that

will hurt him and cause harm, therefore, that is what we should be defining and that is what we should be targeting.

Senator Furey: The Solicitor General will provide us with all the lists of names of people in those groups, so we do not have to worry about that. I understand where are you coming from. It is the conduct we are trying to control, but it is often very difficult to control that conduct. I may be taking a simplistic view of it, but it seems a little easier to control by criminalizing membership in the groups that we know are terrorist groups.

Ms McLellan: Minister MacAulay wanted to add something to that. Perhaps Mr. Mosley could comment, as well. It is fair to say that our prosecutors have some concern that it may be easier for people to avoid prosecution if you are running with the membership offence as opposed to the actual conduct of facilitation, instruction or participation.

Mr. MacAulay: I will think it is fair to say, senator, my capable colleague has well-covered it.

The Chairman: I would make a point, minister, please do not hit Mr. Mosley.

Senator Kelleher: Welcome again, ministers. You will be happy to hear that I have no question now because my friend Senator Bryden usurped it earlier on. I was going to delve into the same area about the brief from the Federation of Law Societies.

However, I would like to take the opportunity to thank the Minister of Justice for securing for us an answer to the security group of cabinet. She undertook to carry that too them, and she undertook to see that we got a reply. While I am under whelmed by the reply, it still does not in any way derogate from her carrying out her commitment.

The Chairman: I also thank the minister for getting us the response from the Minister of Immigration.

Senator Fraser: I would like to congratulate you on many of the amendments that have been made, particularly the reports on data, the knowing facilitation and time limits on the certificates. Much good stuff has been done, but some stuff that we thought would be really good was not done. There was one recommendation that we made that I cannot understand it not being adopted.

We recommended including sex as one of the grounds. Think about the degree to which sexual discrimination and bias enters into discourse. It is not just the Taliban, you can carry this all the way new to the people who bomb abortion clinics, although they are hardly religious types. Why would you have not include sex?

Ms McLellan: I do not know whether senators are aware that my parliamentary secretary in committee in the House of Commons indicated that we would accept that amendment, but the committee defeated it.

Senator Fraser: What? I was not aware of that.

Ms McLellan: Is not that right, Mr. Mosley? You were there until 3:30 in the morning.

Mr. Mosley: If I may, the members who did not support the amendment felt that in the particular context of this offence relating primarily, as it does, to the damage to religious institutions, that the addition of sex to the list of characteristics by which bias might give rise to damage to that institution did not really fit. They had some difficulty understanding how a person might be motivated by bias against sex to damage a church, mosque, temple or a cemetery. There was amendment to the section to include a reference to cemetery in addition to the religious facilities, but the amendment was defeated otherwise.

Senator Fraser: I fail to see why it would be of any less relevant than race or ethnic origin. That is not your fault, minister.

Ms McLellan: Thank you very much.

Senator Andreychuk: I want to review the committee in the House because I think that there was a slight difference in the interpretation as to what was proposed and why it was rejected. We should look at that.

You say that when there is some sensitive information that can be trapped by a certificate, the Information Commissioner and the Privacy Commissioner could continue to do their work. I think that was Mr. Radwanski's feeling yesterday. However, he seemed to think he would have access to all the material and would be one of the sources that could review whether you were properly asking for a certificate to keep sensitive material sensitive. In other words, he would be one of the sources to which Parliament would look to see if the information was indeed for the purposes of the sensitive material that needs to be protected under this bill.

I got from you, Madam Minister, that you could restrict the information. In other words, the material that would be going to the information office or privacy office would already have excluded information, and the court would also be in the same position. Which point of view is correct?

Ms McLellan: Let me first speak to what my role could be as the Attorney General. Keep in mind that we do not anticipate that these certificates would be issued very often.

Having said that, the power is there. We believe it is an important power and I have explained the reasons before in this committee.

The situation is such now that, as minister, I could not issue any certificate until I received an order for disclosure of certain information that, in my opinion, came within those limited categories. Until such an order for disclosure was made, I could not interfere. The status quo – access, privacy, everything -- would continue.

If an order for disclosure was made and if I felt that order dealt, totally or in part, with information that fell within those limited categories, then I could issue a certificate. The access commissioner could continue with all other aspects of an investigation without being affected.

Senator Andreychuk: My question is very specific. The privacy commissioner and the access commissioner may not be part of the court order process. They may receive a request after the order is granted and the certificate is given. They would be basing their information and investigation on an already-limited amount of information.

Ms McLellan: That is right. If this legislation comes into force, a judicial proceeding may be held in the future wherein some ordinary disclosure is made and the certificate is issued. Perhaps the access commissioner would not get involved until five years down the road. The certificate is there. As I understand it, the certificate would prevent the commissioner from having access to that information.

Ms Elizabeth Sanderson, Senior General Counsel, Public Law Policy, Department of Justice: Honourable senators, we carved these amendments specifically to protect the powers of the Information Privacy Commissioner as much as possible. We thought very carefully about the kinds of circumstances you are describing and we think they are addressed in the first paragraph of both provisions dealing with both acts.

Take a situation where a criminal proceeding is unfolding and the section 38.06 process in the Canada Evidence Act is followed. There would be a weighing of the public interest to disclose versus the need to keep secret. Only after that could the Attorney General issue a certificate if she believes it is necessary to protect that information in, say, a criminal matter. That is a very limited situation, so we concluded there is no sense going through the review mechanism if the section 38.06 process was followed in a criminal matter.

If the information was not subjected to such a process and it arises in the context of, say, an access or privacy matter in the Federal Court, under that legislation we would still have to go through a similar section 38.06 process. Only after an order is issued could the Attorney General then issue a certificate. Then we would go through the review mechanism at that point.

The Chairman: In all fairness to the ministers, they must attend the House to vote at 5:30. Officials can stay a further 20 minutes. We thank the ministers. We will continue to pursue our work.

Ms McLellan: Thank you for being about this very important work. The Solicitor General and I thank you for your tremendous work on pre-study.

Mr. MacAulay: Thank you very much.

(French follows--Poulin--Je voudrais d’abord féliciter...)

(après anglais)

Le sénateur Poulin: Je voudrais d’abord féliciter les équipes des deux ministères. Douze semaines se sont écoulées depuis les événements catastrophiques du 11 septembre. Quand on regarde la complexité du projet de loi devant nous, on se rend compte à quel point sa rédaction a nécessité beaucoup de travail en peu de temps. Vous méritez toutes nos félicitations.

Vous avez pris le temps de lire et d'écouter attentivement les recommandations de la préétude du comité spécial du Sénat. Suite à cette préétude, des amendements ont été effectués avant le dépôt du projet de loi à la Chambre des communes. Une des recommandations du comité spécial concernait la création d'une agence centrale pour permettre une meilleure coordination entre le travail qui touche la police, la sécurité et la recherche au Canada. Étant donné que cette agence ne sera pas créée, les ministères et les agences disposent-ils d’un outil qui permette une coordination institutionnalisée sans la création d'une agence centrale? Il faut dépasser la bonne volonté des équipes qui composent les agences et les forces policières. Est-ce qu’un comité quadripartite a été mis sur pied?

Deuxièmement, quelle est la plate-forme internationale pour permettre une meilleure coordination sur le plan de l'information et sur le plan des problèmes spécifiques que vivent certains pays?

M. Mosley: Je tiens d'abord à vous remercier pour vos commentaires très gentils à l'égard de notre équipe.

(Mr. Mosley: Let me address two aspects...)

(anglais suit)

(Following French--Mosley continu... de notre équipe.)

Let me address two aspects of your question. Then Mr. Kennedy can speak more generally about coordination with the police.

On the role of the attorneys general, as the minister noted we began discussions last week with provincial attorneys general and ministers of justice. We continued those discussions with their officials and, in particular, the group known as "the heads of prosecution." They are the senior officials in each jurisdiction who are responsible for the day-to-day management of prosecution services.

Those were very much aimed at coordination and collaboration between the federal government and each province, the sharing of information, the sharing of prosecution services in appropriate situations.

Those discussions will continue in January with a view to developing networks of informed, educated and security-cleared personnel in each jurisdiction who can deal with these matters as they arise.

Senator Poulin: Does that mean domestically?

Mr. Mosley: Domestically, yes.

Senator Poulin: It is not the intention of creating an institutionalized platform for that information sharing and discussion?

Mr. Mosley: It will be institutionalized in the sense that it will become part of our regular meetings with the provinces, but given the constitutional responsibilities for the administration of justice, the different responsibilities of both levels of government, it is difficult to create a central agency to govern the role of the Attorneys General because the Attorney General of Canada has her responsibilities and, similarly, the provincial Attorneys General have theirs.

At the international level, as the minister noted, this has been in the forefront of the discussion among the member states of the G8. That will likely continue to be the principal body that discusses international coordination and collaboration. That tends to have an influence on other international bodies, including the United Nations. At the United Nations, there have been discussions for some weeks about the possibility of a new overlapping umbrella convention. The Security Council has met on several occasions since September 11 and passed unanimous resolutions regarding the implementation of the financing convention.

There is a great deal going on. We will continue to participate in the work of the officials in support of the role of ministers, and this coming spring we expect that the Minister of Justice and the Solicitor General of Canada will host here in Canada a G8 conference of ministers responsible for justice and the interior ministers. The principal subject on the agenda will be terrorism.

Mr. Paul Kennedy, Senior Assistant Deputy Solicitor General: One has to be cognisant that this is largely a federal area of responsibility, although the provinces can assist us, but national security is, in fact, a federal area of responsibility. With that in mind, obviously, CSIS and the RCMP are key players in terms of being able to discharge this. It is already a primary mandate for the RCMP under the Security Offences Act, which is their responsibility, to investigate criminal matters arising out of threats to the security of Canada as defined in the CSIS Act.

In addition, we have been very alive to this issue for years. You probably have heard some reference recently to the integrated border enforcement teams that we use for border criminality. The RCMP also announced it would like to set up what it calls INSET, Integrated National Security Enforcement Teams, that would have representation on them from the Department of Immigration, because they look at people that are committing improper activities, customs folks, CSIS, RCMP, and, as appropriate, local police forces.

As well, the Privy Council has a security and intelligence coordinator who helps coordinate all the federal agencies in the area of national security. I sit as well on a number of bodies, for example, the National Coordinating Committee on Organized Crime that brings together a lot of our provincial colleagues and so on, that would help in this area. Therefore, we could also expand that dialogue to look at terrorism.

The Department of Finance is there for money laundering. CSIS is there, as well as Foreign Affairs.

We have all those representations. We meet as agencies. Rick and I are on a committee of assistant deputy ministers who look at public safety issues. That allows us to carry on a dialogue dealing with these kinds of issues. With our American colleagues, we have the Cross-Border Crime forum, which has representation of law enforcement agencies on both sides of the borders, and we are looking at establishing a working group that looks at terrorism as part of that.

A very extensive apparatus is currently in place that allows us to bring in a myriad of agencies that have an interest in these areas. Despite what one might read in the paper, we are coordinated.

Senator Poulin: That was very helpful.

Senator Lynch-Staunton: I would like to get on to the question of facilitation. It was a preoccupation of this committee, that, in the original draft, knowledge need not be required. I believe an attempt was made to clarify that, and I wonder whether you were successful. I am going to clause 83.19(1):

> Every one who knowingly facilitates a terrorist activity is guilty of an indictable offence…

That seems as clear as can be.

Then when you go to 83.19(2), it says:

For the purposes of this Part, a terrorist activity is facilitated whether or not

(a) the facilitator knows that a particular terrorist activity is facilitated;

(b) any particular terrorist activity was foreseen or planned, whether or not foreseen or planned at the time it was facilitated; or

(c) any terrorist activity was actually carried out.

I hope I am reading this wrong, but my interpretation is that subsection (2) contradicts subsection (1).

Mr. Mosley: I would not agree with that interpretation, Senator Lynch-Staunton. Subsection (2) was put in here further to a recommendation that where it was previously situated was confusing people reading the bill. It is an interpretation clause meant to aid in the meaning of the offence. This was done deliberately, and it relates to a concern that you will hear this week from members of the criminal defence bar, who will argue that in the traditional approach to the criminal law, the *mens rea* element has to go very much to all elements of the offence. Specifically, the offender, in the normal approach to defining crimes, would have to have knowledge or foresight of each factual element of the offence.

In the particular context of terrorism, we know and we are increasingly gaining more understanding of the cellular nature of these organizations. I am sure you are

following stories today. There is a series in La Presse about an investigation in France which has a Montreal connection. The difficulty is that the people who are part of the network may have no knowledge of the specific plan that the network or the leaders wish to have carried out, but they do know that they are contributing, that what they are doing, however small the part may be, is for the purpose of facilitating the larger plan. To get all of the tentacles of the network, you have to have an offence that captures people who are not privy to the larger scheme but are part of the conspiracy.

That is what subsection (2) is intended to make a abundantly clear, that when we are in court with one of these accused, counsel will not be able to argue that the Crown must prove that the accused knew all of the dimensions of the design. It is a very deliberate choice. It goes to the preventative aspect. We may not know why a particular terrorist plot is not carried out. There are many examples, and I am sure you have seen these in the press as well, where law enforcement has acted to prevent the completion of a plot to blow up something somewhere. Persons who have contributed to that will be caught by this provision, and it does not matter whether or not it was successful. What they have done, they have done for the purpose of advancing the plot.

I hope that assists.

Senator Lynch-Staunton: It does, except that I still see a contradiction. It appears to me that, even though it says in subclause (1) that knowledge is required, in fact, knowledge is not required. Subclause (2) takes over from subclause (1). Perhaps, I did not understand, and I do not want you to feel you have to repeat everything. I will read the transcript.

Mr. Mosley: If I may, you have to know that you are facilitating a terrorist activity.

Senator Lynch-Staunton: That is in subclause (1).

Mr. Mosley: That is an essential element. Subclause (2) does not take anything away from subclause (1), because it states that the activity is facilitating whether or not you know that a particular...

Senator Lynch-Staunton: Yes, that is right. Whether you know or whether you do not know.

Mr. Donald Piragoff, Acting Senior General Counsel, Criminal Law Policy Section, Department of Justice: The same question arose in the other place, as an example that I think helped to clarify it. The same type of language appears at clause 83.18, another provision dealing with "contributing to or participating in, " states: " whether or not a terrorist activity occurred or did not occur."

Take the example of a situation where a person provides training for certain skills to members of a terrorist group. Let us take the example of a person who teaches people how to fly a plane. A person says that he was teaching him to fly a plane. He knew that the person belonged to a terrorist group and he assumed that the person would commit a hijacking. He thought that the person would commit an ordinary typical hijacking of a plane to fly to a foreign country while holding the passengers hostage. He was teaching the person how to fly a plane, but he did not know that the individual had intentions of hijacking the plane so that he could fly it into a one-hundred story building.

Under the current laws of aiding and abetting, you must know what crime you are aiding and abetting. You have to know the particular crime, such as someone using a plane to bomb an office tower. A person could get off on the basis of saying, "Yes, I knew I was teaching these members of this terrorist group how to fly a plane. However, I did not know if they were going to fly a plane for the purpose of hijacking it and taking hostages, or if they were going to fly a plane for the purpose of carrying supplies from one country to another. I know that I am helping them facilitate a terrorist activity, but I do not know the actual nature of the activity.

This would permit us to say that the person could still, nevertheless, be guilty of enhancing the abilities of the terrorist group, even if the person did not know the exact nature of the ultimate terrorist activity that was to be committed, because only the top leaders know that. However, the person knew that a terrorist activity was to be committed, and that is what this ensures. It states that the person has to knowingly facilitate a terrorist activity, but subclause (2) states that the person does not have to know the details of the particular terrorist activity which he or she is facilitating. It is enough that the person knows that he or she is helping the terrorist group to bomb their target, but does not need to know that it is the bombing of a particular target on a particular date.

Senator Lynch-Staunton: If someone knowingly trains a terrorist, that trainer will know that the individual or group is going to engage in a terrorist activity. I do not know if we have to go any further with that.

If the training is given to a person, and the trainer does not know he is a terrorist and then gets involved in a terrorist activity, is he guilty of being a facilitator?

Mr. Piragoff: No, he is not, because he is unaware of the activity. The bill states that one has to knowingly facilitate a terrorist activity.

Senator Lynch-Staunton: We are going around in circles on this. A is "knowingly facilitates" and B is "whether the facilitator knows."

Mr. Piragoff: It says "particular," senator. The person has to know that it is a terrorist activity being facilitated, but a person does not have to know the exact, particular activity being facilitated. I may know that I am training someone to fly a plane so as to undertake a hijacking, but I may not know the particular hijacking.

Senator Lynch-Staunton: The bill states: "Whether or not any terrorist activity is actually carried out." Whether he slammed into a building or hijacked a plane to Sudan, it does not matter.

Mr. Mosley: The offence is still complete. The offence was complete at the moment that the person facilitated -- that you knowingly provided the plane.

Senator Lynch-Staunton: Again, "Whether or not any terrorist activity has been carried out."

Mr. Mosley: In criminal law, there are lengthy debates about whether you can commit or attempt to commit an incomplete offence. I will not go into that here because it is the stuff for first year law programs. However, clearly, the offence is complete at the moment that you have done your part to advance the plot. It does not matter what happens after that.

Senator Lynch-Staunton: Does one have to do that knowingly or unknowingly?

Mr. Mosley: The person has to do it knowingly. No one will be caught through inadvertence. This is clearly a full *mens rea* offence. The person must know what he or she is doing.

The Chairman: We are now running into our vote.

Senator Beaudoin: My question is addressed to Mr. Mosley. The new provision dealing with the judicial review of certificates, clause 38.13(1), provides for the review in the Federal Court, but it is not too clear. In one part there is

mention of one judge of the Federal Court of Appeal, and in another there is mention of first instant. Is there a reason for that? I ask that question simply for the information.

(French follows -- Ms Sanderson: Ce fut intentionnel…)

(après anglais)

Mme Sanderson: Ce fut intentionnel. Les premières dispositions, tel que l'article 38.6, sont habituellement des dispositions de première instance. Un principe de discrétion judiciaire s'applique à savoir si oui ou non les renseignements devraient être divulgués durant le processus.

Suite à cela, le Procureur général du Canada pourrait émettre un certificat. C'est à ce moment qu'une des parties liées au litige pourrait porter la question en appel. La question serait présentée devant la Cour fédérale d'appel. C'est la raison pour laquelle on a reporté cela sur un plan supérieur.

Le sénateur Beaudoin: L'appel est possible?

Mme Sanderson: Sur la question du certificat seulement et au niveau de la Cour fédérale d'appel.

Le sénateur Beaudoin: Je suis tout à fait d'accord. Depuis le début que je demande qu'il y ait un accès aux cours et à la Cour d'appel. Après tout, les juges, par définition, sont impartiaux. C'est encore le meilleur endroit pour recevoir justice.

(Sen. Bryden: I am concerned about the issue of the oversight (anglais suit)

(Following French)

Senator Bryden: I am concerned about the issue of the oversight by an officer of Parliament. I understand that one of the reasons that that was not used is the concern about the constitutional issue in respect of the players. What is the issue? I would like the answer to that on the record.

Mr. Mosley: The powers in Bill C-36 given to the police and to the attorney generals will be exercised at both levels of government. Under our system, we believe it would be inappropriate for an officer of Parliament to conduct a review of the exercise of the jurisdiction of a provincial attorney general or minister responsible for the police, or the police or the Crown counsel who report to them. In a nutshell, that is one of the major objections to that proposal.

The Chairman: Thank you, we are grateful for your appearance today.

The committee adjourned.