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THE SPECIAL COMMITTEE ON THE SUBJECT MATTER OF BILL C-36

EVIDENCE

OTTAWA, Monday, October 22, 2001

The Special Committee on the Subject Matter of Bill C-36 met this day at 1:30 p.m. to examine the subject matter of 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 and explore the protection of human rights and civil liberties in the application of this Act.

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

The Chairman: Honourable senators, I call this meeting to order. This is our second meeting, with witnesses, of the Standing Senate Committee on Bill C-36, the Anti-terrorist Act, which was introduced by the government in response to the tragic events of the September 11.

This morning we heard at length from the Minister of Justice and her officials. This afternoon we will welcome the Solicitor General of Canada; the Director of the Canadian Security Intelligence Service; and officials from Canada Customs and Revenue Agency and the Department of Finance on the issues of money laundering and charitable donations.

The Senate is undertaking a pre-study of the legislation so that our concerns and recommendations will be sent in advance to the House of Commons Justice Committee and will hopefully be included in the bill when it comes officially to the Senate for final debate and formal committee study.

This afternoon, I am pleased to welcome our first witness, Mr. Ward Elcock. He will be with us for one hour and a half. I would encourage all honourable senators to be concise with questions so that all senators will have a chance to participate.

Mr. Elcock, thank you for coming and please proceed.

Mr. Ward Elcock, Director, Canadian Security Intelligence Service: Honourable senators, I do not have an opening statement, so if you wish to proceed to questions, I will be happy to respond.

Senator Andreychuk: Included in Bill C-36 are tools that you will be able to employ that you have not had before. Would these tools be equally valuable to you for your ongoing work in such areas as drugs, organized crime and money laundering investigations not related to terrorism, et cetera?

Mr. Elcock: Honourable senators, the tools of the legislation are mostly for the police and other ministries. There are some provisions that do affect and are important for us, but in terms of the tools, they are mostly for the police. The bill provides for uses for our information, but the tools are really for the police.

Senator Andreychuk: Could you expand on those areas that relate to CSIS?

Mr. Elcock: There are provisions wherein our information will be the basis of action taken, whether in respect to charities, or freezing or seizing of assets, a list of terrorists and so on. An important set of provisions that are contained in the provisions amending the Canada Evidence Act that will or should allow the courts a somewhat broader frame of action in terms of dealing with secret intelligence in court cases than they have had before. In that sense, it will be useful to us because our information can be used more effectively than in the past.

There will be changes to the Official Secrets Act that have been coming for some considerable period of time. It will be a good thing to have those in place.

Senator Andreychuk: Is it fair to say that what will help you most are the increased resources that will be made available to you, not directly as a result of this bill, but out of the September 11 incident and the government's announcements that they will be addressing those issues?

Mr. Elcock: The government has said they are addressing those issues. We will be looking forward to additional resources, if we get additional resources out of that process.

Senator Andreychuk: There is some discussion about having counter intelligence or more than the information gathering and intelligence gathering that you have now. There has been a call to have an increased capacity overseas. What is your opinion on that, other than what I have read in the newspapers?

Mr. Elcock: There is something of a misunderstanding, and I testified to that effect last week, although it is something that I have commented on in the past, but no one has asked me the question directly before last week.

The reality of our legislative mandate is that we have an authority in respect to threats to the security of Canada to operate within or outside of Canada and we do so, depending on whether we can obtain what we need here or somewhere else. In some cases, it is more effective to do those operations or collect information outside of Canada rather than here. We do that. There is no mandate apart from the issue of whether we have the resources to do the kinds of operations we need to do and where we want to do them. The reality of operating outside the country is that, by definition, it is more expensive and difficult.

In terms of foreign intelligence, for the purposes of the CSIS Act, leave aside the dictionary definition of foreign intelligence. Foreign intelligence for the purposes of CSIS Act means only that information that has no threat-related component to it, or nice-to-know information. That is information such as what price is country X prepared to pay for Canadian wheat this year as distinct from whether country X is building a nuclear weapon. The wheat price is nice-to-know information in Canada and not abroad. In terms of threat-related information, there is no territorial limit to my mandate.

Senator Andreychuk: You are saying that the CSIS mandate gives you the tools you need. It might be a question of more resources. Bill C-36 is focusing on what is done with your information as opposed to giving you more of a mandate; is that correct?

Mr. Elcock: That is right.

Senator Stollery: I have been casting my mind back over the past few years. Everyone has been talking about September 11, and it was a pretty dreadful business in New York, but then so was the Air India bombing that sent more than 300 Canadian citizens to the bottom of the Atlantic some years ago. I would have called that a terrorist act. I do not know why we did not spend more time dealing with that subject. I realize that police work and information collecting are two separate things, but the investigation seems to have been an incredible failure. No one has ever been convicted for that bombing. I find that astounding. We are talking about who did the bombing of the World Trade Center and the various conversations that are taking place about that, but no one has ever been convicted for the Air India disaster.

(Take 1340 begins, Senator Stollery continuing: If you had had aspects...) RC/Anti-terrorism 38342/Oct22/01

(Sen. Stollery continuing)

**If you had had aspects of this bill those many years ago, would that have made the intelligence on that affair less of a failure?

Mr. Elcock: I do not know that I can make that kind of connection. As I said in response to a previous question, most of the tools in the legislation are tools for the police. In a sense, you might be better to address the questions to the police as to whether it would have made it easier for them to prosecute the offence than it has up until now.

I think it would be inappropriate for me to go further than that, given that three people have been arrested in connection with that incident. They will go on trial some time in the next few months.

Senator Stollery: The Air India bombing was in 1985. We are now 16 years after that bombing. I lived in Algeria during the civil war there, and I understand something about the collecting of information. The police act on information they are given by the intelligence services. I assume that if the police were not successful it is because they did not have the information which, as you have described, seems to involve a great deal of to-ing and froing between Canada and Punjab. Thus, CSIS would have been involved in collecting that information.

I understand that the arrests 16 years later were carried out by the police. However, presumably, they would be using information provided by CSIS to carry out those arrests. Again, if this bill had been in place in 1986, or at whatever the appropriate time would have been, would it have made it any easier to have caught and convicted those people?

Mr. Elcock: A crucial distinction between what I do or what CSIS does and the police do is that the police proceed on the basis of evidence. I simply collect intelligence. While you are right that we provide intelligence to the police, in some cases it is not enough to be evidence for them. It may point them in a particular direction, but it requires additional collection by them of evidence which they can put before a court before they can successfully prosecute someone. The reality of the changes to the Canada Evidence Act might well have made it easier for information to have passed from CSIS to the RCMP so that it could have been

used in a court case. At this juncture, however, that would be speculation on my part. We provide intelligence to the police, not necessarily evidence.

Senator Kelleher: Before we leave this topic I would like to correct the record. In fact, we did convict the person who made the bomb that brought down Air India. He was extradited from Britain and served 12 years in prison in British Columbia for manslaughter. Thus, there was a conviction.

Senator Stollery: However, charges have been laid more recently. They must have been against people who, according to the police, were not convicted or they would not have charged them.

Senator Kelleher: We believe a number of the people who did the bombing were killed in the shootout over in India and Pakistan.

Senator Stollery: I will not pursue that because there are charges against someone for something right now. Obviously, they were not killed in a shootout in Punjab, and they did not go to jail. I am referring to those people. The impression among the public is that the main authors of the intellectual crime were never convicted.

Mr. Elcock: If I can make a slight correction, the individual who was successfully prosecuted was prosecuted in respect of the bomb that went off at Narita airport. It is believed there is some connection between the events. The individuals charged in British Columbia were charged only in respect of the Air India incident.

Senator Murray: Mr. Elcock, I have been reading the three reports of special committees on terrorism, public safety and security and intelligence. I know you are familiar with those reports. The most recent of them was tabled in January 1999. Among other things, it is noted that the definition of a threat to the security of Canada in section 2 of the CSIS Act is materially different from the security exclusion provisions of the Immigration Act.

I do not know whether that is still the case or whether it is addressed by Bill C-11, and perhaps you can tell me. In any case, does it matter? The committee notes that the David McDonald commission, a special commons committee and themselves had all made this observation and had recommended that those definitions be brought into line as part of the current review of the Immigration Act. What do you have to say about that?

Mr. Elcock: At the end of the day, Madam Chairman, that would be an issue for the Department of Citizenship and Immigration. It would be a policy issue for them. The definition in both acts is for different purposes. In our act it simply defines what it is we can collect intelligence on; and, by definition, what we cannot collect intelligence on. The fact that that is, perhaps, somewhat broader than the definition in another piece of legislation used for another purpose is probably not a serious difference, but there is nonetheless a difference.

Senator Murray: The Senate committee points out that the definition in the Immigration Act is much more restrictive than in the act that governs your organization. CSIS has not expressed a view as to whether or not it would be better to bring the wording of that act into line with this bill.

Mr. Elcock: No, we have not.

Senator Murray: What will be the procedure for listing terrorist organizations? I presume you will have collected some intelligence on that matter and will be advising the minister and the Solicitor General.

Mr. Elcock: I suspect at this juncture that that is still a process that awaits the legislation being passed. In all likelihood, the list would come from organizations that we had identified as fitting the bill, so to speak. It is likely that that list will be made up as times goes on, on the basis of submissions we will need to make to our minister and through our minister to the Governor in Council. It will probably be not unlike the present 40.1 process whereby we send a certificate to both ministers which is backed up by many facts and information. That will be approved by them and, ultimately, if the Governor in Council agrees, it will go on the list. There will need to be a process like that. With an appeal process behind that we will have to have made the case before the name is added to the list.

Senator Murray: With regard to the wider mandate for the Communications Security Establishment, or CSE, which appears to be contemplated in this legislation, do you see any problem of overlap and duplication between their work and yours?

Mr. Elcock: No, I do not.

Senator Murray: Are there guidelines for sharing information with foreign governments, that is, information on Canadian citizens or, indeed, about citizens of their own country that yours or other organizations have collected?

Mr. Elcock: I cannot speak for other organizations, but certainly anything that we share is subject to review by SIRC. They would have access to any information we had disclosed to a foreign government or any information we received from a foreign government and what we do with it.

Senator Murray: Is there a need-to-know criterion?

Mr. Elcock: Do you mean in terms of SIRC's access?

Senator Murray: No, in terms of your sharing with a foreign government?

(Take 1350 follows: **Mr. Elcock:** In terms of the information we would....)

38342/C-36/October 22, 2001/DM

Mr. Elcock: In terms of the information we would share with foreign governments, we would obviously look very carefully at the government we were sharing with, the nature of the institutions we were sharing with, their reputations, their approaches to operations and their preparedness to keep secret whatever we have shared with them. There is a whole variety of things we would look at before we shared information with anyone.

Senator Murray: Including the nature of the information.

Mr. Elcock: Including the nature of the information, yes.

Senator Murray: This question gets slightly speculative, perhaps, but I heard the Minister of Justice say the other day that the mere fact of occupying a bridge, for example, is not a terrorist act. My mind went back to the Oka confrontation of 1990, I think it was. Will the tools that CSIS will get in this legislation help you in foreseeing a situation such as arose at Oka where, by the use of arms, there was an occupation of territory?

Mr. Elcock: As I said in response to an earlier question, the reality of the legislation is that it does not change our powers. The legislation does not change our powers at all. It has no impact on our mandate. It does not give us any additional powers.

Senator Murray: I will put the question to others.

Senator Kenny: Welcome, Mr. Elcock. Could you share with the committee why you believe that the changes were necessary to the Official Secrets Act and,

from CSIS's perspective, why the Security Information Act will be an improvement? How will it be helpful to you?

Mr. Elcock: The reality of the Official Secrets Act is that it is essentially a dead duck. It is impossible to prosecute anyone under the act as it now exists except in the clearest case of espionage and probably in a case where you are prepared to release immense amounts of information surrounding such a case in order to get a conviction. There was therefore, certainly in our view, a need for legislation particularly for organizations like my own. Keeping information secret is not an unimportant facet of life, and having an effective piece of legislation that allows that is important.

Senator Kenny: Can you point to specific aspects that would give you better tools than you now have?

Mr. Elcock: The fact that indeed we would be able to prosecute someone who revealed secret information is, in and of itself, the key change in the law. The existing legislation is unworkable under the Charter.

Senator Kenny: Could you comment for the committee on the question of designating persons under the act so that they are permanently bound to secrecy by a deputy head? I am interested in knowing if an individual can be designated retroactively.

Mr. Elcock: I do not believe so.

Senator Kenny: I am looking at clause 10(1)(*a*) where it says, “the person had, has or will have access to special operational information”. The word "had" leads me to believe there is a retroactive aspect here.

Mr. Elcock: I suspect the Justice lawyers would be better equipped to answer that question than I am, but it is not clear to me if you are designated in respect of that previously received information or not. I am not sure there is an after-the-fact consequence of being designated. You are only designated from the point at which you are designated, if that is the point you are driving at. In other words, if you had had access to information and the government decided to designate you, I think you are only designated from the point at which you are designated and not before.

Senator Kenny: What happens if someone does not like being designated? What recourse do they have?

Mr. Elcock: Not much under the legislation.

Senator Kenny: What about clause 15? There is a discussion of a person who, if they are acting in the public interest, may disclose. Could you elaborate on that for us? Would you explain that clause so we have a better understanding of when someone could disclose information that they believe to be in the public interest?

Mr. Elcock: It would be difficult to put a hypothetical example together. The lawyers felt that it was essential under the Charter to include a public interest offence -- in other words, putting a defence in the legislation for someone who had a legitimate reason for disclosing information would be essential if the legislation were to be successful in withstanding a Charter challenge.

Senator Kenny: Can you give us an example of how that might work?

Mr. Elcock: I suspect if the individual believed that he had a justifiable case of malfeasance on the part of the organization or some member of the organization in some operation, that that might well be considered. If they followed the steps provided for in the legislation, that would be considered perhaps as a public interest defence. It is hard to know at this juncture precisely what the courts will accept.

Senator Kenny: Are you comfortable with this? It sounds like this is not something you would have been put in the act, but it has been put in to make it Charter-proof.

Mr. Elcock: That is probably a good description, Senator Kenny.

Senator Beaudoin: This morning I raised the question of the interception of private communications. There is a section that says that the Minister of National Defence may authorize interception when those private communications come from the international scene; however, the system in Canada internally is still the same as before and we go before a court of justice to obtain a warrant. Is that the situation in your centre?

Mr. Elcock: Yes, it is. Only the police and CSIS have the authority to seek a warrant to intercept communications in Canada.

Senator Beaudoin: Only you.

Mr. Elcock: And the police.

Senator Beaudoin: When it is at the international level, I understand the authorization comes from the Minister of National Defence, by exception.

Mr. Elcock: In the case of CSE. That piece of the legislation has nothing to do with CSIS. It is purely in respect of the Communications Security Establishment.

Senator Fraser: Mr. Elcock, you are aware that parliamentarians have been particularly interested in oversight aspects or gaps in this bill. You live with a review committee. Could you tell us how that works and, from your perspective, what effect the existence of that committee has had, the advantages and disadvantages?

Mr. Elcock: I think that in the early days there was considerable unease about a review committee. We describe it as a review committee, not an oversight committee. There is a difference. There was some concern about a review committee, and there certainly was some concern on the part of our allies about a review committee, particularly one that has broad access, and it is the broadest of any committee I am aware of. Most of that has gone, certainly on the part of our allies. Within the organization, most people would see SIRC as an important part of the service and why we are where we are.

(1400 follows, There are a couple of important positive results.)

MA October 22, 2001 38342 Anti-Terrorism

(tk 1350 ends-- Mr. Elcock continuing-- why we are where we are.)

There are a couple of important positive results. If a person is accused of having done something wrong, at least someone can give the person a "good housekeeping seal of approval" and thereby say to the government and to the public that this person is innocent of the accusations. Unfortunately, that entity can confirm that the person has done something wrong but, generally speaking, it should be known when a person has played by the rules.

The other benefit is that this kind of review makes for a very disciplined organization. That is a good thing in this kind of business.

Senator Fraser: Would you describe for me in some mundane terms how it works? Does SIRC come in once a year for a morning, or do they come in every

month? Do you give them regular reports on what is going on or do they just come in and say that this time they want to look at this kind of activity? How does it work?

Mr. Elcock: Review committee members are appointed but the committee also has a staff who are there on a continuous basis. The staff set up a work plan for each year setting out areas for review. They may decide to review offices in the prairie provinces this year and next year in Quebec. They may decide to review our offices in other parts of the world to see how they are functioning. They may review certain investigations to see whether the work was justified and carried out appropriately. That is done by the staff. Members of the committee also carry out a hearing function for complaints against the service. Designating the review work is a continuous process.

Senator Fraser: I understood you to say that, in the end, the agency believes that this has been a positive element?

Mr. Elcock: Yes.

Senator Fraser: It has brought an element of discipline as well as protection?

Mr. Elcock: That is true.

Senator Fraser: Are there any disadvantages?

Mr. Elcock: It is fairly onerous. It requires a fairly large effort to supply the kinds of support that SIRC needs to do its job. In order to review our files on a specific operation, someone from that office must go and explain the operation to them. When they are explaining the operation, they are not doing what they are normally employed to do which is to conduct intelligence operations. In that sense it is onerous and it occasionally has its conflicts. It is by definition a slightly adversarial process. CIRC and CSIS were not meant to be close friends. We are mutually respectful professionals but the relationship is not always friendly.

Senator Fraser: Would you say that the structure which Canada has established is more or less rigorous than, for example, the American congressional committee review that exists for intelligence purposes?

Mr. Elcock: By far and away the most rigorous review process in the world is in Canada.

Senator Kenny: As a point of clarification, there is oversight in the United States but there is no oversight by SIRC here.

Mr. Elcock: I thought of that when I made my response, Senator Kenny. I think the Canadian system still has a good deal more review. Different people could weight the issues differently. I weighted the issues in that way because the comprehensive nature of review in Canada is far greater than in the United States. The oversight in the United States tends to be more narrow than is the review here in Canada.

Senator Tkachuk: I want to follow up on our discussion this morning with Department of Justice officials and the minister.

We have been told that the provisions in the bill regarding the Privacy Act -- i.e. the certificate, using security reasons, defence reasons and others from giving out information -- were needed because of international reasons, in other words to help inr the sharing of information between Canada, Europe, the United States and some other countries. Is any information being withheld today because we do not have this legislation?

Mr. Elcock: I do not believe that our service is not being provided with information now because that provision is not in current legislation. As I understand it, the Department of Justice believes the provision should be there to create concordance between the Access to Information Act and the Canada Evidence Act. In that way one could have the same result in both cases. I do not think it is there because of a lacuna which makes foreign countries think we cannot protect our information at this juncture.

Senator Tkachuk: How do you protect the information now?

Mr. Elcock: We classify the information and share it only on a "need to know" basis. The Official Secrets Act and the new act to be entitled the Security Information Act are, in that respect, far more important for protecting that kind of information in the future.

Senator Tkachuk: Earlier this morning we discussed possible terrorist activity in Canada. Do you have evidence now and did you have evidence before September 11 of terrorists and terrorist groups operating in Canada?

Mr. Elcock: There are terrorist groups with members, adherents and, in some cases, operatives in Canada, as there are in other countries in the world.

Senator Tkachuk: For how long would you have known that?

Mr. Elcock: It depends on the group. In some cases, we have known for some considerable period of time. Some of the individuals may never have actually committed any crime, but membership in an organization has not hitherto been a problem for anyone. A member of a terrorist organization who has never committed a criminal act, especially one with adequate false identification and even some sometimes with legitimate identification, could move around the world easily.

Senator Tkachuk: What would change under this act?

Mr. Elcock: Many of the activities carried out by people in such organizations would now be criminalized. Their fundraising would be criminalized. There are a number of activities that in the past would not allow for arrest that will now do so.

Senator Tkachuk: Would you have supplied evidence to government officials and ministers that these particular people in this particular city are raising funds for and are members in a terrorist organization and they kill people? Would you have relayed that kind of information, or is that information that no one needed to know?

Mr. Elcock: We would probably have provided information not dissimilar from that in some cases. The difficulty with terrorist fundraising until now has been that, even if you knew someone was collecting money on behalf of a terrorist organization, the only way to press a prosecution would be to show an actual dollar bill collected in downtown Toronto was used to buy weapons in some other city. That is almost impossible to do.

Senator Tkachuk: Under this bill, people, including the police, can gather information on almost any Canadian. Would the people you follow because of involvement in terrorist organizations, both before September 11 and after, be Canadian citizens or people waiting for citizenship or refugees?

Mr. Elcock: Representatives of every one of those groups are among the population of adherents to terrorist groups in Canada.

(tk 1410 follows--Senator Tkachuk: Do we have many citizens of Canada operating)

Senator Tkachuk: Do we have many citizens of Canada operating as terrorists?

Mr. Elcock: To give you an example, I believe Mr. Carter, the gentleman whose name was added to the most recent list of those whose assets were frozen, is a Canadian citizen.

Senator Tkachuk: Would they be in the majority?

Mr. Elcock: They probably would not.

Senator Tkachuk: What parts of the world would they come from?

Mr. Elcock: They come from every part of the world. It is a fact of Canadian society -- an admirable fact -- that we have populations from virtually every part of the world. Unfortunately, in some of those parts of the world there are struggles taking place, for one reason or another, and often there are terrorist groups. Sometimes those people filter in with the rest of the population.

Senator Tkachuk: I do not know whether I am right here or not, but there are two kinds of terrorist groups: those who want to do harm to us and those who, for some reason, do not like what is happening in their country and want to do harm to others.

Mr. Elcock: That is not a bad classification.

Senator Tkachuk: The ones who want to do harm to North Americans, where would they come from?

Mr. Elcock: The pre-eminent groups at this point in time would be the Sunni terrorists, such as the bin Laden organization, al-Qaeda, and several associated Somali and Egyptian organizations.

Senator Tkachuk: Should the government be doing anything to assist CSIS in doing its work? The sooner we provide the resources needed to gather intelligence on these groups and either prosecute them or get them out the country, the safer and more secure Canadians will feel.

Is there anything that you have suggested to the government that it can do that will make your work not necessarily easier, because that is not what we want, but more efficient, substantial and effective?

Mr. Elcock: In terms of CSIS, as I said, this legislation does not add to our powers. In a sense, our powers as mandated are largely sufficient for the purposes. In terms of resources, as I said in responding to an earlier question, the government has indicated it is looking at longer term resource requirements for organizations like CSIS and other parts of the community. A decision on that is forthcoming in the not-too-distant future.

This bill, on the other hand, provides, not so much for us but for the enforcement agencies clear authority to prosecute behaviours that heretofore would not have been prosecutable.

Senator Jaffer: I have a question that I am not sure is appropriate. You can tell me if it is not.

Mr. Elcock: There are no inappropriate questions, only dumb answers.

Senator Jaffer: You are very kind. In response to a senator's question, you identified some groups about which we have concerns. There are honest people in those groups who have raised a concern with me about racial profiling. I want to know if you do racial profiling and whether collecting this list will mean you will have expanded rights in doing racial profiling?

Mr. Elcock: We do in fact do some profiling. The profiling that we do is essentially to provide immigration with an essential set of things to look out for in respect of particular groups or organizations. That is not a racially-profiled list. It is not based on colour. It is based on origin, on educational and work background, and a number of other things. It is a fact of life that in some cases we are targeting, say, Somalis who went to a particular school. It may look as if this is racially profiling, but it is not.

Senator Jaffer: You mentioned immigration. Normally, after people are is accepted as a refugee, you often become involved in interviewing and speaking to them after they get landed. Do you get involved before as well?

Mr. Elcock: Bill C-11, which amends the Immigration Act, will have us doing pre-screening of refugees. We have not to this point done that, but in the future the Service will be screening as they arrive. The names will be given to us by Immigration and we will screen them in hopefully as efficient a manner as we do now with landed immigrants.

Senator Jaffer: Would you be doing pre-screening in the countries of origin as well or only after they arrive here?

Mr. Elcock: We would screen the names as given to us by Immigration.

Senator Joyal: The media has been reporting that there were approximately 50 terrorist organizations involving more than 350 people in Canada. Can you confirm that?

Mr. Elcock: Madam Chair, that was a number the media took out of a presentation I made originally to Senator Kelly's Senate committee. That quote, which has lived on in every newspaper story I can think of, was simply a snapshot at a particular point in time. The number that we would be looking at at any point in time could be higher or lower, depending on our focus. We manage risks, so we are looking at the highest risks at any particular moment.

There is no particular magic to the numbers 350 or 50. It is the reality that there are terrorists and adherents of terrorist organizations who seek to come to Canada and who are in Canada, and there are a number of organizations that have a structure here.

Senator Joyal: In your opinion, with the passage of this legislation as it stands now, can we conclude that in a short time some of those people that you have been monitoring in the last years would be brought to justice to answer accusations either to previous federal legislation or to the new crimes that are created in this legislation?

Mr. Elcock: I am not sure that there will be a flood because there are not thousands or millions of terrorists in Canada. I think there will likely be prosecutions under the new legislation. The existing legislation does not in most cases offer much in the way of prosecuting, unless someone has carried out a terrorist act and committed a crime in the process. There will likely be prosecutions under the new legislation, but the process involved will not necessarily be easy. It will be a court process , which, by definition, with its appeals, will likely take some time. It will not happen overnight, but the legislation will certainly provide additional tools for the police to prosecute members of terrorist organizations.

Senator Joyal: In other words, you are not in a position to tell us, to take the example of the al-Qaeda organization linked to Osama bin Laden, that in a very

short period of time those people will be brought to justice because they are a part of a terrorist organization against which Canada has made a decision to put the Armed Forces on active service?

Mr. Elcock: Membership is not by itself an offence. For any individual to be charged under the new legislation, the police would need sufficient evidence to demonstrate that in fact certain activities that are caught by the act had been carried out by the individual.

(Take 1420 follows: Mr. Elcock continuing: There would need to be a prosecution...)

ES/Oct. 22/01

(Take 1420, Mr. Elcock continuing)

There would need to be a prosecution, a court case. There would be all the appeals and so on. That process will go ahead once the legislation is approved, I assume, but that is a process that does not happen overnight.

Senator Joyal: In other words, even if that bill were adopted in a short period of time, it does not mean that people who belong to a terrorist organization would be brought to justice in Canada in the near future and, especially, the one linked to Mr. Osama bin Laden?

Mr. Elcock: We will be assisting the police, and the police would be seeking to prosecute anyone we can find who has, in fact, committed an offence under the new legislation. That process, even if we identify them all and have several candidates, will not be a quick process. The legislation has a great deal of protection.

Senator Joyal: You mentioned that the major thrust of this legislation will be used by the police forces and not by your service. In other words, if there will be a sunset clause in that bill, you will not be drastically affected in the effectiveness of your operation?

Mr. Elcock: The legislation has essentially no impact on our mandate at this juncture, so any other provision added would, obviously, have no impact either. The reality of a sunset clause would mean the provisions that allow the prosecution of terrorists for certain kinds of offences would fall.

Senator Joyal: For example, the Privacy Commissioner has mentioned that clauses 103 and 104 could affect your operation. You are not concerned that even if those two special sections were amended that that would be of any embarrassment in the usual operating of your operation?

Mr. Elcock: The reason for that amendment to the act is to provide coherence between two pieces of legislation, a similar result under both pieces of legislation. By definition, there may well be in the future, if the legislation is there, a case in which we would be involved and in which that clause would be important. However, as I said earlier, there is no barrier at this point in terms of our sharing information with foreign services or other foreign countries.

Senator Joyal: In other words, when the media across the border reports that terrorists are operating in Canada, and the Canadian side does not have enough capacity to provide the American authorities with the information, that, based on your knowledge and experience, is not the reality?

Mr. Elcock: No, I do not believe that is the reality at all. The reality for all modern, democratic Western countries is that if you permit the free movement of people and money, which you must do in a modern economic country, by definition, some people will move under the threshold. The same is true for the United States and most Western European countries. We are in the same boat, and most of the organizations I deal with would say the same thing.

Senator Joyal: Are there terrorist based American groups that have operations in Canada?

Mr. Elcock: I am not sure which groups you are thinking of.

Senator Joyal: The one, for instance, linked to Mr. Timothy McVeigh?

Mr. Elcock: The militia groups do not seem to have existence in Canada. It is not something that has crossed the border particularly well.

Senator Joyal: They could come to Canada to plan terrorist activities in the United States.

Mr. Elcock: That is always possible.

Senator Joyal: In the past, to your knowledge, did that happen?

Mr. Elcock: No.

Senator Joyal: Nor any other American terrorist based group?

Mr. Elcock: That covers a wide range of territory. I would not go that far.

Senator Murray: I have one issue I wish to raise with Mr. Elcock. Are you satisfied that CSIS now has the tools that are adequate in terms of data that is encrypted?

Mr. Elcock: The issue of encryption is a difficult one. There is no question that encryption is widely used by terrorist groups and others. There are some ways of around encryption. There are some techniques that get one around encryption. In a sense, it changes one method of investigation rather than presenting a total barrier to investigation.

Senator Murray: The Senate committee stated that when CSIS, the RCMP and others came before the committee, they had urged a legislative or regulatory regime that would provide you with mandatory access to the keys used to encrypt and decrypt communications and stored data. Later, they indicated that you had sought a change to the Criminal Code to compel the holder of a cryptographic key or password to give it up in response to judicial warrant. Then they went on to say it is clear that security and law enforcement agencies are on the losing side of the debate over encryption. The winning side of the debate, apparently, is the consideration of costs, exports, economic growth, privacy, confidentiality and so on.

They say your other solutions would be expensive, time consuming and, in the case of strong encryption, ineffective. Would this bill not have been a good opportunity to give you the tools that you were seeking when you appeared before the Senate committee?

Mr. Elcock: I believe there have been some discussions around some elements of what might be called the lawful access, including encryption, in a number of other areas. People are still looking at the possibility, and there has been some talk of possibly a second bill, and some of those provisions might be there. It is a more complicated piece of legislation in a sense.

Senator Murray: I appreciate that, and we will look forward to the second bill.

Senator Tkachuk: With respect to the 72 hours that you have to clear a refugee, if that is the right way to put it, is that enough time?

Mr. Elcock: The 72 hours does not refer to our running the name through our system or doing any checks on the individual. That is an immigration deadline. In many cases, we will be able to make a 72-hour deadline because we will be processing those by computer for the most part, but the reality is that the deadline is not in terms of our investigation of particular refugee claims.

Senator Tkachuk: Would you be processing all of them?

Mr. Elcock: All of the names in the future, yes.

Senator Tkachuk: How many do you think that would be in a week or a month?

Mr. Elcock: I believe there is something in the order of 40,000 or 50,000 refugees a year, so it is a fair chunk of names.

Senator Tkachuk: How many of those do you think would be coming from countries that you indicated earlier would be the ones who might want to do us harm?

Mr. Elcock: That is impossible to foretell. Refugees tend to come from areas in the world where a particular problem has occurred or where there is starvation or where there is an economic breakdown, depending on the reason for the refugee push.

Senator Tkachuk: Just about every continent except for South and North America?

Mr. Elcock: Yes.

Senator Tkachuk: At what point in the process will you be asked to see if a person might have terrorist ties or might be ineligible? The process for refugee determination is complicated. I am not sure how much Bill C-11 will change that, but will you get involved at the beginning when the claim is made?

Mr. Elcock: Yes.

(Take 1430 continues, **Senator Tkachuk:** Whether it is made here in Canada or...)

Senator Tkachuk: Whether it is made here in Canada or outside the country, will the name will be given to you almost immediately?

Mr. Elcock: It should be, yes.

Senator Tkachuk: Citizenship and Immigration will then determine if the claimant is eligible. Will they wait for your report before they make that determination?

Mr. Elcock: It depends on whether we are able to generate something quickly or not. In many cases, there will be no problem. In other cases, it may take us longer. The refugee is not through the final process yet, even though their claim has been found to be eligible. In other cases, we will have to collect more information before we can provide advice to Immigration.

Senator Tkachuk: At the same time as that person is going through the process, you are working on that person?

Mr. Elcock: Yes, and we may have some additional information we can provide to Immigration.

Senator Joyal: Mr. Elcock, in the past has your agency been involved in legal proceedings as a result of people who feel that the agency has gone beyond its mandate?

Mr. Elcock: It would be surprising if one had an intelligence service about which people did not complain about what they think we have done or what they believe we have done. On occasion, yes, we are.

Senator Joyal: Could you be more specific? What was the last one?

Mr. Elcock: I am not sure which one you are thinking of, senator.

Senator Joyal: I just asked you about the last one.

Mr. Elcock: I cannot off the top of my head. I am drawing a blank. We do get complaints.

Senator Joyal: What kind of complaints?

Mr. Elcock: As varied as people who think that we are broadcasting instructions through their teeth with microwaves. We get more sensible complaints from people who believe they are being followed by someone, and it may or may not be us. We get complaints from organizations which believe that they are thought to be terrorist organizations and they would like to defend their organizations. There is a wide variety of complaints.

Senator Joyal: How do you deal with them in relation to the review committee?

Mr. Elcock: The process under the CSIS Act is that they must advise me that they have a complaint. It is then referred to SIRC and SIRC deals with their complaint.

Senator Joyal: Does that trigger a readjustment of your operation? How do you deal with that once you are aware that a complaint has been lodged?

Mr. Elcock: It does not involve any change in our operations. There is simply another process on the side. They will make their case to SIRC. We will make a response to SIRC and SIRC will come to a conclusion one way or another.

Senator Joyal: At the end of a year, or after a certain period of time, you go through the process as far as those conclusions are concerned. Would you report to the minister, for instance, the kind of readjustments that had been made if it is found that your procedure needed to be adapted to a special context?

Mr. Elcock: In most cases, if SIRC has a recommendation that would change our process or change the way we operate, they would make that recommendation to the minister. At the end of the day, the minister would have to decide whether or not he wanted us to implement that or not.

Senator Joyal: Has that happened recently?

Mr. Elcock: It has not happened recently that I can recall; but it has happened in the past, yes.

Senator Kelleher: A little earlier in the evidence we had a discussion about your new funding. I know, as I am sure you know, that you suffered drastic cuts in the number of your employees. I personally think this has led to certain criticisms that have arisen about the performance of CSIS. Will the additional funding that you receive restore you back to your former level of services and number of

employees? I will not get into names here. Or will you still be a little behind the eight ball?

Mr. Elcock: If we were suddenly to receive, like on Christmas morning, all the resources we lost through deficit reduction, I am not sure we would know what do with them. If we were to try to absorb the difference between the original high number of CSIS and the present number, which is on the order of 700 people, it would be impossible for us to get that many people trained and into the organization. Essentially, it would be beyond our capacity to cope.

Senator Kelleher: Do you feel the new funding you will receive will restore you to the level that you feel you can live with? Like any other organization, we have a sense of what we need, and we have provided that view to the government. We will have to wait and see what, indeed, the government decision will be. As the government has said publicly, those issues are now under consideration. They will be taking the decisions in the near term. Chair.

Senator Finestone: Madam Chairman, I was out of the city this morning on other business. However, in the course of driving from Montreal I listened to a very interesting interview with a past director of CSIS. I suggest that we get a copy of that particular interview. It was extremely enlightening, at least from his perspective. It raised some questions in my mind that I would like to share with you.

He said that, among other things, CSIS has always had special rights in terms of listening rights and the taping of conversations, whether over a cell phone or a regular telephone, for a period of one year. However, they had no obligation to advise the party that they had done this taping. I gather in this bill, and I do not know the number of the clause, there is now the right for the police to tape for an extended period of time; but, at the end of a period of time, and I think it is a year, they would need to advise the party that they had been under surveillance. This would release information into the general public which would allow them either to seek more protection underground or subject them to a court challenge.

I do not know if that is what you know or think about that particular aspect of their concern around this bill. The former director had four concerns. Had I known I was to be on this committee, I would have listened and taken notes of what he said. However, that is hard to do while driving. I would appreciate an answer to that particular observation.

Mr. Elcock: The description of our powers is essentially accurate. Under section 21 of our act, we have the authority to obtain warrants, which allows the interception of communications without notice to any party. The reason that it is without notice to any party is that we are by definition a covert agency. We do not operate in the public view. We do not collect evidence as the police do. We do not collect to an evidentiary standard. We are there as a preventive organization rather than an enforcement organization.

From our point of view it would make no sense to provide notice to anyone. However, in the case of the police the rules are different, and have been traditionally so. The legislation will give the police some additional powers in terms of the length of time for which they can obtain a warrant and so on, as well as with regard to the notice provisions.

Senator Finestone: Then they must advise the party.

Mr. Elcock: I believe that is right.

Senator Finestone: In your view, does that reduce your capacity?

Mr. Elcock: It has no effect on our powers.

Senator Finestone: Do the police mandated with these new powers have to advise you that they are listening and have put surveillance into place?

Mr. Elcock: We try not to wind up watching the same target or running the same intercept. There is coordination between the police and ourselves.

Senator Finestone: It will not be like we see on some television programs where people are tripping over each other because of their jurisdictions.

Mr. Elcock: We try not to do that.

Senator Joyal: It was reported that the American government had been informed last summer that something was in the planning with regard to what happened on September 11. Was that information something that came to your own knowledge?

Mr. Elcock: Madam Chair, there has certainly been an expectation for some time, particularly heightened last spring and this summer, about the possibility of some terrorist action on the part of al-Qaeda.

Senator Joyal: Did you have the same information from your own sources?

Mr. Elcock: We had some information from our own sources. Obviously, we share information with a number of other services.

Senator Joyal: Then you were not the only one who was made aware that there was something from al-Qaeda that would happen?

Mr. Elcock: No.

Senator Joyal: When you receive that kind of information, would you share it with the various professional people with whom you are normally in touch?

Mr. Elcock: Yes.

Senator Joyal: Is this the same information you had following the initiative taken by the international coalition in Afghanistan; or did you share the information that there might be retaliation on the part of al-Qaeda outside Afghanistan?

Mr. Elcock: Given the capabilities of the organization and its track record, the likelihood of some response cannot be discounted.

Senator Joyal: Do you have any other specific elements that could put you on the track of something?

Mr. Elcock: We are certainly working very hard, but not at this juncture.

The Chairman: Thank you very much, Mr. Elcock. We appreciate you coming here this afternoon. You have given us a great deal of information which we did not have before.

(take 1500 follows: The Chairman continuing: Our next witnesses...)

38342/C-36/October 22, 2001/DM

(The Chairman continuing)

Honourable senators, our next witnesses this afternoon are from the Canada Customs and Revenue Agency and the Department of Finance. We certainly thank you all for appearing. For the benefit of colleagues, we will begin with an overview from Mr. Roy, Assistant Deputy Minister, Department of Finance. We

also have with us today another veteran, Mr. Horst Intscher, also from the Department of Finance, who is the Director of Financial Transactions and Reports Analysis. We also have with us Ms Walsh and Mr. Snider, from Canada Customs and Revenue, and Mr. Lalonde, Mr. Seeto and Mr. Ernewein, from the Department of Finance.

To begin the discussion, please proceed, Mr. Roy.

Mr. Yvan Roy, Assistant Deputy Minister, Counsel, Department of Finance: Honourable senators, I had not planned on making a long presentation to you this afternoon on what this bill is doing that is of special interest either to us in Finance or to CCRA. By way of an overview, I can stress some elements that may be of particular interest to you. The portions of the bill that will be of interest to us are Part 4 and Part 6. Part 4 would be at page 87 of the bill, at least in my copy, and Part 6 would be found at page 125.

By way of introduction with respect to Part 4, these are a number of amendments to the legislation passed by Parliament last year creating an agency responsible for helping the Government of Canada deal with problems caused by money laundering, or FinTRAC. The government proposes to broaden the mandate of that agency for the purpose of ensuring that this agency not only fights or helps in the fight against money laundering but also assists in our fight against the funding of terrorism.

You will have been told by the Minister of Justice when she appeared this morning that a number of changes to the Criminal Code are proposed in this legislation for the purpose of allowing Canada to ratify the UN Convention on the Financing of Terrorism. One of the provisions of particular interest in this legislation is the one that prohibits the financing of terrorism.

We have in place an agency which will be up and running soon. It can help with the examination and analysis of transactions for the purpose of identifying trends and eventually help us fight terrorism and in particular the funding of terrorism. This piece of legislation proposes that the tools that are in place be used in the future for the purpose of attacking the funding of terrorism. For that purpose, not only is it proposed by the government that the agency be used to analyse, but also once the analysis has been done, to provide the information that has been gathered by that agency to an agency such as CSIS when there is, in the opinion of the agency, a threat to the security of Canada following the analysis that had been conducted.

Also, the agency would like to be able to enter into agreements with counterparts in other countries in order to start that net that we have been talking about and to talk to each other and be in a position to intervene in appropriate cases. This is what Part 4 is trying, by and large, to achieve.

Part 6 is the creation of a brand new piece of legislation that would be called the Charities Registration Security Information Act. This piece of legislation, if it is passed by Parliament, will provide the state with the tools to deny organizations their charity status. As we all know, you can make donations to charity organizations and benefit from tax deductions. Another bill that was before Parliament, Bill C-16, which would be withdrawn. This legislation would allow the Minister responsible for CCRA, the Minister of Revenue, as well as the Solicitor General to issue a certificate, the purpose of which would be to deny organizations status as a charity. Once that is done, that certificate issued by ministers would be reviewable before the Federal Court, and the Federal Court would decide whether it was reasonable in the circumstances to issue that certificate. You will see that there is a mechanism in there that provides details of that.

(1510 follows, Mr. Roy continuing, Once that status has been denied)

MA October 22, 2001 38342 Anti-Terrorism

(Tk 1500 ends--Mr. Roy continuing-- suggest to you, in details.)

**Once that status has been denied, some tax consequences will follow. Most importantly and most obvious, the charity cannot in future issue charitable deduction slips to donors.

Other consequences flow from this provision. If you want us to discuss those, we will be more than pleased to do so.

Those are the two big, important tools in this bill with which to fight terrorism by drying up sources of funds for organizations that exist to terrorize the Canadian public or a segment of the Canadian public.

(French follows--Sen. Bacon--la loi accordera...)

(après anglais)

Le sénateur Bacon: La loi accordera au solliciteur général des pouvoirs additionnels pour contrer le financement du terrorisme. Elle lui donnera même le pouvoir de retirer l'enregistrement d'un organisme de charité.

Ce retrait se ferait-il uniquement dans le cas où il existe une preuve à l'effet que des fonds sont à la disposition des terroristes ou dans le cas où les autorités policières auraient des soupçons d'une telle possibilité?

Si ce pouvoir de retirer l'enregistrement d'organismes de bienfaisance n'existe pas en ce moment, existe-t-il déjà si on se rend compte que ceci ou cela profite à des activités criminelles?

M. Roy: À l'heure actuelle, les dispositions importantes à cet égard se retrouvent à l'alinéa 4 de ce qui deviendrait la Loi sur l'enregistrement des organismes de bienfaisance.

Le ministre, le solliciteur général et le ministre responsable du revenu national devront avoir des motifs raisonnables de croire que l'un ou l'autre des trois éléments qui se retrouvent à cet alinéa 4 s'appliquent en l'espèce.

Une fois le certificat émis, la Cour fédérale doit réviser le tout afin de s'assurer que c'est raisonnable. Il est clair qu'à cet effet les autorités policières devront fournir une preuve car il ne suffit pas d'avoir une opinion qui n'est pas supportée par quoi que ce soit. Une preuve doit être faite afin qu'un juge soit d'accord avec le ministre habilité pour qualifier de raisonnable l'émission du certificat. Évidemment, la preuve doit se faire en fonction de l'un des éléments prévus à l'alinéa 4.

Le sénateur Bacon: Avez-vous déjà procédé au retrait de l'enregistrement pour des raisons d'activités de nature criminelle?

M. Roy: Quant à des certificats, ce genre de pouvoir existe déjà. En matière d'immigration, cela existe par exemple dans les cas d'individus soupçonnés d'appartenir à des cellules terroristes. En vertu de la Loi sur l'immigration, il est possible, lorsqu'on tente de leur refuser le statut de réfugié, d'émettre un certificat qui est révisable devant les tribunaux.

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38342 Anti-Terrorism 1510– 29

Vous le savez déjà toutes et tous, mais aucune décision gouvernementale ne peut être prise sans qu'il y ait possibilité d'une révision judiciaire. Les tribunaux l'ont établi il y a déjà plusieurs années et même les décisions du Cabinet sont révisables.

Ce texte prévoit un processus de révision encadré. Plutôt que de laisser le tout à l'utilisation de la common law, ce texte de loi prévoit le cadre dans lequel cela doit se produire, évitant ainsi l'éventualité de difficultés procédurale. En soi, la révision judiciaire correspond à ce qui se fait généralement dans ce domaine.

Le sénateur Bacon: J'aimerais qu'on revienne à page 16, l'alinéa 83.05. La loi prévoit que le solliciteur général aura la possibilité de recommander l'inscription d'une personne ou d'une organisation sur la liste des terroristes. Quelles sont les garanties que seules les entités relevant du domaine terroriste seront consignées sur cette liste et qu'on ne retrouvera pas des individus ou des organisations qui s'opposent à la mondialisation, des membres de syndicats ou, tout simplement, des personnes qui pratiquent un culte religieux?

M. Roy: Je suis avocat et conseiller juridique au ministère des Finances. L'avocat que je suis vous dira que ce qui fait foi de tout dans ce domaine, c'est la définition d'activités terroristes et la possibilité que les tribunaux en viennent à la conclusion que les listes créées sont trop larges.

En ce qui concerne la définition proposée par le gouvernement, je vous dirai qu'elle cherche à éviter d'être trop large et trop vague en s'assurant que les gens qui protestent par des moyens légitimes ne soient pas visés par la définition que vous avez ici.

Une fois qu'on aura qualifié la définition comme étant raisonnable, il y a dans ce cadre donné la possibilité d'intervention des tribunaux pour ramener les choses dans un juste contexte. À mon avis, un cabinet a un intérêt inhérent à s'assurer que les listes ne soient pas trop larges ou trop vagues. Et si cet intérêt inhérent n'est pas satisfait, les tribunaux pourront intervenir.

Il s'agit pour nous de regarder le contexte et de voir s'il risque de fonctionner. Il y a dans ce contexte des vérifications et contrôles qui passent par la définition, par l'intérêt du gouvernement de ne pas aller trop loin et, en bout de ligne, par l'intervention possible des tribunaux pour que le tout reste dans le cadre du raisonnable.

38342 Anti-Terrorism 1510– 30

(Sen. Tkachuk: I have some questions on money laundering...)

(anglais suit)

(following French—M. Roy… le cadre du raisonnable.)

Senator Tkachuk: I have some questions on money laundering. I was part of the committee that reviewed the money laundering act. At the time, we were told it was important to pass the bill in order to get the organization going. Can you tell us, Mr. Intschster, is FinTRAC up and running? Is it fully functional?

Mr. Horst Intscher, Director, Financial Transactions and Reports Analysis Centre of Canada, Department of Finance: We are very close to being up and running, senator. We were established, as you know, on July 5, 2000. Our most immediate challenges were to obtain staff and accommodation, to train analysts and to put in place systems to deal with the expected information flows.

Together with our colleagues from the Department of Finance, we also conducted extensive consultations with reporting entities with a view to formulating regulations to govern the reporting of information as required by the act.

The regulations were pre-published in February. Over the spring and summer, we received submissions from reporting entities. The regulations were revised. The package was severed to facilitate implementation of the regulations. That all sounds like a long story, but the answer is that we expect to be able to receive voluntary information a week from today, on October 29. The regulation requiring the reporting of suspicious transactions will come into force on November 8 at which time we will be operational.

(tk 1520 follows—Mr. Intscher cont--The second package of regulations governing electronic fund transfers)

ES/Oct. 22/01

(Take 1520, Mr. Intscher continuing:)

The second package of regulations governing the reporting of electronic funds transfers, large cash transactions and cross-border currency movements is expected to be published later this fall. Those reporting requirements will come into effect early in 2002.

Senator Tkachuk: Under the investigative hearing portion of the bill, on page 32, I believe, there are certain powers granted for gathering evidence. Will this be

a tool that you will be able to use or officials or RCMP will be able to use to haul in lawyers, bank presidents or accountants who may be affiliated not only with Mafia-type people, organized crime, but perhaps terrorist activity? Could this power be used that way?

Mr. Intscher: I will defer to my colleague, Mr. Roy. However, this is not a power that would be available to FinTRAC. FinTRAC can only receive information that is required to be reported.

Senator Tkachuk: Then you pass it on to whomever.

Mr. Intscher: If we have reasonable grounds to suspect, then we can pass it on.

Senator Tkachuk: It is now passed on to Mr. Roy, and Mr. Roy says maybe he can haul in those bankers. Would you be able to do that now, or would you be able to if this bill were passed?

Mr. Roy: Right now, the state of the law in this country is that if you do not wish to speak with the authorities, you do not have to speak with the authorities.

Senator Tkachuk: I know that is what it is now.

Mr. Roy: The purpose of clauses 83.28 and following is to force some people to appear before a judge for the purpose of giving some evidence. I do not think there is anything here that limits this to a particular class of people. The experience, however, that we have with financial institutions is that they have been co-operating with the authorities whenever it was possible.

What is being contemplated with those investigative hearings is the possibility for people who may be involved in one fashion or another with terrorist activities, who have absolutely no incentive whatsoever to be the good corporate citizens that our financial institutions are, to be brought before a judge for the purpose of ensuring we can advance an investigation.

Let us not forget that these provisions, Senator, also provide for some guarantees in that the Constitution kicks in and you cannot incriminate yourself and, therefore, whatever you have said at those hearings will not be used against you. However, even evidence that is derived from what you have said cannot be used in the future. To answer your question more directly, it is not limited -- that is

my reading of the provision -- only to some very particular people. Rather, it is a power that is broader than this.

Senator Tkachuk: You are saying that it is not only the man with the gun in the T-shirt but also the bank president, the accountant or the lawyer that can be hauled in front of this investigative hearing process. I am not saying you would do it. I am just saying you now have the power to do that. Do you not?

Mr. Roy: As long as the person can be said to offer some information with respect to a terrorism offence, I do not think that there is anything, as you are asking the question. I am looking for something that would limit this further. You are right, senator. There is nothing that limits this to a particular class of people.

Mind you, had the legislation been drafted in that fashion, I am convinced that some people would have said it is much too narrow. You must give us more, if this is to be useful in any way, shape or form. At the end of the day, it depends on who is willing to use a power like this.

Let me offer another observation. Because you cannot use that information against someone, or you cannot use whatever evidence would be derived from the information we have received from someone, this scheme provides for checks and balances. There is an incentive for the state not to use this unless it has no other choice but to resort to this mechanism.

At the end of the day, will that be a tool, a power, that would be used by a great deal by the state? I have no way of knowing.

Senator Tkachuk: Neither do I. That is why I am asking. Neither does anyone else here.

The head of CSIS was here before. I asked a question about different kinds of terrorists, those who are present in this country, who want to do us or North America harm, and those who just want to do harm to their people back home. He concurred that that was probably true. There are those two types.

The IRA has been very active in North America gathering cash. John Lennon gave them money. He lived in the United States. They kill people. They are terrorists back home. To me, they would be an obvious target for us. Do they have organizations that they gather cash through and pass on to their friends back home, other organizations? Is that the organization you want to close down here in

Canada, or is it just the ones who want to hurt us? Does it apply to those who want to hurt Americans, but not necessarily us? Who is caught in this web?

Mr. Roy: I believe that the provisions we are talking about here would apply as long as the organization is involved in terrorism, which takes you back to the definition of terrorist activities.

Terrorist activities, you will have noticed, are not only international, but domestic. However, in the instance that you bring to our attention, an organization that would be doing terrorism abroad, would, in all likelihood, be covered by a provision like this. Therefore, a certificate could be issued against such an organization collecting funds in Canada for the purpose of supporting terrorist activities elsewhere. Again, terrorism is not limited to what is taking place domestically but, rather, covers both.

Senator Tkachuk: That is good to know. Does this bill apply to people raising money or simply to the charitable status of the organization that is raising money?

Mr. Roy: Senator, are you talking about the offence of financing terrorism, or are you talking about Part 6, which deals specifically with charities?

Senator Tkachuk: Anyone can incorporate a non-profit organization. It does not necessarily need to have tax status. Is this bill drafted to remove the tax status but not necessarily the gathering of cash? If an organization called the IRA Forever or al-Qaeda-whatever is raising cash, fundraising, having dinners, and so on, but has not asked for tax status, is that okay?

Mr. Roy: Part 6 is clear that all we are talking about is the decertification of those organizations. However, you bring me back to the offence of financing of terrorism, found at page 15 in the draft that we have. That would be under clause 83.2 of the bill. We see that it is an offence to willfully and without lawful justification or excuse provide or collect property. It is a two-way street.

(Take 1530 follows, Mr. Roy continuing: If you are doing that for the purpose...)

RC/Anti-terrorism 38342/October 222/01

(Mr. Roy continuing)

**If you are doing that for the purpose of supporting a terrorist activity, then you are financing terrorism and that, in and of itself, constitutes an offence.

These are two different things. Basically, you are targeting that problem two ways. Someone who does that wilfully is, therefore, supporting a terrorist organization, knowing full well what he or she is doing, and is committing an offence under clause 83.2.

What is being done on the tax side is the state is saying to those organizations that are collecting the money -- and it may be that you are doing that yourself without even knowing that the funds will eventually flow to some terrorist organization -- "We are decertifying your organization." Therefore, in the future, it will not be capable of receiving that money and, indeed, if you were to contribute in the future, you would not be getting the deduction.

Mr. Ernewein can tell you that there are some other tax consequences that flow from the fact that you are being decertified. Perhaps you would want to hear from him as to what will happen to those assets that have been gathered by that organization over the years.

Mr. Brian Ernewein, Director, Tax Legislation Division, Department of Finance: Briefly, the effect of a certificate issued by the Solicitor General and the Minister of National Revenue and confirmed by the Federal Court is that the registered charitable status of an organization is revoked. The effect of that is that they cease to be a registered charity for tax purposes. That has two principal effects. One is that they will no longer be entitled to issue charitable donation receipts for tax purposes. The second is that their own status as a charity will be lost. That triggers consequences already found in the Income Tax Act under the deregistration of charity provisions.

In summary, the consequences for the charity is that it is required to divest itself of all its assets. Either its property must be transferred over to another qualified donee, essentially another registered charity; or, if they are not, they are required to be given over to the Crown in the form of a tax. Upon loss of its registered status, essentially, the charity is made defunct by reason of the loss of its assets.

Senator Stollery: Some of the questions raised by Senator Tkachuk occurred to me. This business of money laundering is an old story. When Senator Murray was the Leader of the Government in the Senate we had, and I do not remember

when, a money laundering bill. We have been talking about the Colombian drug lords and the billions of dollars that they would launder.

It is common knowledge in the drug business that Miami is the corporate headquarters.

If you pick up a Florida newspaper, you often read that they just got another money laundering operation, and it is Joe's Pizzeria, and they took in $12,000 last year. That seems to be the extent of the success of their money laundering campaign.

As I understand the picture, and you can just run this past me again, the IRA, for example, has a dinner club and they give tax receipts because they have qualified under provisions of income tax legislation as some kind of a charity. The first part of this question seems to be that the federal government removes the right to give the tax receipts to people who buy dinner at the IRA supper club. Is that right? I would have thought that the IRA is universally recognized as a terrorist organization. Presumably, the IRA supper club, if it exists, or organizations which make up the IRA supper club under a different name and have some tax status as a charitable organization, lose their ability to give the tax receipts; is that correct?

Mr. Ernewein: On the assumptions, as you have stated them, that there is a charitable organization and it is engaged in terrorist activities, the consequence is that they would be deregistered and therefore lose their ability to issue tax receipts.

Senator Stollery: If someone says, "Can you give us $1,000? We will provide wooden legs to people who have only one leg." Let us say I give him $1,000. This is the association to provide wooden legs. I know nothing about this association, but Joe has asked me for the money. He has asked many other people and let us say that he raises $10 million. What happens then? If there is no tax receipt involved what happens? That money will go to a less respectable cause than that of providing artificial limbs.

Mr. Roy: Under this legislation, it will be one of two things in order for the legislation to kick in. Either this organization you are talking about is already registered with CCRA --

Senator Stollery: We assume it is not. Why would it be? They are just collecting money. Lots of people give money and do not need a tax receipt.

Mr. Roy: The other possibility is that clauses 83.02 or 83.03 kick in. The organization is actually using the money, not to do the good deals that it claims it is doing but, rather, diverting the money to terrorist activities. At that point, people who are providing those resources and who know that is the case, or people who are receiving those resources and know that is the case, would possibly be prosecuted. Under the criminal standard you would have to prove beyond a reasonable doubt that they had that knowledge. In those circumstances, the person will be found guilty of the crime. These are the only two possibilities that we have under this legislation to go after these people.

Senator Stollery: The chances of this having any real effect on anything are minuscule. Anyone could come up with many different ways of contributing money to an organization which they feel strongly about. It sounds to me like this will go the way of all the other attempts to control flows of money. It will turn out to go right into the sand.

There are many organizations and concepts which lead to terrorist violence. The imagination has no problem coming up with various schemes. They close up "X" and then "Y" opens. This looks great on paper, like all the other schemes to control money laundering and the financing of terrorist organizations, or organizations we would like to see not financed, but they never seem to work. As you look at this and analyse it, it seems to me that this scheme will go the way of all the others.

Mr. Roy: Senator, in a free and democratic society there are just so many tools that can be created for the purpose of trying to stop a phenomenon such as money laundering or the financing of terrorism.

I do not know how much money we are talking about here. You may have seen last week some reports in the papers. Indeed, my minister, Mr. Martin, was asked a question by Mr. Bellehumeur from the Bloc. He said that in Montreal there was a conference on money laundering and they said that $30 billion a year leave this country and go to tax havens.

(take 1540 follows: Mr. Roy continuing: What will you do to stop this from happening?)

GM/October 22, 2001

(Take 1540 Begins -- continuing with Mr. Roy)

What will you do to stop this from happening? Senator, I have no way of knowing how much money is leaving the country. Nobody knows. However, we know that that exists.

The bill you speak about goes back to the late 1980s, when there was a section in the Criminal Code that was created for the purpose of trying to target money laundering. The government is trying to refine and provide the tools in order to tackle that problem. Mr. Intscher is now in charge of an agency that will help with this.

Senator Stollery: How many charges have been laid on that particular change that was done in the late 1980s?

Mr. Roy: I do not know, senator.

Senator Stollery: Have any charges been laid?

Mr. Roy: I do not know. I know that every year there is a significant amount of assets that are frozen and eventually are forfeited to the state. How much, I do not have the information for you.

At the end of the day, what I am trying to say is that we are trying, as advisers to the government, to give some tools as to how we will be refining the instruments that are available to us. We, as civil servants, are looking around.

FinTRAC is an agency that has counterparts elsewhere. Are they doing better elsewhere with this? I can probably provide you with a system that will be foolproof, but the government will check every little transaction that takes place in advance. If that is to happen, we will bring the system to a halt. Nothing will be happening. Obviously, this is not what the government is trying to do. Therefore, we are trying to provide some tools that will identify where there is a significant problem and then do something about that problem.

If charities are being used for the purpose of laundering -- I will use that word in its broadest sense -- some money that is being received for the purpose of terrorism, we should be doing something about this. The Minister of Finance and the Minister of National Revenue are saying to you: We have got to give ourselves those tools. If the financing of terrorism is an issue, and we believe that it is an issue, we have got to give ourselves the tools. What are the tools that we have? We start with making it on offence to finance terrorism. You would be the first

one to tell me if the offence was broadly worded. You will catch all sorts of people who have nothing to do with this.

This is the balance that is being struck here. In creating an offence on the criminal standard, the state will have to prove beyond a reasonable doubt that you know what you are doing when you are giving money to some organization. I would not want to go into particular organizations. However, when you give money to some organizations, knowing full well what they are about, you should be prosecuted, but it should be for the state to prosecute only those cases, and not those of people who give a few dollars here and there and do not think that that money will be used for humanitarian goals. There is also a great deal of that taking place and we should not be targeting these people because they are doing the good things that they are hoping will produce the good results.

Senator Finestone: Mr. Roy, you have led me to a question I had not thought to ask. In a democratic society, the rule of law prevails. I presume, and I think, that the drafting of these 147 clauses was to ensure that the rule of law would be respected and in place and that the exceptions to that rule of law would be defined, therefore, being a law, it is allowable in the Canadian democratic society. Is that a fair principle that I have just stated in your view?

Mr. Roy: Absolutely, senator.

Senator Finestone: You like that. My question to you is: Are you not uncomfortable in any way that we are breaking the trust of Canadians in a democratic society? Have we defined terrorism clearly and succinctly enough to know if we are targeting terrorist charitable organizations? Do we have a definition in place somewhere?

Mr. Roy: You are asking me a question that should be answered by the Minister of Justice, the ministers in the government and, at the end of the day, by parliamentarians. You will pass this piece of legislation or not.

The lawyer here can tell you that we in the Department of Justice have looked at this legislation carefully. Indeed, the Minister of Justice has said that she does not remember in her eight years as Minister of Justice a piece of legislation being scrutinized that much. This bill is trying to target the phenomenon of terrorism. It does not apply outside f that scope. That is the first point.

Second, the definition given of terrorist activities is one that is being used in other jurisdictions by and large, including the United Nations in its convention of the year 2000. If you look carefully at the definition used in that convention, look at the definition used in England, or the definition used in the United States and look at ours, I believe you will come to the conclusion that these are instruments elsewhere that are certainly not reproduced in our legislation because we have our Canadian way of doing things. However, the basic elements, the checks and balances in the definition are what you will see in other places. That is for the purpose of targeting that phenomenon and nothing else.

That phenomenon that we thought was at best remote a month and a half ago is now with us. The state is saying, as part of the Canadian way, as part of what the Constitution requires of the government, we need to provide Canadians with the safety they have requested. That is the balance that is hopefully struck here. It is not for me to say whether the balance has been struck. It is for you to say. However, I submit to you that in an attempt to target that phenomenon, you must also keep in mind that Canadians are asking for something to be done about this.

Has the government gone overboard? You will tell me. However, it is really targeted to the phenomenon of terrorism. With respect to that, we were talking earlier about other provisions such as investigative hearings. Again, it is targeted to terrorism and nothing else.

Preventative arrests, that is another provision that is included in the bill. Again, it is limited to that and nothing else. If the definition is reasonable, and if we collectively think that there is a need for something to be done about terrorism, perhaps it will be ruled in the future as being reasonable in a free and democratic society. That is certainly the assessment that has been made by the department of which I am a member.

Senator Finestone: I can appreciate that and I can sense your deep commitment and I think Canadians share your view. They do not want something that is reasonable and justifiable in a democratic society. It is right in our Charter and it is an obligation that we have. If we are to go beyond the Charter in that regard you must pretty well be assured that it is reasonable and justifiable. That is one of the reasons for my question.

I would like to know if you have developed, in trying to do this assessment as Minister McLellan stated, did you draw a chart of the terrorism definitions that are to be found in the United States, England and the UN?

Madam Chair, I would like to have a request made to the Department of Justice to have a chart in which the definitions for terrorism and terrorist activities have been defined so that we can cross-check and see how the Canadian vision of society compares with what they have seen and defined as terrorism. It has always been helpful when we have done that, that we have a yardstick of measure for ourselves.

If that is available I would ask you, Mr. Roy, with that deep commitment and deep sense of the participation that you have demonstrated, if you would please be so kind as to inquire and see that either we get it or we make the request through our clerk?

Mr. Roy: Senator Finestone, it will be a pleasure for me to get the support of my colleagues. You must appreciate that I used to be part of the group that was developing this kind of legislation. I am not any more, but I will speak with my colleague, Mr. Mosley. I believe I have seen something, so we will try to make something available to you.

Senator Finestone: The purpose really, and it followed from one of my colleagues' questions with respect to terrorism offences, to whom does this apply? If we are looking at money laundering, we are only really attacking the organism that is in place to collect that money. How and what, and then you keep saying go to clause 83.2. I have been reading clause 83.02 and clause 83.01, and it still does not satisfy me. How do we attack and find the party that is out there soliciting? He is not giving tax receipts but he is sure shipping money.

(Take 1550 Follows -- continuing with Senator Finestone: I am interested in how we catch the person...)

(Senator Finestone continuing)

I am interested in how we catch the person, not merely the supposed charitable organization. Could you tell me how you read that into clause 83?

Mr. Roy: The person who is collecting the property is certainly covered by this provision. The person who is providing the money is also covered by the provision; such is the case in clause 83.03.

Senator Finestone: What page are you on?

Mr. Roy: I am at page 15 and page 16 in the bill.

Senator Finestone: Financing of terrorism?

Mr. Roy: It is not only the person who is providing the funds that is captured by this, but also the person who is collecting the funds. As such, both would be guilty of the offence, as long as they are doing that with the required knowledge. Again, as I was trying to say, if you have someone who is providing money for the purpose of helping to buy some milk for children in some country, and that is truly what the person believes, you and I would agree that we should not be prosecuting this kind of behaviour.

The law is cast in such a way that this is not possible. The Crown must prove beyond a reasonable doubt, not that you have been negligent and you have not asked the right questions, but rather that you have done that in the knowledge that it was to finance terrorism.

Senator Finestone: Let us say that you have been misled. I have come to you and I have said that we need money to clear out the anti-personnel land mines. In Afghanistan, land mines are killing more people than they have soldiers. I take the money that you give me and I give it elsewhere. Is that covered under clause 83.03?

Mr. Roy: If I am the one who has given that money, and I truly believe that it has gone for the purpose of clearing land mines, I would not be covered by this. However, the person who has collected the money for a different purpose would be captured by the provision because they are doing that in the knowledge that they are financing terrorism.

Senator Finestone: Are we sharing the list of charities that are terrorists with other countries? Do we know the names and numbers of terrorist organizations that are being so classified as terrorists?

Mr. Roy: I do not have any knowledge with respect to that, senator. Perhaps others do around the table. I do not know.

The Chairman: Senator Finestone, there are other senators on the list. Could we put your next question down to a second round?

Senator Finestone: Certainly.

Senator Kelleher: Clause 83.24, on page 31, states:

> Proceedings in respect of a terrorism offence or an offence under section 83.12 shall not be commenced without the consent of the Attorney General.

If you work your way backwards, you would see that it also includes clause 83.08 in respect to freezing property, clause 83.11 in connection with an audit and clause 83.11 with respect to disclosure.

Why do we need the consent of the Attorney General? We enact an act. We set up certain things that shalt not do be done. If those things are done, we will nail the person. When lawyers are about to do something in a department, it is suddenly discovered that the consent of the Attorney General is required.

Why is that? What is the rationale?

Mr. Roy: Usually, senator, when you have a provision such as this in the Criminal Code or more generally in our criminal law, it is because there is a concern that the provisions could be abused. Under our law, it is possible to launch a private prosecution. You need to prosecute a case without having the support of the police, the Crown prosecutor or anyone for that matter. You can do this yourself. You can lay an information and prosecute the case.

You will see provisions of that nature throughout the Criminal Code. Due to the subject matter, we are afraid.

Government officials and Parliament, because Parliament might agree with this, are concerned that the provision will be abused. We are concerned that people will lay information. If a person is being targeted as having supported terrorism, that person's reputation would be tainted in some fashion or another.

There is a better mechanism in place. The Attorney General would make the determination whether the case is appropriate to be prosecuted instead of leaving that up to private prosecution.

I have not been close to that portion of the bill, and I cannot answer specifically with respect to this item. However, that is usually the policy rationale if there are provisions in the code requiring the consent of the Attorney General.

Provisions in the Criminal Code regarding war crimes and crimes against humanity require that before a prosecution is launched, the Attorney General must

determine that it can be launched. This provision probably falls in that same general category.

You may wish to get a better answer from a colleague from the Department of Justice when they appear before this committee. However, that is usually the reason for these provisions.

Senator Kelleher: If there is an act addressing some offences, I do not know why you have to go to the Attorney General individually each time to commence proceedings.

Mr. Roy: I wish to stress that I think that the difficulty is not with respect to Crown prosecutors laying charges, but rather with private citizens starting private prosecutions in those cases. Therefore, there is the intervention of the Attorney General prior to the proceedings being started.

It is not because the Attorney General does not have confidence in their Crown prosecutors, but rather because, if you do not have a clause like this, anyone in this country has the power to lay an information before a judge and to prosecute a case. You do not need to have a Crown prosecutor to do this.

Senator Kelleher: I am aware of that.

Mr. Roy: You remember your days as Solicitor General.

Senator Kelleher: I was wondering if you were involved in those discussions.

Mr. Roy: With respect to this item, no, senator.

Senator Kelleher: Was that handled solely by Justice?

Mr. Roy: That is correct.

Senator Kelleher: Perhaps we could ask them that question when they return.

Mr. Roy: I hope they do not contradict me. They may.

Senator Kelleher: I am sure it would not be the first time.

Mr. Roy: I am afraid that you are right.

Senator Kelleher: Thank you.

Senator Murray: A background paper that the government has put out notes that Canada will ratify the suppression of terrorist financing convention. Are you familiar with that convention?

Mr. Roy: I did not bring it with me, senator, however I remember reading it.

Senator Murray: Perhaps others at the table are familiar with it.

Mr. Roy: I do not think so.

Senator Murray: It says here that only four other states have ratified this convention.

Mr. Roy: Up to now, yes.

Senator Murray: Do you why?

Mr. Roy: I think that convention has been open for ratification since December of 2000.

(Take 1600 Follows -- Mr. Roy continuing: My understanding is that it...)

RC/Anti-terrorism 38342/Oct 22/01

(Mr. Roy continuing)

My understanding is that it is simply because the domestic instruments have not been created, one of which -- and it is probably the most important one -- is that you have to criminalize the financing of terrorism. Very few countries have such instruments in place. It is my understanding that many more since September 11 are in the process of creating this.

Senator Murray: There is no policy reason for why we have not done so thus far; it is a question of instruments. I presume the bill will equip the government with the instruments to implement that convention here. Is that the case?

Mr. Roy: You are right.

(French follows--Senator Joyal: la partie 6 du projet de loi qui traite de l'enregistrement …)

22-10-01

(après anglais)

Le sénateur Joyal: La partie 6 du projet de loi qui traite de l'enregistrement des organismes de bienfaisance, est-elle en tout point identique au projet de loi précédent déposé à la Chambre des communes et qui a été retiré. Y a-t-il des différences et si oui à quel endroit?

M. Roy: Il me semble qu'il y a une ou deux différences vraiment mineures.

(Mme Walsh : There are really only two areas of change. The first is that the ground for issuance of a certificate…)

(anglais suit)

(Following French)

Ms Donna Walsh, Director, Special Compliance Initiative Division, Charities Directorate, Policy and Legislation Branch, Canada Customs and revenue Agency: There are really only two areas of change. The first is that the grounds for issuance of a certificate under clause 4 of the bill are now tied to the new provisions in the Criminal Code defining terrorist activities and naming the organizations that would be named as listed entities because of their involvement in terrorist activities.

The second area where there is a minor change is with respect to the length of the certificate. Under Bill C-16, the length of the certificate was three years. We have extended that to seven years with the recognition that acquiring charitable status provides an important air of legitimacy to these support activities. It helps to create a layer of deniability about the use of funds. It is a serious matter and we felt seven years was a better deterrent which reflected the seriousness of that activity.

(French follows--Senator Joyal: Monsieur Roy une chose me préoccupe quand je lis la partie...)

(après anglais)

Le sénateur Joyal: Monsieur Roy une chose me préoccupe quand je lis la partie 4 et la partie 6 côte à côte. Quand je lis l'article 2 de la partie 6 et l'article 47 de la partie 4. Dans ma version du projet de loi à la page 87, de l'article 47, on lit :

> Loi visant à faciliter la répression du recyclage financier des produits de la criminalité et du financement des activités terroriste,[…]

Le projet de loi dans ses dispositions préliminaires définit ce qu'est une activité terroriste de façon relativement claire.

Dans le cas de la partie 6, je lis le texte de l'article 2.(1), à la page 125:

> La présente loi a pour objet de traduire l'engagement du Canada à participer à l'effort concerté déployé à l'échelle internationale pour priver de soutin ceux qui s'adonnent au terrorisme, […]

Donc il y a une des deux lois, la Loi sur le recyclage des produits de la criminalité qui vise spécifiquement le financement des activités terroristes tel que définies la partie 83.01 du Code criminel.

Dans le cas des organismes de bienfaisance, la définition de terrorisme n'est pas comprise dans la loi. Alors m'est avis que dans le cas de la loi qui crée l'agence sur le recyclage des produits de la criminalité, c'est très précis. Ce sont sur les activités terroristes alors que dans l'autre c'est sur le terrorisme en général. Donc c'est plus large. La portée de la loi dans le cas de la loi sur les organismes de bienfaisance, vise le terrorisme en général sans faire référence à un type d'activité en particulier. Alors il y a des activités terroristes qui pourraient être perçues comme étant terroristes qui ne seraient pas incluses dans la définition des activités terroristes qu'on a au début du projet de loi qui sont très précises et d'autres activités qui pourraient être perçues comme des activités terroristes mais qui visent pas à commettre un effet immédiat sur le plan public. Cela pourrait, par exemple, de la propagande. On pourrait définir que quelqu'un qui fait un rassemblement et qui invite ou prend la théorie de l'interprétation du Coran, qui soutient la position de Al-Quaïda, qui est un groupe minoritaire dans l'interprétation du Coran. Ces gens s'adonnent à une activité qui serait couverte par l'enregistrement des organismes de bienfaisance mais ne donnerait pas lieu à une restriction sur le plan de la partie 4.

Y a-t-il un objectif particulier pour lequel la partie 6, c'est-à-dire la Loi portant la création d'un organisme de bienfaisance, a une portée plus générale que celui de la partie 4?

M. Roy: Je suis moi aussi troublé par cela. La ministre de la Justice, lorsqu'elle a présenté le projet de loi et en cours de témoignage devant différents groupes et instances a souligné le fait que l'on définissait des activités terroristes, mais qu'on ne définissait pas le terrorisme. Si je vous comprend bien, votre première question nous aidait à établir que le changement qui a été fait à l'article 4 pour restreindre le taux aux activités terroristes était probablement bien fait, mais peut-être que dans la rédaction du projet de loi avons-nous oublié d'en restreindre la portée dans son objet à l'article 2 en référant spécifiquement aux activités terroristes.

Je crains que ce que vous avez à l'article 2 soit exactement le même que dans le projet de loi C-16. Autant où nous ne définissions pas ni les activités terroristes ni le terrorisme. Je crains que le changement n'ait pas été fait comme il aurait peut-être été bon de le faire. Avec votre permission je vais certainement rapporter ce commentaire à mes collègues pour voir s'il n'y aurait pas lieu de présenter une motion en bonne et du forme pour faire le changement.

Je suis un peu troublé par cela. Si les choses devait rester telles quelles le sont, je ne suis pas certain qu'il y ait un vice important au projet de loi parce que le certificat qui doit être émis est fonction des activités terroristes à l'article 4. L'article 2 étant celui qui présente les objets de la loi. Quoi qu'il en soit, ma réaction à froid, sénateur Joyal, serait un peu comme la vôtre et de dire restreignons dans les objets la portée de ce qu'on a à l'esprit et cette portée ce sont les activités terroristes et non pas le terrorisme en soi.

Le sénateur Joyal: Vous comprenez que sur le plan pénal, les gens doivent comprendre l'infraction qu'on leur reproche et non pas simplement une définition générique qui peut être interprétée et qui pourrait être interprétée de manière abusive dépendant des circonstances particulières auxquelles on pourrait se retrouver.

M. Roy: Je crains que vous n'ayez mis le doigt sur quelque chose et nous allons voir si nous pouvons y remédier.

(Sen. Joyal : My last question is in relation to the registration of charities …)

38342 Anti-Terrorism (anglais suit) 1510– 50

(following French-- M. Roy: …si nous pouvons y remédier.)

Senator Joyal: My last question is in relation to the registration of charities, which is found in clause 6(2) of the bill.

(French follows—Sen. Joyal continuing: La décision rendue au titre de l'alinéa (1)*d)* n’est susceptible …)

UNREVISED

38342 Anti-Terrorism 1510– 52

(après anglais)(Sen. Joyal)

> La décision rendue au titre de l'alinéa (1)*d)* n’est susceptible ni d’appel ni de révision judiciaire.

Dans votre présentation, vous avez dit qu'il y avait un processus de révision. Le processus de révision est défini par la procédure à l'article 6, de la page 132. Quelle était la raison fondamentale pour laquelle on exclut dans le projet de loi de façon complète l’appel de la décision d’un juge de la Cour fédérale?

(16h10--M. Roy : La raison, vous l’aurez deviné, ces questions doivent être déterminées de façon expéditive…)

(français suit)

mcl -- 22-10-01

(après français)

M. Roy: La raison, vous l’aurez devinée. Ces questions doivent être déterminées de façon expéditive car le gouvernement cherche à éviter les appels à répétition. Le processus pour examiner ces questions est celui qui est prévu aux alinéas 10 et suivants. Le gouvernement ne voudrait pas s'embourber dans une série de procédures judiciaires à n’en plus finir.

Je ne crois pas que cette disposition aille trop loin, mais c’est sûrement le genre de disposition qui attirera l'attention. On ne voudrait que la révision d'un certificat se fasse par voie judiciaire et que, parallèlement, on puisse avoir des procédures par voie de révision judiciaire en vertu de la bonne vieille common law. Ces procédures feraient en sorte qu'on n’en sortirait à peu près jamais.

Plutôt que de s'en remettre aux révisions qui pourraient avoir lieu autrement, un régime statutaire est prévu en vertu de l'alinéa 18 ou 28 de la Loi sur la Cour fédérale.

Le sénateur Joyal: Est-ce qu’on ne pourrait pas prévoir un processus d’appel limité dans le temps qui maintiendrait le principe du pouvoir d’appel de la Cour fédéral d’appel à l’intérieur d'un délai qui nous donnerait une certaine garantie que le processus judiciaire a suivi son cours normal?

M. Roy: Je ne parle pas au nom des ministères concernés, mais cela ne choquerait certainement pas. Avec des appels qui pourraient avoir lieu assez rapidement. Je porte à votre attention l'alinéa 11(5) qui prévoit que la détermination faite par le tribunal en vertu de la révision sur les articles 10 et suivants n’est elle-même ni sujet d’appel ni de révision judiciaire.

En cette matière, le gouvernement a choisi de garder les choses simples en s'adressant à un juge de la Cour fédérale et que l'affaire fasse l'objet d'une décision à ce stade et ce, pour ou contre le gouvernement. Je prends bonne note de votre commentaire, mais je ne peux pas aller plus loin.

(Mme Walsh: I would add that the judicial process...)

(anglais suit)

(Following French—Mr. Roy… je ne peux pas aller plus loin.)

Ms Walsh: I would add that the judicial review process is a review of the facts to determine reasonableness of the certificate. While it is not an appeal in that sense, it certainly is a review of the facts. Our laws do allow for different kinds of reviews. It was felt to be appropriate to the administrative law circumstances that the decision would be made within, and it is modelled on the process that is already used under a similar section of the Immigration Act for similar reasons. It was designed to address a similar context. I do not know if that helps at all.

Senator Fraser: Forgive me if I am going over familiar ground, but I want to ensure that I understand what we are doing. My attention has been caught by an article dating back to 1985. It is not current, but I think the principle applies. This is article in the Congressional Quarterly Researcher which quoted a professor of constitutional law at Georgetown University talking about the American Constitution, not ours. However, he said it was patently unconstitutional to make it a crime to support charitable activities of groups that are designated as terrorist. The government cannot punish somebody for associational support of a group that has both lawful and unlawful ends unless the government shows that the person supporting specifically intended to further the unlawful ends. It is perfectly permissible for the government to prohibit people from supporting terrorist activities of any organization, but it is unconstitutional to prohibit people from supporting a hospital, a school or political activities of a group just because the group also engages in unlawful terrorist activity.

Make it clear in my mind how what we do in the case of the friends of some country's benevolent association where 90 per cent of the money they raise goes to famine relief and hospitals and 10 per cent goes to some terrorist group. What do we do, how is it constitutional, and how does it square with Canada's Constitution?

Mr. Roy: Senator, the comment made was premised upon an article referencing the American Constitution. In this country, on a regular basis, you are confronted with the fact that we can, in a free and democratic society, contravene, in a limited way, some of the protections that exist under our constitution. Our clause says that it must be what is being done in a free and democratic society.

With respect to the financing of terrorism, the government will rely heavily on the fact that the United Nations just about unanimously passed a convention that requires countries to target and prohibit the financing of terrorism. Indeed, when we look at our partners, whether they be in Western Europe, in England, in Australia, or New Zealand and other countries, they are all in the process of putting together provisions which will look, we think, remarkably like the sections that you are talking about.

It will be the argument of the government, if and when we must defend the constitutionality of this, that we are in an era where it is not only a good idea to do this, but it is required by international law. We will be going forward and arguing that this is a measure that is tailored solely to address the scourge that has become terrorism. That is why it is so important for this house in particular but Parliament as a whole to satisfy itself that the proposed definition of terrorist activities is narrow enough in order to target what it is that we are trying to target here.

We submit to you that, having looked around, this is a definition that does the trick. However, you must satisfy yourself of that. You will certainly not take my word for that.

Senator Fraser: Help me to satisfy myself. Let us look at the Rurotarian Benevolent Association. It gives 10 per cent of its money to the Rurotarian Liberation Front and 90 per cent of its money to hospitals in Rurotania. What happens to that group now under this law?

Mr. Roy: Under this law, you may have a prosecution in spite of the fact that only 10 per cent of the assets are used for terrorism financing, because the law as written says that as long as you are using that in whole or in part, that is sufficient.

(1620 follows, In the case of a prosecution)

October 22, 2001 MA 38342 Anti-Terrorism

(tk 1610 ends--Mr. Roy cont will be sufficient.)

In the case of a prosecution, Canada must show that the person who is taking those assets and transferring them for the purpose of helping terrorism knows what he or she is doing. If persons in Canada are sending money to organizations not knowing that that money will be diverted to terrorism, then that person does not have the required knowledge. I must stress, however, that "knowledge" as defined in our law may also be wilful blindness. If they should know but they choose not

to know, those persons would probably be covered by this clause. Those who do not know are not covered by the provisions and should not be.

Senator Fraser: Is it possible for my friendship association, or whatever, to correct its ways, to hand information over to the prosecution, to testify against the vice-president who was in charge of links with terrorists, and then to devote themselves genuinely, verifiably, in future to the financing of hospitals and famine relief? Can the agency get its registration back? Is it gone for good once it is gone?

I see, in clause 11, that a former registered charity can come back and ask for a review of that decision. Is that the clause that would apply to my hypothetical benevolent association?

Mr. Roy: I do think so.

Mr. Ernewein: There are two possibilities. A review of the certificate or a general review to re-establish registered charity status is possible. That may not have the effect of allowing the organization to recapture the property or assets that were used at least in part for terrorist activity. However, as far as going forward and operating as a pure charity, that possibility exists.

It is also possible to create a new charity to carry on purely charitable activities, but that would not include re-qualifying or reconstituting the existing charity. Starting anew with a new organization would presume, as you have in your question, that the new organization would carry on purely charitable activities and so regain the original charitable objective.

Senator Fraser: However, the old assets would stay seized? They would not come back?

Mr. Roy: The assets will have been transferred.

Senator Finestone: Madam Chair, am I misinformed? We have heard from three members of Canada Customs and Revenue Agency. Would they be part of the group who handle visitors who come across our borders? I ask because I am concerned about the nature of the investigation when people arrive at the Canadian border and three days are allotted to assess those people as threats or as terrorists. How can that be done in a three-day period? If this is the right party, I would like them to return.

The Chairman: Mr. Jones will respond to you.

Mr. Ray Jones, Director General, Investigation directorate, Compliance Programs Branch, Canada Customs and Revenue Agency: honourable senators, no witnesses are here from the Customs side of the house. You may want to schedule a separate group or ask the Immigration witnesses.

The Chairman: Senator Finestone, we are seeking to have the Minister of Immigration come to this committee. We will include that question then.

I thank the witnesses for coming for this tough but good discussion.

(tk 1630 follows--Chair continuing--Honourable senators, we are delighted)

ES/Oct. 31/01

(Take 1630, The Chairman, continuing)

Honourable senators, we are delighted to have with us the Solicitor General, Lawrence MacAulay, and with him, Mr. Paul Kennedy, the Senior Assistant Deputy Solicitor General, Nicole Jauvin, Deputy Solicitor General, and Ian Blackie, the Director of the National Security Group.

Mr. Minister, we appreciate the time you are giving to us. I should say to colleagues that I know that everyone will have questions. We have about an hour and a half, as I understand Mr. MacAulay, and I will ask colleagues and those responding to be as concise as possible after we hear the minister's statement. I will try to have everyone recognized with a question and a supplementary. We will go into a second round so everyone will have a chance.

The Honourable Lawrence MacAulay, M.P., P.C., Solicitor General of Canada: Honourable senators, it is a pleasure to be here to discuss the government's anti-terrorism bill.

I certainly appreciate how quickly you have turned to the pre-study of this bill, which is now under review by the justice committee in the other place.

We know it is not the ordinary procedure, but these are not ordinary times. I applaud your decision to undertake a pre-study of the bill. I believe it reflects how seriously you take the issue and the urgency of the need to protect Canadians. As I have said to the Justice and Human Rights Committee last Thursday, Canada needs

this bill, our allies need this bill, and, more importantly, our law enforcement and security agencies need this bill. They need more powerful tools to detect and deter terrorists and those who support them. This proposed legislation is designed to give our law enforcement and security agencies and the courts the ability to do so.

A great deal of work has gone into drafting Bill C-36. It contains key reforms, and it also breaks new ground. It is a bold and comprehensive piece of proposed legislation, but I emphasize it is made in Canada and conforms to Canadian values, to the Charter and to the wishes of the people.

Canadians want tougher laws and they want laws that truly help protect them. They expect us to be able to help our neighbours to the south.

Our government has adopted a four-point anti-terrorism plan. Its objectives are as follows: first, to stop terrorists from getting into Canada and protect Canadians from terrorism; second, to bring forward tools to identify, prosecute, convict, and punish terrorists; third, to prevent the Canada-U.S. border from being held hostage by the terrorists and affecting the Canadian economy; and; fourth, to work with the international community to bring terrorists to justice and to address the root causes of such hatred.

Since September 11, we have made a concerted effort to review our laws and procedures to ensure the security of our borders and the investigation of criminals and terrorists. We have already taken a comprehensive measure to improve airport security, help the RCMP and CSIS fight terrorism, tighten up our borders and freeze the assets of terrorists.

Over the last two weeks, the government has announced $280 million in new funding to be invested immediately in our national security. I remind you that this is on top of a $1.5 billion allocation to the RCMP, CSIS, Immigration and Customs in the 2000 budget.

A review of our state of readiness is not over. This past weekend, my colleagues and I, on a special committee of cabinet, chaired by my colleague, the Minister of Foreign Affairs, continued our meetings to discuss the range of tools and laws we have in place, those we are proposing and those we still may introduce. As the Prime Minister has said, what needs to be done will be done.

We have delivered for debate in Parliament a comprehensive set of legislative tools to deter and disable terrorists. Some of these are extraordinary and are

complementary to the efforts of the United States and our allies. They build upon our forward-looking approaches against organized crime, money laundering, and drug dealing. However, make no mistake, we have built into this legislation rigorous checks and balances, legislation that, according to the Minister of Justice, has already been given thorough scrutiny against the requirements of the Charter.

We are very concerned to ensure that these measures are targeted to terrorists and those who help them.

(Take 1630 follows, Mr. MacAulay continuing: It will give police...)

(Take 1640 Begins -- continuing with Mr. MacAulay)

It will give police more investigative tools. We will be able to better protect our security information, detain terrorists before they harm our friends, our citizens and our way of life. We will also be able to go after the money that supports these terrorist groups. With this enabling legislation, we enact the two remaining counterterrorists in the United Nations conventions not yet ratified by Canada. These conventions are aimed at ensuring that terrorists and organized criminals have no sanctuary, but rather face a common front of determined nations united against them.

If we are to truly prevent terrorists and bring them to justice, we need this legislation. While doing so, we still must maintain and uphold Canadian values to be consistent with the Canadian Charter of Rights and Freedoms and ensure that due process be employed and respected. The Attorney-General and I believe we have found this balance.

I should like now to point to some honourable senators three specific anti-terrorist provisions that call for the personal intervention of the Solicitor General. The first is the issue of freezing and seizing of terrorist funds, choking off their money supply is critical to fighting terrorism. This bill brings strong provisions against terrorist funding. It reinforces what we have already done and built upon our successful money laundering laws. We will designate terrorist groups. We will make it easier to freeze their assets, prosecute those who give them financial support, and deny or remove charitable organizational status from those who channel funds to terrorists.

Our goal is to cut off financial support for terrorists by making it a crime to collect or give funds, either directly or indirectly, in order to carry out terrorism. We will retain the provisions of my bill that denies or removes charitable status from organizations that are making resources available to terrorists. However, as I emphasized earlier, we will have checks and balances to ensure fair and due process.

In this case, the Solicitor General and the Minister of National Revenue must sign a certificate that will be reviewed by the Federal Court and decisions to de-register must be published in the *Canada Gazette*. As well, to help dry up terrorist funding, the new agency FinTRAC will be permitted to disclose financial information about the RCMP and CSIS in respect of terrorist activities.

We are doing this because it is essential that we collect as much information as we reasonably can and that we make the best use of that information by sharing it both at home and with our allies. It will be up to the Solicitor General to grant approval of the application by CSIS for that information. This entire process is reviewable by an independent Federal Court justice.

Let me turn to the list of terrorists. It will be up to the Solicitor General to recommend to the Governor in Council that an entry be listed, where there are reasonable grounds to believe that it is engaged in terrorist activity. We have building a review mechanism to ensure the integrity of the list process. By law, the Solicitor General will have to review that list every two years and the listing may be subject to Federal Court review, yet another safeguard built into the bill.

In conclusion, is my hope that honourable senators will look favourably upon this legislation and we will look forward to any suggestions to make it even more effective. I emphasize again, we need this legislation, we need it to protect Canadians and our allies in their help against terrorism.

The Chairman: Colleagues I have been advised that the minister will have to leave at 5:30. I have a number of people who want to ask questions how. I wonder whether we could do our best to get around the circle once and then try and do a follow-up if that would be agreeable.

Senator Lynch-Staunton: My question, minister, is on the list. Will the list include names of groups or names of individuals or both?

Mr. MacAulay: Senator, it could be both. It could be the name of an individual and it could be the name of a group. Any information that is gathered by government agencies, RCMP, CSIS, or any other organization, is submitted to me. I evaluate it and then, should I feel it should go on, as you know, I take it for Order in Council. If that should proceed, then they are listed.

Senator Lynch-Staunton: Reading the definition of terrorist activity, it certainly goes way beyond some of the activities, in particular the one climaxing on September 11. It can also be applied to strictly domestic activities. For instance, the Hell's Angels qualify under just about every definition of terrorist activity. Would they qualify to be on your list?

Mr. MacAulay: I thank you, senator. When the legislation should pass, what must happen is the information must be provided to me by a government agency. I have to evaluate that information and then decide. In the position I am in, I can never pass a judgment before I receive the information as to what I would do or not do.

Senator Lynch-Staunton: I can give you information that, with no exception, Hell's Angels qualify under every provision that comes under the definition of terrorist activity, including ideology. I would think that perhaps the FLQ in 1970 might have come under the same provisions. I wonder if the Mafia would come under the same provisions.

What I am trying to get from you, minister, is how far in Canadian society does the net of the definition of terrorist activity extend? Right now, this proposed legislation is the result of a terrible event. However, the way it is written and drafted it goes way beyond those who cause that event or their sympathizers, to my mind. I should like to know whether you share that view or not.

Mr. MacAulay: Senator, I would like to say that in this situation it is not who you are, it is what you have done. If you have done something in order that in my evaluation you should be listed as a terrorist organization or individual, then an Order in Council approves that recommendation from me and then they are listed.

I think you can understand where I would not want to say that a certain group would or would not meet that requirement. What needs to happen is I have to review the information with my officials and decide whether that should go forward. What we want to do is ensure -- it has probably gone farther -- that funding of terrorists or terrorist organizations is stopped.

Senator Lynch-Staunton: We are all in agreement with that. However, I will still try to draw you out by using the example of the Oka crisis and the seizure of the Mercier Bridge for one summer with armed people on it upsetting public safety and all the consequences of that. Would that group, under this proposed legislation, be considered a terrorist group?

Mr. MacAulay: You are asking me on the spur of the moment to evaluate something that I have not evaluated in depth. The fact of the matter is, before I indicate whether in my opinion a group should be designated or not, it will take some evaluating.

Senator Lynch-Staunton: Surely you are doing the evaluation now, you are not waiting for the Royal Assent before you start to evaluate?

Mr. MacAulay: We will be working to ensure that we stop terrorist fundraising. That is exactly what we will do. What I do not want to do, senator, and I know what you want me to do, but I will not indicate clearly: It is not the group; it is what has been done.

(Take 1650 Follows -- continuing with Mr. MacAulay: It is not who you are, it is what you have done.)

38342/C-36/October 22, 2001/DM

(Mr. MacAulay continuing)

** It is not who you are; it is what you have done. That is what this is really all about.

Senator Lynch-Staunton: It does include the Hell's Angels. Thank you.

(French follows, Senator Bacon: J'aimerais retourner à l'article 83.05 où on prévoit que vous avez la possibilité)

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38342 Anti-Terrorism 1510– 63

22-10-01

(après anglais)

Le sénateur Bacon: J'aimerais retourner à l'article 83.05 où on prévoit que vous avez la possibilité de recommander l'inscription d'une personne ou d'une organisation sur la liste des terroristes. Quels sont les garantis que seul les entités qui relèvent du domaine terroriste seront consignées sur cette liste et qu'on ne retrouvera pas des membres de syndicats ou tout simplement des personnes qui pratiquent un culte religieux? Qui fournira les informations nécessaires à l'inscription sur la liste des terroristes? Est-ce le SCRS?

À la lumière de l'examen de plaintes faite par le comité de surveillance des activités de renseignement et de la sécurité, il y a matière à être inquiet de cela et il y a lieu de resserrer les opérations du SCRS afin d'éviter que ne soit pas exclut sur la liste des personnes innocentes qui n'ont aucun lien réel avec les organisations terroristes. Je n'ai qu'à citer le rapport du SCRS de 1999-2000, intitulé «L'Examen opérationnel du service canadien de renseignement et de sécurité » qui a été produit. On parle de plusieurs affaires, affaire numéro 1, 2, 3. À l'affaire numéro un, on disait: « on a trouvé que les rapports des entrevues du service avec le plaignant contenaient de graves inexactitudes au sujet des réponses de celui-ci à d'importantes questions et se fondaient sur les déclarations mal consignées attribuées au plaignant ». C'est un peu gênant.

À l'affaire numéro 2, on disait: «[…] même si l'intérêt initial du service pour le plaignant se justifiait par les activités de celui-ci en faveur du mouvement nationaliste étranger, l'enquête n'a pas fourni d'information constituant des motifs raisonnables de conclure que le plaignant était membre d'une organisation terroriste.»

À l'affaire numéro 3, on disait: «le comité a trouvé que la note d'information du service était tendancieuse, truffée de conjectures, répétait souvent la même chose comme pour y donner plus de poids et son enquête a révélé l'absence de fondement de certaines affirmations du SCRS et a faussé de certains autres préjudiciables au plaignant.» Ces trois affaires étaient un peu gênantes, je crois pour le comité qui a constaté que le service applique des critères d'appartenance à une organisation de manière à donner à ce thème une compréhension trop vaste qui a valu l'étiquette de terroriste à des nationaliste qui sont actifs sur la scène politique, mais pacifique et respectueux des lois.

C'est un peu gênant quand on lis ce rapport. J'aimerais vous entendre là-dessus pour éviter que soit incluses sur cette liste des personnes innocentes qui n'ont aucun lien avec des organisations terroristes puisque le rapport de 1999-2000 nous dit que cela est déjà arrivé.

(M. MacAuley: I can assure you, senator, that we certainly do not want …)

(anglais suit)

(Following French)

Mr. MacAulay: I can assure you, senator, that we certainly do not want anyone on the list who is not involved in terrorism.

First, the definition does not cover legitimate dissent. That is for sure. SIRC reviews every ruling CSIS does. It is an overview of what CSIS does.

Your concern is that an individual or an organization could be on the list that should not be on the list. This can be reviewed and no doubt will be reviewed, if requested, by the Federal Court.

(French follows, Senator Bacon, Monsieur le ministre, c'est le comité de surveillance des activités)

(après anglais)

Le sénateur Bacon: Monsieur le ministre, c'est le comité de surveillance des activités de renseignement et de sécurité qui vous le dit: il y a eu des noms de personnes qui ont été placés sur la liste comme étant des personnes terroristes et qui n'en ne sont pas. Est-ce qu'il est permis de resserrer davantage les opérations?

(M. MacAuley: First, I must evaluate the information that is given

(anglais suit)

(Following French)

Mr. MacAulay: First, I must evaluate the information that is given to me by the RCMP and CSIS and decide whether the information they give me is accurate or not. Then I take it to cabinet. It is also reviewable by the Federal Court. Should an individual or group feel that they are inappropriately on this list, it can be taken to the Federal Court. What CSIS does can be reviewed by SIRC.

You are telling me that in the report someone is named as a terrorist who is not a terrorist. Mr. Kennedy, perhaps you could expand.

Senator Bacon: That is what it says here. If you read the document here, 1999-2000, there are three or four cases or people who were considered as terrorists where they were not.

Mr. Paul Kennedy, Senior Assistant Solicitor General: I am familiar with that instance. All three relate to the same issue and the same ruling by the same SIRC committee. One advantage we have here is that terrorist activities, for the purpose of this legislation, are actually defined in terms of the activities. The SIRC had some disagreement as a matter of principle as to whether or not activities that were being carried out by that organization were, in fact, terrorist activities. That is where the point of departure arose. This legislation seeks to try to define what activities are problematic. To that extent, it removes that ambiguity.

The SIRC is there to find if there is fault and to correct the fault. The reality is that there are tens of thousands of cases that are reviewed by CSIS at each year in which they provide advice to departments and agencies in terms of security clearances and refugees. Relatively speaking, the instances where fault is found is rare. In the context of the quality of the work they perform, bear in mind there are tens of thousands of cases each year that are looked Alt. One must bear that in mind. There is always room for improvement. That is why we have SIRC and the reports. You must put that in context. In the vast majority, there is no problem. Can there be improvement? Yes, there can. Is there a check and balance? The SIRC is a check and balance, and here the minister and the Federal Court will be a check and balance. As I said, the rarity is that, for the first time in legislation, someone has tried to define what terrorist activities are, if that is any guidance.

Mr. MacAulay: Senator, simply because you belong to a terrorist organization does not mean that you will be listed.

Mr. Kennedy: We are dealing with two issues here with respect to that. The legislation calls for listed entities and entities. I think the minister is trying to indicate that clearly there is provision in the legislation for a list to be prepared of organizations, and to the extent that they can be identified, they will be identified. You will always have ongoing embryonic groups discovered, and if one is doing activity in relation to an entity that is engaged in that activity, that as well will constitute an offence. In other words, the list is not exhaustive, but it will be useful to people in terms of what organizations they should not associate with or support.

Senator Andreychuk: I wish to follow up on that, minister. When the publication of this list took place in the past under SIRC, one problem was that one was not quite sure whether one was suspect or not. Under this legislation, how will the publication take place? My concern is not for the organization or the individual listed. When you say an organization or a group is a terrorist organization, how does the innocent person who does not qualify for your definition clear themselves?

(1700 follows, **Mr. MacAulay:** If CSIS or the RCMP ...)

(Following Senator Andreychuk)

Mr. MacAulay: If CSIS or the RCMP provides information to me, and I evaluate it to the best of my ability, with the resources that I have, and take it to cabinet and there designate it, they are on the list.

Senator Andreychuk: If you take an organization and you get them listed, having gone through the proper procedures to the best of your ability, but someone in that group identified with that organization is totally innocent of terrorist activity, and that is the definition you use, how does that person clear themselves? Will it be guilt by association? What if that person's association is innocent? What if they joined that group because they were told the organization was humanitarian, but it turns out they are not. How do they clear themselves and get their reputation back? How do they function in this society?

Mr. MacAulay: It is the group that is designated. If I understand what you are telling me, if you do business with that group, if that individual supports that group and makes financial donations to that group, then that must not deal with the group that is so designated.

If a person deals with a group that is designated, that is what is breaking the law. If the individual has done nothing wrong, they are not on the list. The only way that they will commit an offence is by supporting or doing business with a group that is listed.

Senator Andreychuk: If I am an innocent person and join a foundation and I tell everyone that it is a great group and they are doing great things, and then I find they are listed, I have already publicly stated that I am associated with them. How does one clear one's name if they had an honest belief that the organization was credible? In other words, how does that person not wear the taint afterwards?

Mr. MacAulay: If I understand what you are saying, the individual has done nothing wrong. You are saying that this individual has indicated quite clearly that they are involved with a group that is a terrorist organization and then they find out afterwards. Perhaps Mr. Kennedy would like to respond.

Mr. Kennedy: One of the main factors we tried to look at, and you will see it both here and organized crime legislation, is that we have not criminalized membership. Membership is not stigmatized or criminalized. The minister is right, we will put up a list of entities and they are defined as persons or groups to signal to people. It becomes like a red beacon to beware.

Clearly, it would be possible for individuals to be innocently involved with that group. Anything is possible. The signal for them, once that has happened, is to disassociate themselves from that point out. Their bona fides would be assessed in the sense of what action they take once that group is brought to their attention as being a terrorist group.

In terms of culpability, as the minister has pointed out, any of the activities that are described, if you do those activities, then clearly you have a problem. That is how we have to approach it. There is always the risk, once you put a group list together.

I must advise you that, having been involved in the charities portion of Bill C-16, and having consulted with approximately 20 national voluntary sector groups that represent a large group of charities, they said, "You have not provided a list. We want you to provide a list." This may be somewhat like a double-edged sword. If there is no list, they are complaining. If there is a list, there is a side, too.

The advantage of the list is that it provides clarity to people about those groups that we consider problematic. It is Hobson's choice, if you do or do not do it. There are pros and cons. These groups asked us to give them a list, so we have lists. In any event, the United Nations is also creating lists. The lists are out there.

Senator Fraser: Minister, the Solicitor General draws up the list. The Solicitor General defends that list, if necessary, in a one-time only court hearing that may be held in secret so that the person listed does not get to hear all of the evidence. That person may not see all of the evidence against him or her.

Two years later, the Solicitor General reviews the list he or she has drawn up and has the opportunity to say, "I still think it is a good list." First, would it not be appropriate to have that review conducted yearly, perhaps, and, second, conducted by an independent body, something like the Security and Intelligence Review Committee?

Mr. MacAulay: If there is some disagreement on whether the person should be listed or not, there is a provision to go to the federal court.

Senator Fraser: That is some protection, but not sweeping protection for the person in that the evidence that the Solicitor General will bring can be heard in whole or in part *in camera* and the person's counsel may perhaps receive only a summary of the evidence. Sometimes the summary leaves out the portions that could have been refuted. That person will remain on the list for as long as the Solicitor General thinks it is a good idea. The Solicitor General, with respect, is acting in the closed loop here.

Would it not be appropriate, given the extraordinary impact on individual's lives of being listed, to have an independent review mechanism that comes into play?

Mr. MacAulay: What is proposed is that the list is reviewed every two years. However, as I have said, the person or group can go to the federal court.

Senator Fraser: They can only do that once, however.

Mr. MacAulay: If they have new information, there is a possibility to approach the court again. However, if a list is compiled and the court asked to rule on a matter, the problem with this type of legislation is that it can involve names or groups of people that supply the information whether these people should be listed. That information can be from foreign intelligence. That information can endanger lives if these names are released in open court. That is why we *in camera*

proceedings are addressed in this bill. Otherwise, information provided could not be used at all in court.

Senator Fraser: I understand that point.

Mr. MacAulay: We review the list every two years, because it is an offence to deal with the people on the list. We review it every two years. One does not make it to this list without having broken the rules as far as terrorist acts.

Senator Fraser: A person makes it to the list as long as there are reasonable grounds to think that they have been involved with terrorist acts.

Mr. MacAulay: This is being done to choke off the funding, to stop the funding of terrorist organizations. If we do not do it this way, there is no other way to stop the funding going to these groups.

(Take 1710 begins, Mr. MacAulay continuing: If we do not protect...)

ES/Oct. 22/01

(Take 1710 - Mr. MacAulay continuing)

If we do not protect the people or the organizations that supply the information to be able to find out whether these people should be listed, then we cannot use the information in open court. That is the reason for the segue. We review it every two years because it is certainly not the place to be on that list. The fact of the matter is we must be sure the organizations that are on there should be on there. That is why we are doing it every two years. If the people on there that feel they should not be there, then they have the option of going to the Federal Court. It is pretty open.

Senator Murray: Part 5 of this bill would amend a number of acts, including the Access to Information Act, the Personal Information Protection and Electronic Documents Act, the Privacy Act, in virtually identical words to give to the Attorney General of Canada the right, at any time, to personally issue a certificate that prohibits the disclosure of information for the purpose of protecting international relations or national defence and security.

These acts already permit the government to invoke an exemption on grounds of international relations, and so on. I believe I am correct in saying that. The way the process works now -- and your deputy minister can correct me because she

knows the process intimately from a previous life -- the government invokes the exemption under one of these acts. If the person seeking the information under Access to Information objects to the invocation of that exemption, that person goes to the Commissioner of Information. The Commissioner of Information can call the government officials in and demand an explanation as to why that exception is being invoked. He can go so far as to order the government to yield the information, and, if I am not mistaken --

Ms Jauvin: No.

Senator Murray: He can take the government to court.

Ms Jauvin: The commissioner, I believe, has the power to recommend to the deputy head in question to release the information. If the deputy head does not follow the recommendation of the information commissioner and there are other reasons that the commissioner would like the information to be made public, then he could take the government to court if he has to.

Senator Murray: Thank you. That is the way it works, yes. I will now address my remarks to the minister.

The purpose of these amendments, minister, is to cut out the Commissioner of Information, cut out the Commissioner of Privacy, cut out due process and cut out the courts. Is it not?

Mr. MacAulay: Is this under Access to Information?

Senator Murray: Or privacy or whatever. The amendments are in virtually identical language.

Mr. MacAulay: Mr. Kennedy, you can answer this, but it is the attorney general who handles that.

Senator Murray: It is a policy question. Let me put it in more neutral language: the effect of the amendment is to cut out those officers of Parliament, to cut out due process and to cut out the courts.

Mr. MacAulay: I do not think so.

Mr. Kennedy: If I can put it in context, there has been a practical problem in terms of interaction of matters before the court on access and privacy. I am sure

colleagues from the Department of Justice can expand on this. There have been cases, for instance, where there is a separate process under ATIP. If you claim the wrong exemption, the courts have held that we cannot use the provisions of the Canada Evidence Act to prevent the disclosure to cure that fault. If you are careless and pick exemption A and it does not apply and B does, it is out the door.

Senator Murray: What does that have to do with this?

Mr. Kennedy: We also find in courts which run parallel to the judicial processes where the courts are making rulings on the admissibility of evidence, people are also using access and privacy as a separate vehicle. What they have tried to do here in Access to Information, under amendments 37 and 38, is find a way to rationalize before the court the treatment of access to national security information. They designed that process. You looked at that process, which was deemed to be the entire process. Once you had done that, then you had to look and ask what are the consequential amendments, if any, that would have to impact on other vehicles or access to information. That is why you have to look at the Official Secrets Act amendments in conjunction with Access and Privacy and the mechanisms that were created. You are dealing with the same subject matter. You must go back and look at the root problem you are dealing with.

The effect, at the end of the day, on a narrow class of information would be to give to the attorney general a fiat to stop certain information from going out. I ask you to look back at the model of the Official Secrets Act to see what was created there and the powers there. That will help guide you as to why they sought out those recommendations.

Senator Murray: I think we had better take another look.

Senator Kenny: Do we have a foreign intelligence service overseas at this time?

Mr. MacAulay: We have an intelligence agency that has the power to collect any information that deals with a threat to the security of Canada. That is what we have.

Senator Kenny: Does it have sufficient resources?

Mr. MacAulay: The director of CSIS has indicated that he has the resources to carry out his mandate, but as you are fully aware, Senator Kenny, things have

changed since September 11. You are aware that we have provided it with $10 million Friday, and we are continuing to evaluate what needs to be done.

The big thing that needs to take place, as far as I understand with CSIS and all the security agencies here and around the world, is to ensure that they have the capacity to intercept and evaluate what they intercept. That is the big problem, as well as the expense to all security intelligence agencies. You are aware, of course, that we have the committee and we are evaluating what needs to be done, what changes need to be made and what funds need to be provided. In fact, that is what we are doing.

Senator Kenny: Is the 5 per cent increase enough?

Mr. MacAulay: For the moment, yes. What we have to do is evaluate that we have enough funding in place. I have been to a number of countries around the world. If you talk to any police organization or security intelligence agency in this world, it would indicate it could use more money.

Senator Kenny: What does the Solicitor General think?

Mr. MacAulay: The Solicitor General thinks we have to evaluate with CSIS and the RCMP to ensure -- and you are talking about CSIS, specifically -- that they have the appropriate funding to be able to fulfil their mandate. The fact is at the moment they do.

Things happened on September 11 that should not have happened. The United States has much more money and a much bigger organization, but things did not work. We have to ensure, and that is why this cabinet committee is in place, that we examine and evaluate what has been done, in cooperation with CSIS, and ensure that we are able to put the proper funding in place, and we will.

Senator Kenny: The definition of "Attorney General" in Part 1, right at the beginning under the Criminal Code section makes reference to "the Attorney General or Solicitor General of the province in which those proceedings are taken and includes his" or her "lawful deputy." Who could that be? Is that one person or could that be any number of people? Can you deputize a series of people to carry out this function or the functions the legislation deals with later on, or is it the deputy head of the department?

Mr. MacAulay: I would expect it is the respective deputies in the territories or provinces. However, I should like to have a legal answer, and I should like to ask

the Department of Justice to respond. You are making an overall evaluation, and I am aware that you are quite capable of doing an in-depth evaluation of legislation, which we appreciate, but I want to be sure you have the proper answer.

Mr. Kennedy: Those definitions are the definitions in the Criminal Code for those purposes.

(Take 1720 follows, Sen. Kenny, new speaker: Can you help me with it, please?)

MA October 22, 2001 38342 Anti-Terrorism

(tk 1710 ends--after Mr. Kennedy... Criminal Code for its purposes.)

Senator Kenny: Can you help me with it, please? Can any number of people within a department be deputized, if you will? Can they become lawful deputies, or is this power restricted only to the deputy head of the department?

Mr. MacAulay: It is restricted to the deputy head of the department.

Senator Kenny: And no other?

Mr. Kennedy: Yes, there is the minister and the deputy. That law comes out of the Interpretation Act. It is defined here. In the code itself, some activities can only be done by the minister, the Attorney General or Solicitor General. Some can be performed by the deputy as appropriate. Those functions are laid out. Our colleagues at the Department of Justice have a manual which sets out exactly which functions in the code can be done by the deputy and which must be done by the minister.

Senator Kenny: You say there are two people involved, the minister and the deputy, but that power cannot be sent further on?

Mr. Kennedy: That is right.

Senator Beaudoin: This bill amends many statutes, including the Corrections and Conditional Release Act. Clause 94 of the bill seems to imply some retroactivity. Retroactivity and criminal law are not good neighbours. I should like to know a bit more about the retroactivity in clause 94(1) at page 111.

Mr. MacAulay: Are you addressing the correctional services issue where parole cannot be sought until half the sentence has been served? Is that the change you are referring to?

Senator Beaudoin: Clause 94(1) states:

> The following provisions apply to an offender regardless of the day on which the offender was sentenced, committed or transferred to penitentiary.

Some principle of retroactivity is found there, if I am not mistaken. I should like to know why it is there. This is purely for information.

Mr. Kennedy: I do not pretend to be an expert in this area on the corrections side, but I have a note indicating that this clause provides that offenders convicted of conspiracy to commit or of committing offences in Schedule 1 of the Corrections and Conditional Release Act will be excluded from the accelerated parole release program. That is where they are released after serving one sixth of their sentence, regardless of the day on which they are sentenced, committed or transferred to penitentiary.

We are saying that an offender who falls into that category is not eligible for the program that lets first-time federal offenders go out after one sixth of the term is served. Normal parole provisions call for completing one third of your sentence and frequently up to two thirds.

This provision will not apply to offenders in respect of whom the National Parole Board has directed release on parole under section 126 of the Correctional Releases Act before the coming into force of the bill.

This clause intends to take away, from offenders who are currently incarcerated for these offences, the speedy release option after serving one sixth of the sentence.

Senator Beaudoin: Is the punishment not retroactive?

Mr. Kennedy: No, the punishment is not impacted. The parole release date is impacted, disallowing release after a one-sixth sentence and putting them under another regime. The sentence imposed is not affected. It affects eligibility for early release.

Mr. MacAulay: The dangerous offender status is also available. Some of these offenders may never be paroled if they fit the requirements.

Senator Beaudoin: I am not at all worried about the question of security. I want to know why there is such a retroactivity.

(French follows - Ms Jauvin—Vous soulevez un bon point--)

mcl -- 22-10-01

(après anglais)

Mme Jauvin: Vous soulevez un bon point car le langage ne m'apparaît pas tout à fait clair. Je ne crois pas que l'intention soit de parler de rétroactivité et que cela signifie que c'est nonobstant la date à laquelle le contrevenant a été condamné.

Le calcul commence à un stade différent. Mais si on pense qu'une interprétation rétroactive peut être donnée, je pense que c'est quelque chose qu'il faut vérifier parce que je ne crois pas que c'était l'intention.

Le sénateur Beaudoin: Ce n'est pas l'intention du législateur?

Mme Jauvin: Je ne crois pas, mais c'est quelque chose à vérifier.

(Sen. Jaffer: The definition of terrorist…)

(anglais suit)

(following french)

Senator Jaffer: The definition of terrorist activity refers to an organization inside or outside Canada. Will the list of terrorist organizations which is to be prepared include organizations inside and outside of Canada?

Also, I understand some racial profiling is being used. Perhaps you can correct me on that. Would racial profiling be used in preparing these lists?

Mr. MacAulay: The most important thing is this, and these are words that we all need to hear: It is not who you are; it is what you have done.

This has absolutely nothing to do with race or religion. We will act on information that is provided, no matter who or where or what group is referenced. The fact is, if a person or group fits the prerequisites set out for this list, that name will be on this list, no matter who or what it is. This has absolutely nothing to do with race or group of people.

Senator Jaffer: Will the list consist of people in organizations inside and outside of Canada?

Mr. MacAulay: Yes, it may.

Senator Tkachuk: We have been told that this is a very important bill and that is why we are doing pre-study. May I ask why you are leaving early?

Mr. MacAulay: I have another meeting. I gave one hour and there are three portions of this bill on which I can respond. If I need to return for other issues, I can return.

Senator Tkachuk: We had you scheduled until 5:50. Can we keep you that long?

Mr. MacAulay: I need to go at 5:30 because I have another commitment. I am sorry. I understood that you wanted to see me today and I wished to oblige the Senate. I know better than to not oblige you. I appreciate that you want me for a little longer.

Senator Tkachuk: I am sure it is very important business. I had asked the Minister of Justice, who was here this morning, about the identify of these terrorists in Canada and about the evidence we have and the origins of these

people. I am sure that since September 11 we have been busy trying to figure out who would want to do harm to us in Canada.

Do we have any evidence about where most identified terrorist organizations originate? What part of the world do they come from? Are many of these terrorists Canadian citizens?

Mr. MacAulay: Honourable senators, as you are aware and as a number of witnesses have already stated here quite clearly, this country has people who are associated with terrorist organizations, as does every industrialized country in the world. Our security intelligence agency and our police force deal with our national security. You are also fully aware, I am sure, that I am not at liberty to indicate to you who they are or where they are or where they come from.

Senator Tkachuk: You have no demographic information on where these people are from?

(tk 1730 follows-- Mr. MacAulay: Sir, I have information. I will not)

GM/October 22, 2001

(Take 1730 Begins -- next speaker Mr. MacAulay)

Mr. MacAulay: I have information. I will not be sharing information publicly that I have that deals with the national security of the country.

Senator Tkachuk: You are asking permission to publish the lists of these organizations. You must have information of some kind as to what kind of people they are. Are they Asians? From where do they come? Are they refugees, immigrants or Canadian citizens? Who, in the main, are they?

Mr. MacAulay: Senator, there will be the establishment of a list. As I said before, it has nothing to do with where you are from; it has to do with what you have done. That is how the list is put together. When the list is put together it will be in *The Canada Gazette*. It will be available for all Canadians. For me to indicate to you who they are, who they might or might not be, you are fully aware that that would be totally inappropriate.

Senator Tkachuk: We have already agreed with the United States that the al-Qaeda organization is the one that you believe is responsible for the acts of September 11. We have gone to war on that basis. Is that a group?

Mr. MacAulay: Senator, as you are aware, if I was to respond to you what group would or would not, or might or might not be on this list, we are all fully aware that that would be a totally inappropriate action for a Solicitor General of this country to take and I will not take that action. I appreciate your concern, however. I am fully aware where you are coming from.

Senator Tkachuk: Do you believe we can prevent these people from coming to our country?

Mr. MacAulay: I believe that measures will be taken by this country and many countries around the world to make sure that we have a much better control of these types of activities. That is why, senator, your government and you are sitting right here evaluating and I would expect coming up with recommendations that possibly will be accepted to make sure that we have the proper laws in place. That is why we have the committee in place, in order to make sure that we have the proper funding in place. I can assure you, senator -- and I know you are concerned -- that we will do both, and you will help us.

Senator Tkachuk: I have a feeling, from the answers to my questions, about how this bill will be administrated because I think some of this information you should be able to share with the public so that the public is aware of what is happening.

We have been told by witnesses who have appeared before the Senate on Bill C-11 that there is not much in this refugee bill that will be dealing with preventing refugees from coming into Canada. We have nothing in this particular bill that is taking any action. We have no moratoriums on refugees. We have a good idea of who these terrorists are and where they come from. To keep ourselves safe, why are we not taking actions to that effect and why are we not doing anything about that?

Mr. MacAulay: Are you asking me why I am not indicating to you what groups we may or may not evaluate to put on the list? The answer to that would be it would be an inappropriate action for a Solicitor General to take before he evaluates the situation and before he takes his evaluation to the cabinet. That would be a totally inappropriate action, which I would not be taking.

Senator Tkachuk: From your earlier comments, are you saying that you would be open for suggestions or recommendations to the refugee bill, C-11, as well?

Mr. MacAulay: I have come here to defend this piece of legislation and my responsibility. I have not dealt in-depth with that piece of legislation, but I would be pleased to discuss it with you sometime. We are here dealing with this bill and trying to make sure -- and you are, too -- that we take the proper process. We had a great deal of discussion on how the lists are put together and how it should be done. Perhaps the honourable senator feels that it should be more public. I would be interested in hearing just what the committee has to say, and many times this place particularly has contributed improvements to legislation. Possibly you will improve it here.

The Chairman: Thank you, Mr. Minister. Colleagues, thank you very much for cooperating. I truly appreciate that.

Mr. MacAulay: I wish to thank all honourable senators.

Senator Finestone: I should like to pursuit issue of our borders and our frontier and our Canada/U.S. openness; the importance of being able to trade, at the same time the importance of trying to determine the difference between a tourist and a terrorist, or a refugee or an immigrant coming through the border?

How will you do that? Evidently we are saying somewhere -- I forget which bill -- that 72 hours or three days to verify they are bona fide. Is that this bill or the immigration bill?

Senator Andreychuk: It is Bill C-11.

Senator Finestone: How will you do that? You have responsibility for that border. I believe at least the possibility is vested there. If we are worried about tourists, it is appropriate to ask what is being done to make sure it is not a terrorist but a tourist who gets across. If it is a terrorist, how do we know to hold them back if you are only giving 72 hours to examine?

Ms Jauvin: Essentially, this is a bill under the Department of Immigration. It is not one that I have any personal or deep knowledge about. We can talk a bit about some of the new measures that were announced recently to help the agencies that are working at the border, but I do not know if that is what you want to hear. If you do, we can provide details. We have that.

Senator Finestone: Perhaps I am out of order. It was my understanding that this department is responsible for CSIS and the RCMP. Are you not responsible for the border guards?

Ms Jauvin: The Canada Customs and Revenue Agency is at the border, and that is under the responsibility of the Minister of revenue, Mr. Cauchon.

Senator Finestone: I will save that for him, then.

Senator Fraser: On the lists under clauses 83.05(1)(*a*), an entity can be listed if that entity -- and remember the definition of "entity" includes individuals -- has carried out, intended to carry out, participated in or facilitated a terrorist activity.

In the definitions this bill says that, in regard to "facilitation," you can have facilitated something even if you did not know you were doing that thing. In a number of other sections of the bill, however, the text specifically says that in order for an offence to be committed you must have knowingly facilitated something.

Would it not be appropriate to include here the word "knowingly" so that we would be saying you could be listed if you have carried out, attempted to carry out, participated in or knowingly facilitated a terrorist activity?

Ms Jauvin: Again, that definition is a definition that would now form part of the Criminal Code is, therefore, under the purview of the Minister of Justice. They are the ones who would set the standard.

Senator Fraser: This is about who gets on the list, is it not?

(Take 1740 Follows -- next speaker Ms Jauvin: The role of our minister...)

Ms Jauvin: The role of our minister is to look at the information given to him by enforcement agencies like CSIS, the RCMP and, perhaps, certain parts of Immigration and come to a conclusion as to whether he has reasonable grounds to believe that these organizations have committed these acts or have carried out a terrorist activity. He must have grounds to believe that this is the case. He then takes that recommendation to cabinet and convinces his colleagues.

Senator Fraser: What public purpose would be subverted if the word "knowingly" were inserted in this section? Let me explain. I asked about "knowingly facilitation" and "knowingly facilitating" this morning when the Justice Minister and her officials were here. I hope I am doing them justice in my summary of what they said. They said that they did not include the words

"knowingly facilitate" for certain cases where, on the face of it, you had to know what you are doing. If you are recruiting someone for terrorist training, you know what you are doing. You are facilitating knowingly.

The classic example people cite is if you are just an ordinary citizen and you rent your basement to someone who turns out to have terrorist meetings there, unknown to you. Should you be on the list for having facilitated a terrorist activity, or should not the bar be set just a bit higher so that you must have known that you facilitated it?

Ms Jauvin: Mr. Kennedy will want to say something, but my point is that my minister and the minister to whom we report will be responsible for administering the test that is in the act as finally passed. If the act says "facilitated," then, obviously that will be the test. If the bill is changed and the wording is changed to "knowingly facilitated" because of a decision of the cabinet then, obviously --

Senator Fraser: Of Parliament.

Ms Jauvin: Cabinet and Parliament, of course. Obviously, then, that would be --

Senator Finestone: That is an interesting slip of the tongue.

Ms Jauvin: Sorry, the first step is cabinet. For the administration, the first step is cabinet before it goes to Parliament.

Mr. Kennedy: In the context of the legislation, looking at facilitation on page 15, this is complex. The concept there is “knows about a particular terrorist activity.” The key word is "particular".

If you look back at what we are hearing, for instance, with reference to September 11, those events were the ears in the taking. People were pre-positioned to do certain things without necessarily knowing how they would be directed at the last moment. There would be people who would be assisting them, knowing that they were assisting a terrorist organization without necessarily knowing what the ultimate object of that particular terrorist event would be. That is why that is in there. It is the nature of the creature we are dealing with.

With Bill C-24, the organized crime package, you will probably find there is similar language there, too. If you have reference to organized crime groups, biker gangs and so on, you know that their institutional purpose is to commit crime.

Knowing that, you know actions that you do to facilitate that entity will assist them to carry out their corporate object, which is to commit crime. With a terrorist group, it is to commit terrorist acts. It is a convenient shield to say, "I helped you three years ago by giving you a safe house or false documents or false identify, by giving you money, by facilitating your travel to another country, but I did not know you would drive your airplane into the World Trade Center." Is that not a convenient out? "I did not know your particular terrorist act," but you do have a particular terrorist group and you know they will commit a terrorist activity. That is why the facilitation is there.

These are sometimes many years in the offing. If you do not have that, it is a laissez passé for people to assist these groups with no consequence. That is the rationale for that. Whether or not you agree with the rationale, I suggest that is the rationale for it. If you look at what is done in Bill C-24, you will see that many of the activities for facilitating, participating and instructing mirror the model before the Senate in Bill C-24.

Senator Fraser: For the record, I should like to say that I am not worried about the people who provide false documents and guns and all that. I am worried about, for example, had this happened in Canada, the flying instructors who taught those gentlemen how to fly not realizing what was at stake.

Mr. Kennedy: They would not be captured, with the greatest respect, because they would have to knowingly facilitate, knowing that they were dealing with a terrorist organization.

Senator Fraser: Thank you.

Senator Jaffer: Mr. Kennedy, with the example you were giving of someone who helps someone because they think there is an injustice happening in their country, there is no definition of who a terrorist is. Terrorist activity is very much set out. Sometimes, as Senator Fraser said, the boundary is very thin. Some injustice is happening in Canada, and I may be working with people who later on have been found to have other intentions. Did I facilitate? That is a concern I have.

I have is a question about something the act does not cover, and that is an annual report. I understand in wiretapping that you have an annual report to Parliament. Would you comment on what you would think about having an annual

report on the organizations, roughly how many you want to put on the list and, in the end, how many were put on the list?

Ms Jauvin: On your first question, clearly the government would recognize the importance of these decisions to list groups or people. That is why the standard is quite high. Grounds to believe is a high standard in criminal law. It is a high standard that the minister would have to meet. The cabinet would have to meet it also. That would then be subject to review by the Federal Court, which could look at all the information and challenge that again. Yes, it is a difficult decision to take when you list a group or list a person. That is why the standard is so high. That is why there is judicial review as well.

Senator Jaffer: That is not what I was asking. I was asking about the annual report. I was also asking about facilitating unknowingly. There is a thin line between helping someone because you think an injustice has been done and then later finding that that person has committed a terrorist act.

Mr. Kennedy: With reference to the annual report, you are quite right. There is an annual report in terms of the number of wiretap applications that are made. That is done for CSIS as well as for the RCMP. That is because the application procedure is secret. Normally, it is an *ex parte* application before a judge, and until the application actually comes to the court, you do not know there has been a police wiretap.

In this particular case, though, the listing will be a public listing, so you will know exactly how many there are. The whole purpose of the list is to make it public. You will see each time that it goes out on a list. There is a public accountability in that regard.

The other issue that you have spoken to is one that has troubled the international community for decades, which is the freedom fighter terrorist routine. An academic had done some research, and there was in excess of 192 different definitions of "terrorist" or what "terrorism" is and no uniform agreement on it. There is consensus on what you see described here as terrorist activities.

There will always be the challenge that my freedom fighter is your terrorist, or vice versa. We must accept the fact that the use of violence in pursuit of a political, religious or ideological regime or objective is unacceptable.

(1750 follows, Mr. Kennedy, Once you move away from that premise)

(Mr. Kennedy continuing)

Once you move away from that premise, then you are into "good freedom fighter, bad terrorist." As I say, you can read the paper and you will see diametrically opposed purposes. Our purpose is to start by looking at those activities. Everyone agrees that those activities are bad. They include activities such as serious violence against persons with property, intimidation of the public, bombings and things such as that. These are activities that are clearly directed at innocent members of society to intimidate them.

One must be cautious. If one is to associate with someone who is trying to support a political objective in Canada or elsewhere, one must ensure that the avowed purposes do not involve the kinds of activities that are described here because those are ones that entail violence or risk of death to people.

Senator Jaffer: Your last sentence gives me even more worry about facilitation. People do not become terrorists in a day. These are ongoing things. People first work in communities. It is the facilitation where people may not know. I have great difficulty with your last explanation.

Mr. Kennedy: The language under clause 83.19 is:

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

You do not have to know the particular serious death or harm they will cause, but you know that is their modus operandi. That is the connection you make. If you do not know that they are involved in this activity, you do not have the requisite mental intent. However, if you know you are dealing with a terrorist organization that does these things and you assist them, then you are knowingly facilitating.

I appreciate that this is a complex piece of legislation. There are bits and pieces that must be strung together.

Senator Murray: Mr. Kennedy, I am not being obtuse, I just do not understand what you were explaining to us earlier about the connection between the Official Secrets Act and the amendments to the Access to Information Act, the Privacy Act, et cetera.

To recap, for a moment, the amendments to the Access to Information Act, the Privacy Act, and so on, will give the Attorney General of Canada unfettered discretion and power to simply declare that certain information cannot be disclosed because it would be prejudicial to international relations, or whatever. In so doing, it cuts out such due process as now exists under those acts involving the commissioners, and so on.

If I understood something of your explanation, it was that these amendments to the Access to Information Act and the Privacy Act, and so forth, are consequential upon what we are doing with the Official Secrets Act. Would you mind explaining that to me again?

Mr. Kennedy: Thank you, Senator Murray, I wanted to take the first opportunity to correct the record. The connection is with back to the Canada Evidence Act, not the Official Secrets Act.

Perhaps my colleagues at the Department of Justice would be better able to explain this element. However, without getting into the rationale, under the Canada Evidence Act, the Minister of Justice has reserved the right to issue a certificate to print the disclosure of that information. If the Minister of Justice has that vehicle under the Canada Evidence Act then you must see what other vehicles are available that could cause that information to be disclosed. Those other statutory instruments are the Access to Information and Privacy Act.

For consistency, if you wish to amend the Canada Evidence Act, then you must make a corresponding change to the other piece of legislation.

Senator Murray: Even though I am not encumbered by any legal training, Mr. Kennedy, I do not see how that follows. I am looking at the amendments to the Canada Evidence Act, on page 74, new section 37(1) for the first time:

> ... a minister of the Crown in right of Canada or other official may object to the disclosure of information before a court, person or body... by certifying orally or in writing to the court, person or body that the information should not be disclosed on the grounds of a specified public interest.

Is that what you are reading?

Mr. Kennedy: I am looking at page 87, new section 38.13.

Senator Murray: That reads:

> The Attorney General of Canada may at any time personally issue a certificate that prohibits the disclosure of information in connection with a proceeding for the purpose of protecting international relations or national defence or security.

I am not sure that we would need, necessarily, under the Access to Information Act, or these other statutes that I have referred to, to cut out the process that now exists to enable the commissioner to make a finding as to whether the exemption is justified.

Mr. Kennedy: I was trying to indicate to you that this is the device you should look at. It flows from the changes from the Canada Evidence Act. You are quite right, if you play the process through, there can be a hearing, an objection is taken, the matter is contested, it goes to the federal court, and there can be a ruling by a judge from the federal court that something be released. That information might be of such a sensitive nature that it provokes the Attorney General to rely upon this clause and say, "I issue a certificate that this information cannot be released." That is after that process.

Once you have done that in terms of a proceeding before the court, you must then step back and ask, "Are there other vehicles that one can rely upon other than a ruling by the court in terms of disclosure to get information from the government?" Yes, there are two others: The Privacy Act and the Access to Information Act.

If you do not look over and provide something comparable, what you have is an absolute certificate for a proceeding before the court and then someone turns around and the commissioner says, "Release it, or it goes up on a separate vehicle and it is released." You say, "Wait a minute, I have filed a certificate here. It cannot be."

Senator Murray: The proceeding could be one that had been launched by the Commissioner of Information, could it not?

Mr. Kennedy: That would be interesting. In the case I referred to earlier, where a request had been made under the Access to Information Act, a wrong decision had been made in terms of the exemption. The matter went up to the federal court and was to be ordered released.

The Government tried to invoke the Canada Evidence Act to bar its release. My understanding is that there was a ruling from the court that they could not rely upon the provisions of the Canada Evidence Act to prevent its release; it would have gone out the door under a separate vehicle.

The point is that it does not necessarily follow that if you have the provision here, it would override access or privacy unless you specifically said so, or there was some way to tie them together. I believe that is what they tried to do here is tie each of these three regimes together.

(Take 1800 begins, Senator Murray, new speaker: I think it is a problem...)

(tk 1750 ends--Kennedy... these three regimes together.)

Senator Murray: I think it is a problem.

Ms Jauvin, I am interested in "Confidences of the Queen's Privy Council for Canada" and clause 44, found at page 89 of the bill, setting out a change to the Canada Evidence Act. Clause 44 states:

> The Act is amended by adding, after section 54, the schedule set out in Schedule 2 to this Act.

I know this is not at the moment under your supervision but I think you probably will understand why they have done it and you can tell us what it is they are trying to do here.

Ms Jauvin: We have different numbered pages but I have found it. I truly have nothing to do with this area right now, but I believe it is a reference to the title in the next section which is section 39 of the Canada Evidence Act. I do not believe there is any change here.

Senator Murray: It is nothing substantive?

Ms Jauvin: That is the conclusion I came to when I read the bill.

Senator Andreychuk: I wish to go back to this list of terrorists to see if I understand the points being made by Senator Jaffer and Senator Fraser.

As I read the clauses under "List of Terrorists," a person could be placed on the list for unknowingly facilitating terrorist activity. On the previous page, clause 83.01(2) states:

> 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....

It is only if a person is charged that the "knowingly" kicks in. A person can be named on the list even without assisting knowingly. That is the dilemma we are trying to point out with this clause. The problem is further compounded by the earlier clause 83.05 (1):

> The Governor in Council may, by regulation, establish a list on which the Governor in Council may place any entity if...the Governor in Council is satisfied that there are reasonable grounds to believe that
>
> > (*a*) the entity has...facilitated a terrorist activity...

We have absolutely no idea how this list will be established until we see the regulations. This is an important power that may affect the lives of more people than the terrorists; these are the facilitators. We do not want to trap innocent people who happen to live near someone and who may have extended a hand of charity to them. You will have to persuade me that the regulations will exclude the person who unknowingly facilitated.

Senator Fraser: There will not be any regulations.

Senator Lynch-Staunton: There are no regulations now.

Senator Murray: The regulation will be the list.

Ms Jauvin: You will be guided by what is in the bill right now, assuming that this is what survives at the end of the day. Again, the test is that the Solicitor General would have to form an opinion that he or she has grounds to believe that the entity facilitated terrorism. Obviously, if the person unknowingly gave a permit --

Senator Fraser: Or a flying lesson.

Ms Jauvin: -- the Solicitor General would decide if there were reasonable grounds to believe and on which to convince colleagues and a court that the entity facilitated a terrorist activity. That conclusion would be made in the entire context of the act and the Criminal Code, bearing in mind that the offence of facilitating has the criteria of "knowingly" facilitating. This entire context would come into play.

Senator Andreychuk: Would it not be to better to allay our fears about this clause? The minister must be satisfied on reasonable and probable grounds that the entity facilitated terrorist activity. One would hope that he would look at the issue of "knowingly" but that would not be in his purview. If push comes to shove, he can name any person that he thinks facilitated terrorism. That was my original question. The named person must fight back to prove innocence. We will not know how the names get on the list until we see the regulations.

Senator Murray: The regulation is the list. You will not learn anything from the regulation except the name.

Senator Andreychuk: We do not know that. I want to know how, when and in what form this list is to be established.

Senator Murray: It is by regulation.

Senator Andreychuk: It is by regulation and so I am no wiser until I look at *The Canada Gazette*. That gives me concern. Can you allay our fears that innocent people will not be trapped? This clause is not clear and it is the wrong signal to give out to the public.

Ms Jauvin: We certainly understand that concern. It must be examined because we all share the same objective here. The last thing we would want is to put someone on the list who should not be there because of some test that is not specified here. We will certainly look at that and see whether there are ways of alleviating these concerns.

Senator Andreychuk: What if a person is a permanent resident but not a Canadian citizen who finds his or her name on the list without any proof?

This list continues for some time. After the Second World War, when the Communist issue was "flavour of the month," many people later found they did not get Canadian citizenship because they were somehow associated with communist activity. As late as the 1970s, in my own personal legal experience, we were

fighting to get Canadian citizenship for people who unwittingly attended a social activity that had been organized by a group that was a front for communist activity. Those collected lists of names made it into the RCMP and the Department of Immigration and elsewhere. Can we have some assurance that that will not happen here and that there will no false trail that will prejudice the innocent in Canada?

Ms Jauvin: We are assured that the list will be made public, so the people on the list will know. We are also assured that anyone who disagrees with the judgment to place his or her name on the list can ask to demonstrate why he or she should not be on the list.

The Solicitor General may come to that conclusion and recommend to the Governor in Council that the name be struck off the list. Also, there is a possibility of going to the federal court. If a judge decides that there are no reasonable grounds to believe that the person should be on the list, then the name will be struck off the list. At that point, the person is not on the list anymore.

(tk 1810 follows-- Mr. Kennedy: There is a separate vehicle as well under)

ES/Oct. 22/01

(Take 1810, Mr. Kennedy, new speaker)

Mr. Kennedy: There is a separate vehicle under both the Immigration Act and the Citizenship Act. Those are the provisions that allow the government to take action to remove permanent resident status and have a person deported from the country if it believes that person is involved in activities that constitute a threat to the state. The activities are defined there.

Conversely, there is a test for a person who is applying for citizenship, and in the last couple of years, they have mirrored each other. That is the one that allows the state to deny a person citizenship if he or she applies for it. One can apply every three years. There is a mechanism there. There are mechanisms currently in place under the Immigration Act and the Citizenship Act to deal with people who find themselves on the list. It would be an unusual situation for someone to be on the list, going around this country and the government did not take action to do something if you that person were a threat to the state. There are vehicles there. Those actions are subject to review by SIRC in terms of pursuing a denial there, and SIRC can make recommendations one way or the other. There are mechanisms currently in place.

Senator Lynch-Staunton: The question of the list troubles me greatly. First, I do not think that any regulations will act as a guide to the minister responsible because there is nothing in clause 83 that speaks to regulations.

I am troubled by the fact that the chapter heading to this section is "List of Terrorists." It has a finality to it. I would be less unhappy if it were called the List of Suspected Terrorists. Once you get on the list, you are guilty.

What troubles me more -- because I have not heard anything to the contrary -- is that individuals being assessed for placement on the list do not have an opportunity to defend themselves from any charges which or any evidence, which would lead the governor in council to feel that there are reasonable grounds. It is all one-sided. It is police evidence, Intepol and so on. Does the individual himself or herself have a opportunity to be heard before the list is drawn up? If so, where can we find that here?

Ms Jauvin: When you said before the list is drawn up, the answer to that is no. There is an opportunity for a person to be heard once they have applied to have their name removed.

Senator Lynch-Staunton: That is dreadful. You would be finding, inevitably, people on this list who do not deserve to be there. It is inevitable. To ask them to get off the list after the government has made a dreadful mistake -- we have seen miscarriage of justice in this country, sadly enough, despite all our efforts. With this approach being brand new, it is inevitable, and one person would be too many. At least one person will be on this list and will not deserve to be there. Does no one care about that person's reputation, the harm to the family and the harm to whatever else? I find the approach a bit crude: "We will put you on the list, and if you do not think you should be there, get yourself off." The argument is that we are facing unusual times. That is true, we are facing unusual times and we need to take drastic actions, but there is still the protection of the individual. If a person gets himself off the list in two or three years, so what? The damage has been done.

At least change the heading to List of Suspected Terrorists. The heading has a sense of finality to it which means, "You are guilty. Now prove your innocence." That goes against every basic rule of law of this country.

I see you nodding. This time it is in agreement?

Ms Jauvin: It is just I feel this is what is before you now in terms of whether you want to make that determination.

Senator Lynch-Staunton: *The Canada Gazette* had a list of names which were in accordance with one of the UN conventions on terrorism. If I have caught you by surprise on this one, I will ask someone else another time and I will have it with me. If you are familiar with that, can you expand on it?

Ms Jauvin: I am familiar to the extent that the government has recently, by Order in Council, passed an instrument. I do not think it is a regulation. It is simply an Order in Council.

Senator Lynch-Staunton: A convention, I think.

Ms Jauvin: There is a regulation under the convention, and then an Order in Council was passed under that regulation that sets out a list of organizations whose assets are to be frozen, if that is the same list we are talking about.

Senator Lynch-Staunton: I think it is. Do you know where those names came from?

Ms Jauvin: The Governor in Council made the decision on the recommendation of ministers who had looked at all of the evidence placed before them with respect to the organizations on the list.

Senator Lynch-Staunton: I am sorry I did not bring it in. I will bring it in tomorrow so colleagues can share it.

Ms Jauvin: The list was brought up.

Senator Kenny: Was there any consideration of advance notification of people going on the list? When the drafting was going ahead, was there any discussion about it?

Ms Jauvin: The Department of Justice essentially drafted the bill. I do not know if Mr. Kennedy is aware. We would not know.

Senator Kenny: Can you anticipate any problems? Would there be any problems if there were, for example, a 60-day advance notice to an individual before he went on the list?

Mr. Kennedy: Potentially some problems. Part of the effort here is to seize the assets of terrorist groups. A terrorist goes on the list and looks at this legislation, the will know the next step is that the Attorney General of Canada can make a application to seize and freeze the terrorist's assets. Of course, the Office of Financial Institutions would be looking at seizing the assets, too. Effectively, we are saying, "We believe you are a terrorist organization." The moneys flee this jurisdiction quickly and go to another jurisdiction where they are thought to be safe. There is a price to be paid for notification.

With regard to both terrorist organizations and organized crime, they are businesses and they need operating capital. That is the money. That is the challenge you face. With early notification, the money is gone.

Senator Kenny: You cannot think of a way to deal with that problem before someone is notified?

Mr. Kennedy: I am indicating that is the challenge we have. The other comment is that being on the list as does not criminalize your behaviour. This may be facetious. The key about putting someone on a list is it criminalizes the behaviour of people who deal with individuals or groups on the list. It is a bit difficult to say, "By the way, if you deal with these people, you run the risk of committing a criminal office that may be punishable by 10, 14 years or life, depending on what you do." This is a list of suspected terrorists.

Senator Kenny: What does being on the list do to your reputation?

Mr. Kennedy: I indicated to you the challenge of putting suspected terrorists on the list and then the conduct of the people who deal with people on the list is criminalized.

The Chairman: Thank you very much, colleagues, and thank you for staying here to answer our questions.

The committee adjourned.