

DV/October 23, 2001 – Anti-Terrorism – 38348

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

EVIDENCE

OTTAWA, Tuesday, October 23, 2001

The Special Committee on the Subject Matter of Bill C-36 met this day at 2:00 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 together our second session of today on the special Senate Committee on the Subject-Matter of Bill C-36, which is the government bill on anti-terrorist actions in response to the tragedy that took place in the United States on September 11.

We have been hearing a variety of witnesses. Yesterday we heard from Mr. Ward Elcock from CSIS. Today we have with us the Security Intelligence Review Committee members.

For those who are watching on television, our committee is undergoing a rarely used procedure called pre-study in which we are trying to study this very important piece of legislation so that we can give our recommendations to the House of Commons before it passes the bill. Hopefully, the bill will include some of our recommendations by the time it returns here to the Senate for our formal debate and committee study. We are trying to get an advance push of some of our ideas and concerns into the House of Commons early.

We have with us today one person whose face will be familiar to all, and that is the Honourable Gary Filmon, a member of the Security Intelligence Review Committee. We have with us Mr. Pollak, Mr. Klein, Mr. Dastous, and the chair of the Security Intelligence Review Committee, known as SIRC. The chair is the Honourable Paule Gauthier.

We would be delighted to hear your opening remarks and then our committee will be full of questions. For the members of the committee, we will start the first round with members of the committee with a question and a supplementary question then proceed to the second round in order that everyone will have an opportunity to question and respond on both sides. We would encourage you to be as brief as possible in order that the dialogue can develop to the greatest extent.

Also, to members of the Senate who are not on the committee, we will certainly include you as well in our questioning.

Please proceed. Welcome.

(French follows - Ms Gauthier: Mesdames et messieurs les membres...)

mcl -- 23-10-01

(après anglais)

**Mme Paule Gauthier, présidente du Comité de surveillance des activités de renseignement et de sécurité:** Mesdames et messieurs les membres du comité, nous vous remercions votre invitation à nous présenter devant vous et nous nous efforcerons de vous être utiles dans vos délibérations. Vous pourrez consulter les annexes qui vous ont été remises avec nos commentaires et, comme vous l'avez suggéré, je garderai du temps pour répondre à des questions.

(Mme Gauthier: The shocky and tragic events of September 11...)

(anglais suit)

(Following French)

The shocking and tragic events of September 11 pose an unprecedented challenge for all Canadians, in particular for those of us who work in Canada's security and intelligence community.

Bill C-36 is obviously a key element in the government's response to this challenge. It is clearly designed to strengthen our defences and to aid our enforcement agencies as a means to ensure the protection of our cherished rights and freedoms.

This protection is a large part of the committee's *raison d'être*. For those of you who are unfamiliar with the committee, I would like to begin by addressing the obvious question: What is SIRC?

(Take 1410 Follows -- Ms Gauthier continuing: The Security Intelligence Review...)

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(1410 -- Ms Gauthier continuing)

The Security Intelligence Review Committee, SIRC, was established under the Canadian Security Intelligence Services Act in 1984 to provide full and independent scrutiny of CSIS's activities and to report annually to Parliament and the Canadian public on our findings.

The committee comprises five Privy Councillors appointed by Governor in Council after consultations between the Prime Minister and the leaders of all parties that have at least 10 members in the House of Commons. The committee's day-to-day operations are the responsibility of the Executive Director, Ms Susan Pollak, who is assisted by a staff of 15.

SIRC may review any CSIS activity. It also investigates complaints from the public about any CSIS action. In addition, people denied a security clearance for federal employment or denied federal contracts on security grounds can complain to SIRC. SIRC can also investigate when a person seeking admission to Canada or applying for Canadian citizenship is affected by detrimental security findings.

SIRC periodically provides reports to the Solicitor General on matters of special importance that are distinct from, but related to, its normal audit or investigative functions. This is further detailed in the appendices.

As the agency charged with providing independent reviews of CSIS, the committee was naturally very interested in Bill C-36, the proposed anti-terrorism legislation that is being considered here today. I would like to take this opportunity to make a few observations about this draft legislation, and then we would be happy to answer any questions you may have.

Some elements in Bill C-36 have implications for the committee. Bill C-36 contains a specific addition to the committee's mandate as well as other provisions that will probably also result in an increase in complaints brought to SIRC.

To begin with the specifics, the committee is named as having new responsibilities under the proposed revisions to the Official Secrets Act. The proposed amendment states that the public interest defence for the disclosure of

special operational information is available only where the individual has brought the information to the Deputy Attorney General of Canada and, in the absence of a response from the deputy head, to our committee. The legislation does not indicate, however, just what the role of the committee is supposed to be with respect to this special operational information.

If an investigation is anticipated, what would be the committee's powers and to whom would we report? Would we be asked to make findings or recommendations? It would be useful to the committee to have some clarification of its responsibilities under this new provision.

Other changes proposed in Bill C-36 that will almost certainly affect the committee are the proposed Criminal Code amendments to create a list of terrorists and the proposed charities registration act. These are likely to generate a substantial increase in complaints to the committee, because the CSIS Act, under section 41, provides the public with the opportunity to complain about any act or anything done by CSIS. Many of the individuals and organizations listed, as well as those who have been denied charitable status, will likely complain to SIRC.

In conclusion, as the chair of SIRC, I believe its work is more vital than ever and is a vital part of the framework established by Parliament to balance the need to protect both the state and the rights of the individual. Given the new world we suddenly find ourselves in, the need to maintain that essential balance is more important today than it has ever been. The committee as a whole will follow your work with great interest. Thank you for your attention and we would be happy to answer your questions.

**The Chairman:** To those who may be watching, you will hear the acronyms CSIS and SIRC which stand for Canadian Security Intelligence Service and Security Intelligence Review Committee respectively. SIRC examines the work performed by CSIS. Sometimes, in the security area, it can become confusing.

**Senator Murray:** As you have indicated, Ms Gauthier, this bill has a provision that the cabinet may, on the recommendation of the Solicitor General, draw up and issue a list of terrorists. Some members of this committee are extremely concerned about that and about the process that is envisaged. It is a matter, as you say, of the security and intelligence authorities advising the minister and the minister then recommending to cabinet and the cabinet then publishing the list. Senator Lynch-Staunton said yesterday that it is almost inevitable that someone will be on that list, of any length, who should not be on that list. Once he or she is on the list, that is the end of his or her reputation.

I understand the provisions that are in the bill for appeal to the court and so on. However, all of that is after the fact. I am quite interested in your view that the Security Intelligence Review Committee would have a role in all this. You have based that, as you say, on the fact that the statute provides the public with the opportunity to complain about "any act or anything done by the Canadian Security Intelligence Service. Does the government agree with your interpretation of your role in this matter? Do they agree with your legal opinion?

**Ms Gauthier:** We do not know at this time if they agree. However, clause 41 has been experienced before and there were many complaints brought to us. We certainly believe that an individual or an organization named on the list could appeal that decision to us if they are dissatisfied.

The results, as you know, are not from our committee, but rather they are recommendations. There is clout to what we decide for recommendation, however the last decision always rides with the government whether the person of the organization will remain on the list.

**Senator Murray:** The government has already written into the bill a process for review and for appeal to the court. Is I mentioned before, that is after the fact. Now, is there a possibility, since we are talking about anything done by CSIS, that you would have an opportunity to view that list before it is published? After it leaves the hands of the Director of CSIS and forwards to the minister, but before publication, would your review committee have an opportunity to view it?

(1420 follows -- Sen. Murray continuing: Could you insist under the terms of your own statute...)

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(Senator Murray continuing)

Could you insist under the terms of your own statute that you have an opportunity to examine that list before it is published?

**Ms Gauthier:** Under the CSIS Act, we have access to all files and all documents involving CSIS. I suppose that we would have access to the list. If we decide on our initiative or if the Solicitor General asks us, we could make a special report under Section 54 of the CSIS Act to the Solicitor General concerning the names of organizations or persons on that list. Yes.

**Senator Murray:** We in this committee are very concerned about safeguards with respect to that list and what safeguards could be instituted before the list becomes public.

We have been talking about the possibility of parliamentary oversight. A special committee of Parliament might have an opportunity to provide that review.

Your testimony is extremely important here. Let me confirm that you are saying is that after this list has been compiled by CSIS for the benefit of the minister, but before the list is published, you could, under the statute, make it your business to review that list and determine the reason that various names of individuals or organizations are on it. I invite you to tell us that you will do that.

**Ms Gauthier:** I am saying, "yes" because the life of our committee will continue after this bill is in place. The CSIS Act is there, and we have access to all their files and will continue to do so. We would like to review the list and make a special report under Section 54.

On the other hand, in all the amendments and the bill you are now examining, there are no special provisions for us to do that work.

**Senator Murray:** No, but you have interpreted the statute by which you are now governed to mean that you are engaged on this issue. I am very happy with what I take to be the undertaking you have given us.

**Ms Gauthier:** In that sense, our engagement would be there.

**Senator Murray:** If you find that someone is inappropriately on the list, you will so state, in private, to the government.

**Ms Gauthier:** Exactly, yes.

(French Follows - Senator Bacon: Madame Gauthier, vous...)

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(après anglais)

**Le sénateur Bacon:** Madame Gauthier, il nous fait plaisir de vous voir aujourd'hui et je suis très heureuse qu'on ait renouvelé votre mandat.

S'il y a une valeur chère aux Canadiens, c'est bien le droit à la vie privée et la garantie de ce droit devrait être respectée et protégée. Nous sommes également en droit d'attendre que notre gouvernement respecte et protège ce droit à la vie privée. Il est du devoir des législateurs de voir à cette protection dans l'élaboration des lois.

Dans le projet de loi qui est devant nous, ce droit est effectivement restreint pour les raisons que la ministre de la Justice a exprimées hier devant le comité et sur lesquelles, je pense, il n'est pas nécessaire de revenir.

La ministre nous a assurés que des dispositions de la loi passeraient le test de compatibilité avec la Charte canadienne des droits et libertés. Les tribunaux représentent un dernier recours une fois que la loi est examinée et dotée des outils de protection nécessaires. Il faut toujours, bien sûr, avoir à l'idée qu'une personne innocente qui voit ses droits brimés est une personne de trop.

Le Service de renseignement de sécurité est bien entendu un des joueurs-clé dans l'application du projet de loi C-36 et aussi une des organisations de l'État dont les activités sont les plus intrusives et menaçantes pour la vie privée des Canadiens.

Le Comité de surveillance que vous présidez mentionnait, dans son rapport annuel 1999-2000, que les Canadiens sont inquiets des activités du SCRS et de l'atteinte aux libertés et droits de la personne. On peut lire dans ce rapport, et je cite:

Ces doutes tiennent, entre autres, à la manière dont le travail de renseignement de sécurité s'insère dans toute démocratie, à savoir que le gouvernement confère à un petit groupe de gens des pouvoirs d'enquête puissants et intrusifs en leur ordonnant de ne révéler ce qu'ils font à personne, ou presque. Instinctivement, les gens avertis se demandent ce que diable ces gens peuvent bien faire.

C'est à la page 1 de la déclaration du Comité de surveillance des activités de renseignement de sécurité.

À la lecture de votre examen des plaintes adressées au SCRS, vous portez quand même un jugement sévère sur la façon dont le SCRS a établi des liens entre certaines personnes et des activités terroristes à l'occasion des opérations de filtrage de sécurité pour des fins d'immigration. Certains craignent que la confection d'une liste, sur laquelle figureront des entités terroristes, ne donne lieu à une chasse aux sorcières et que des personnes n'ayant rien à voir avec le terrorisme se retrouvent sur une telle liste.

Croyez-vous que la définition d'acte terroriste, dans le projet de loi, sera suffisante pour permettre au SCRS de fournir au solliciteur général des renseignements conformes à la réalité et ainsi éviter des abus et erreurs -- que vous avez vous-même constatés -- à l'occasion de la confection de la liste que le solliciteur général sera chargé d'établir?

**Mme Gauthier:** Je dois vous dire que le mandat du Service de sécurité lui est attribué dans la loi qui a créé le Service de sécurité. La définition de la menace à la sécurité du pays est amendée dans cette loi, mais très peu. Elle est amendée pour élargir la notion de ce qui constitue une menace en cas de terrorisme. On associe cela aussi à la religion et à des questions idéologiques.

Pour le Service de sécurité, cela veut dire qu'on donne une certaine extension à sa capacité d'agir puisque, autrefois, il fallait que ce soit motivé pour des raisons politiques. Aujourd'hui, on motive également pour des raisons religieuses. Mais très souvent, tous ces termes sont très intimement reliés. La loi qui touche particulièrement le Service de sécurité ne change pas vraiment beaucoup d'éléments dans le mandat qu'il détient actuellement.

La définition de terrorisme qu'on retrouve dans le projet de loi devant le comité englobe beaucoup plus, mais est aussi beaucoup plus orientée vers les organismes comme la GRC, plutôt que le Service de sécurité. Je suis d'accord avec vous généralement, mais les craintes éprouvées précédemment sont toujours là, ce sont le même genre de craintes et notre comité sera toujours là pour continuer à surveiller.

**Le sénateur Bacon:** Serait-il nécessaire qu'il y ait des balises, dont pourrait se doter le SCRS, pour éviter que des innocents se retrouvent sur une telle liste? Y a-t-il d'autres balises?

**Mme Gauthier:** Si on mettait des balises, je pense qu'on empêcherait l'exercice de leur fonction, de leur pouvoir. C'est une question d'expérience, de compétence, et de jugement. Parfois, c'est très difficile d'exercer un jugement parce que la ligne est très difficile à tracer entre le blanc et le noir. C'est pourquoi un organisme comme le nôtre est là et révisé. La loi existe depuis 15 ans au moins et on semblait bien fonctionner en ce qui concerne leur pouvoir. Il y a donc tout lieu de croire que c'était suffisant et qu'ils peuvent encore faire leur travail de façon raisonnable et acceptable aujourd'hui.

**Le sénateur Bacon:** Est-ce que le fait de ne plus avoir à prouver que la surveillance électronique est un dernier recours -- comme c'est actuellement le cas -- est essentiel pour que le SCRS puisse recueillir des informations efficaces pour arrêter les terroristes avant qu'ils ne commettent leurs crimes sur notre territoire?

**Mme Gauthier:** Cette partie de la loi, cette règle s'applique surtout à la gendarmerie plutôt qu'au Service de renseignement de sécurité.

(Sen. Beaudoin: Dans votre mémoire, vous dites...IN TAKE 1430)

(français suit)

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**Le sénateur Beaudoin:** Dans votre mémoire, vous dites, et je cite:

[...] j'estime le travail du Comité comme un rouage vital de l'appareil que le Parlement a établi pour faire régner l'équilibre entre la protection de l'État et celle des droits de la personne.



Je suis tout à fait d'accord avec cela. Cependant, je me demande si dans le domaine des communications privées, on n'a pas un peu changé cet équilibre, en ce sens que les conversations privées ne doivent pas être l'objet d'écoute sans mandat. La jurisprudence de la Cour suprême est tout de même assez constante. J'ai relevé au moins quatre arrêts qui disent que pour écouter une communication privée, il faut avoir l'autorisation de la cour. Le projet de loi actuel fait une certaine intrusion et permet au ministre de la Défense nationale, sur le plan des relations internationales, de donner l'autorisation à la place des tribunaux. *Prima facie*, cela m'apparaît aller contre un équilibre entre les trois pouvoirs: législatif, exécutif et judiciaire. Quelle est votre réaction à cet amendement apporté par le projet de loi?

**Mme Gauthier:** Au sein du Comité de surveillance, nous regardons surtout le Service canadien de renseignements et de sécurité et la loi n'a pas changé pour lui. Il doit encore obtenir un mandat de la cour fédérale avant de pouvoir faire ses enquêtes. Vous faites probablement référence au Communication Security Establishment qui fait actuellement sa surveillance des conversations sans obtenir de mandat. À ce titre, la législation ne change pas pour le Service canadien de renseignements et de sécurité.

**Le sénateur Beaudoin:** Est-ce que dans votre organisme, il y a toujours l'obligation d'obtenir un mandat?

**Mme Gauthier:** Oui.

**Le sénateur Beaudoin:** Dans tous les cas?

**Mme Gauthier:** Cela dépend à quel niveau ils font l'enquête et de quel genre d'enquête il s'agit. Lorsque c'est pour faire intercepter des communications, il doit obtenir un mandat de la cour fédérale. Nous n'intervenons pas à ce stade-là à la cour, mais nous révisons tous les documents qui y ont été présentés en vue d'obtenir le mandat pour s'assurer que les faits qui ont été présentés devant le juge sont conformes à ce qui existe dans les dossiers du Service canadien de sécurité et de renseignements.

**Le sénateur Beaudoin:** J'admets que c'est bien important dans les circonstances actuelles, mais sur la scène internationale, il n'y aura pas de recours devant les tribunaux avec le projet de loi C-36. Tout va se régler par le ministre de la Défense nationale. Je suis le premier à admettre qu'un des principaux rôles du ministre de la Défense nationale est de veiller à la sécurité du pays. Je n'interviens pas du tout sur le plan législatif, mais je me demande si, sur le plan de l'équilibre des pouvoirs, on n'aurait pas pu garder le même système, c'est-à-dire aller devant un juge de la cour fédérale?

**Mme Gauthier:** Évidemment, il semble y avoir une balance en faveur de la sécurité d'un État contre la sécurité des individus. Cependant, le Communication Security Establishment a le commissionnaire qui joue un rôle similaire au nôtre et qui doit s'assurer qu'il y a eu un certain équilibre et que les écoutes étaient justifiées et raisonnables. Ce n'est pas notre rôle à nous.

**Le sénateur Beaudoin:** Merci.

(Sen. Fraser: Ms Gauthier, while you were delivering your opening...)

(anglais suit)

(Following French)

**Senator Fraser:** Ms Gauthier, while you were delivering your opening remarks, I was whipping through your brief, and allow me to congratulate you on it. It does a wonderful job of conveying a great deal of relevant information in short, succinct, understandable language. Terrific.

I understand from my rapid perusal and from listening to you that you are expecting appeals from people listed only if those people are on the list because of something CSIS has done.

**Ms Gauthier:** Yes.

**Senator Fraser:** If they were on the list because of information sent to the Solicitor General by the RCMP or by our embassies or other sources, they would not come under your purview?

**Ms Gauthier:** It means that we would not have jurisdiction to review their position on the list. CSIS must be involved for us to be able to get the information.

**Senator Fraser:** I was taken by the description in your brief of the way you have evolved institutional policies, practices and institutional culture to protect the rights of the citizen, the complainant, if you will, while also protecting national security.

Given the desirability of such a culture, and that you already have it, would it be wrong to assume that you would be prepared to assume the mandate if it were given to you for everyone on the list?

**Ms Gauthier:** Yes, we would be ready to do that, under the conditions that we receive the proper resources to do it. However, we feel that we have the expertise. The process for hearings that we have put in place was recognized by the Supreme Court of Canada as a good means to get to the point. It also gives a reasonable process for the people appearing before us.

**Senator Fraser:** Further to Senator Murray's inquiry, I was not sure from what I heard you say and from what I was reading whether you thought that ought to extend to examination of the list prior to publication. I could see many practical problems with the type of delay that would need to be built in. Perhaps it should be subsequent to listing, as is now the case. You examine a complaint after the fact.

**Ms Gauthier:** Yes.

**Senator Fraser:** You do not get into prior restraint.

**Ms Gauthier:** It depends. By incident we could go into a file and realize there is something wrong, or there could be a complaint coming to us. It depends.

We must pay attention not to be in a conflict of interest. If we look at the list first and make the full investigation, we would then make a recommendation. If we receive a complaint on the same person, we would not make a recommendation unless there are new facts or new aspects at which we have not looked. We would be caught in our recommendation. Otherwise, it would be like a conflict of interest because we would have set things before reviewing.

**Senator Fraser:** It strikes me that timing may be very difficult here. These lists are to enable the freezing of assets. That is the kind of thing you may want to do very quickly.

**Ms Gauthier:** Sure.

**Senator Fraser:** If you must go through the entire investigative procedure before the name is added to the list, the assets may be long gone. They may have been transformed into a bomb and used to blow-up some place important.

(Take 1440 Follows - Ms. Gauthier continuing: You are right...)

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(1440)

**Ms Gauthier:** You are right. How could we review the entire list? For some files, it would be quite easy to do. However, there may be some that would require more time and a more thorough review of all the files.

**Senator Fraser:** The bill as it stands requires that the Solicitor General review the list every two years. I would assume that SIRC would find it an appropriate extension of its current mandate to take on that function rather than the Solicitor General performing the review.

**Ms Gauthier:** Yes.

**Senator Fraser:** Would you also find it appropriate to take on the review of other acts in this bill, for example, the review of ministerial certificates prohibiting disclosure of information? There has been some concern expressed about that one in particular.

**Ms Gauthier:** We do not know exactly what our role would be in that area.

**Senator Fraser:** The clause I am talking about does not give you any role at all. I understand you want clarification of the clauses where you are mentioned. There is a separate clause that states that the Attorney General may issue a certificate prohibiting the disclosure of information on grounds of national security.

**Ms Gauthier:** Yes.

**Senator Fraser:** That is what it states, period. It does not mention SIRC at all. Clearly, as the minister herself told us, you can always go to the courts. It has been suggested to this committee that the courts might or might not be able to do an adequate job of looking at the specific cases. Would you, as matters now stand, be in a position, if you have the resources, to undertake that kind of review?

**Ms Gauthier:** Yes, we would, because we have far more access to all the files than the courts do. We are in a better position to perform the work.

**Senator Fraser:** How many more commissioners and staff persons would you need to do all of that?

**Ms Gauthier:** It is difficult to say. It is a little premature at this time because we would need more information to determine that. Perhaps we would need more staff but not more members.

**Senator Andreychuk:** I would like to know more about how CSIS and SIRC operate. If I understand correctly, SIRC was set up after the MacDonald inquiry to make sure that the laws and the policies that govern CSIS would be adhered to, and that there would not be excesses or interpretations that a reasonable person would not make, given the Canadian circumstance. SIRC's role is to review CSIS activities to ensure, to the best of your ability, that they are following the rules, the practices and the act. Is that correct?

**Ms Gauthier:** Yes, you are right.

**Senator Andreychuk:** In that, you have no role to make any determinations. You cannot say who is the security risk. Except that, in reviewing the files, you see whether they use the proper tools. It is not a question of trying to substitute your own opinion for theirs, but rather it is a question of trying to ensure that they are adhering to the rules. Is that correct?

**Ms Gauthier:** Yes, we ensure that they are adhering to the rules, and at the end of an investigation, we make recommendations. We also report annually to Parliament and so our report is public. Sometimes, if we are not satisfied that our recommendations have been followed, we report in our annual report publicly.

**Senator Andreychuk:** Is there also a continuance of an internal review mechanism within CSIS, the inspector general?

**Ms Gauthier:** Yes, there is the inspector general within the Department of the Solicitor General. He is supposed to be the eyes and the ears of the Solicitor General. He reviews the day-to-day operations of the service and ensures that the minister is apprised of the activities.

**Senator Andreychuk:** I am having some difficulty understanding how you interpret clause 54 -- that you could, in fact, vet the lists. As I understand it now, CSIS will have a concern about someone in question of security, whether it falls under the Immigration Act, whether it is a terrorist activity, whether it is for refugee status or what have you. You will review it, however, at the moment, those names do not become public the way they will if this bill is passed.

**Ms Gauthier:** We have access to all CSIS files and access to all their documents. If they compile a list, we will have access to that list. Then, we can prepare a special report for the Solicitor General under section 54 of the act.

**Senator Andreychuk:** You are suggesting that this may be an appropriate way to function.

**Ms Gauthier:** Yes.

**Senator Andreychuk:** I understand that, at the moment, these lists do not occur; there are internal documents that identify people as risks, but there is no publication of that information.

**Ms Gauthier:** There are many files that contain information about people that are a risk to the security of Canada. However, they are not in line on a special list. There are many names of individuals and organizations, at the moment.

**Senator Andreychuk:** I certainly know of people who have complained about known activity against them by CSIS. That complaint has always been, "I do not

know what the case is against me, yet I cannot get a job because it seems that someone has talked to me." That has occurred after the fact.

**Ms Gauthier:** They could complain to SIRC if they are not satisfied.

**Senator Andreychuk:** That is right. That has been an extremely valuable role and that is the point I am trying to make.

**Ms Gauthier:** We must also be careful. If a person complains to us, it can sometimes prove to just be a "fishing expedition." Sometimes they want to know what the service knows about them and so they come to us for more information. They want to compare their notes to the notes of others. Therefore, we must be very careful.

**Senator Andreychuk:** Basically, you analyse the matter and it appears that all the rules were followed.

**Ms Gauthier:** Yes.

**Senator Andreychuk:** How would you contemplate being able, on a daily basis, which it may take, to be in a position to vet the list that CSIS will provide? At some points, in extreme emergencies, people are added to the list daily. In other times, it might not be for quite some time. However, there are regulations yet to be announced. How will the list be compiled? Do you believe you have the capacity and the mandate to vet the CSIS portion of the list prior to the list being turned over to the Solicitor General?

**Ms Gauthier:** We will have access to all the lists that they have. I understand that it is an ongoing process, and new names will be added or old names will be deleted. We will always have access to these files. We will be able to assess whether it is reasonable for the names of these persons or organizations to be on this official list. We would not change the decision of CSIS, but we would make recommendations to the Solicitor General.

**Senator Andreychuk:** I want to underscore how valuable the review is. Our concern is that a name becomes published and a person's reputation, career and life may be at stake if that name is published. Z

(1450 follows -- Sen. Andreychuk continuing: Will you be able to look at CSIS's list...)

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(Senator Andreychuk continuing)

Will you be able to look at CSIS's list expeditiously in the time-frame before those names are published?

**Ms Gauthier:** We could not do that with the bill as it is drafted at the moment. The public would like that it be said very obviously in the bill that no list will be published before it has been reviewed, or something to that effect.

**Senator Murray:** However, you do already have the authority. You said so.

**Ms Gauthier:** We have the authority to review, but we do not have the control of the publication of the list. If it is made public, it is public, and then we review.

We will always be able to review. It could be public, as Senator Andreychuk has said, before it could be reviewed.

**Senator Kenny:** Like Senator Fraser, I found the report well organized. It will assist the committee in noting the anomalies that you have.

I would like to follow on Senator Andreychuk's line of questioning briefly. I would like to get a better understanding of your relationship with CSIS.

Particularly, the report mentions that about 15 people are on your staff in total?

**Ms Gauthier:** Yes.

**Senator Kenny:** You have a budget of roughly how much?

**Ms Gauthier:** \$2 million a year.

**Senator Kenny:** You talk in the report of supervising somewhere around 35 complaints or 40 complaints a year that you receive?

**Ms Gauthier:** Yes, but not all of the complaints require hearings.

**Senator Kenny:** What about the clause where you monitor the law with operational policies and with ministerial direction. Could you describe for the committee how that works? In other words, how do you monitor whether these folks are behaving as they should. We are nervous because Mr. Elcock was here the other day. He said that he thought that he had a really good relationship with you. When the person being watched thinks well of the watcher, I get nervous.

**Ms Gauthier:** It is a healthy tension.

The Solicitor General issues ministerial directions and the service must abide by this direction. We have a research program for the year. During the course of our review of their files, we ensure that they abide by the ministerial directions.

**Senator Kenny:** Could you give us an example?

**Ms Gauthier:** As soon as the minister issues the directives, we ensure that they abide by these directives.

**Senator Kenny:** Could you pick an example of one that you have done in the past that would give us some understanding of how you function?

**Ms Gauthier:** CSIS cannot start to do operations with a foreign agency before the minister gives his or her approval of such an activity. It goes on and on. It is a big book of directions

**Senator Kenny:** They cannot start an arrangement with a foreign entity before the minister gives approval. You have said that. How do you check to see that they are doing what they are supposed to be doing?

**Ms Gauthier:** Our analysts go to the location of CSIS, and they have access to all of the files. They review documents, letters, telexes and everything.

**Senator Kenny:** How do you know you have seen all the files?

**Ms Gauthier:** I understand your concern about that. Sometimes there is a file or letter that we miss, or that they did not show us. However, if something like

that happens, there will be something else in another file that makes us realize that we did not get all of the information needed. We would tell them and they would explain why. It is a way to keep them on their toes.

They know that if not tomorrow, then next week, we will get at all the information. That is sure.

**Senator Kenny:** When you get to it, do you always report it or is it sometimes not made public?

**Ms Gauthier:** We always report or make recommendations, but sometimes it is reported publicly. If you have read our annual reports, it is written in such a way...

**Senator Kenny:** ...that we will not understand it.

**Ms Gauthier:** You will understand it, but you may not be able to know the facts exactly. However, it is there.

**Senator Kenny:** In your report to us, you made a point of underlining on page 2 that SIRC does not review security and intelligence activities. You list the Solicitor General National Counter-Terrorism Plan, the RCMP Criminal Intelligence Directorate, the Department of National Defence General Intelligence Division, the Communications Security Establishment, the Office of Critical Infrastructure Protection and Emergency Preparedness. The list goes on and on.

We had before us last night a gentleman who reviewed the CSE. He described his function for us. Do all of these other groups that you do not review have review agencies, with the exception of the CSE?

**Ms Gauthier:** I do not think that they have.

**Senator Kenny:** Should they?

**Ms Gauthier:** It is mostly the office of the Auditor General that reviews their activities with not the same eyes.

**Senator Kenny:** With a review for value for money or spending?

**Ms Gauthier:** It is more on that approach, yes. We have said in the past that the entire process of reviewing the various organizations where they collect information on Canadians should be done by Parliament, and the public should review that. We said in the last two annual reports that there was a need for that. Today we are busy with other matters, but it is still there.

**Senator Kenny:** Is your position that one agency should review them all or each agency should have its own reviewer.

**Ms Gauthier:** We could not say that one agency should review them all. Perhaps that puts too much power in one agency.

**Senator Kenny:** Is this a matter you discuss? Is this an official view or does Mr. Filmon have views on this?

**Ms Gauthier:** We are happy to discuss that because it is always of concern to us that the public and the rights of Canadians be protected. Yes, it is of concern. It was and it still is.

**Senator Kenny:** What do you think, Mr. Filmon?

**The Honourable Gary Filmon, P.C., Member of the Security Intelligence Review Committee:** To put it into perspective I have only attended my first meeting on SIRC, so I could not in any way be an expert on all of the things that they have reviewed in the past. I will say that from my brief discussions, there were areas of concern expressed about the disconnect in our ability to review other elements that come under security and intelligence in the country.

**Senator Kenny:** Finally, to be clear on Senator Murray's point, the review you suggested of on the list of Section 54 is a wish list for you. That is not something that you see in the bill, that is something that you would like to see. Am I not correct?

**Ms Gauthier:** It is not in the draft bill, I agree. However, under Section 54 of the act that guides us, access is given to all files and also we can make reports to the Solicitor General under our own initiative or upon request from the minister. We could review the list.

**Senator Kenny:** How long does it normally take from the start of the review to the finish of a review?

**Ms Gauthier:** Normally we go as fast as possible. However, it depends.

**Senator Kenny:** I notice that several slopped over from one year to the next.

**Ms Gauthier:** There are lawyers involved, and sometimes it takes more time. Normally, it is not a long time for review.

**Senator Kenny:** On average?

**Ms Gauthier:** If it is a special report like Section 54, we put all our capacity on the file and we do our best to go as fast as possible.

(Take 1500 Follows - Senator Kenny: Which would be...)

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**Senator Kenny:** Which would be roughly how long a time?

**Ms Gauthier:** It is difficult to say for this particular list because I do not know how many names there will be on it. It is difficult to say at the moment, but we would be ready to inform you in due time on the amount of time it would take.

**Senator Tkachuk:** I would like to examine the review process further. You say in Appendix A, page 2, that SIRC anticipates that almost all of the groups listed will file complaints with SIRC under section 41 of the CSIS Act in order to obtain more information or compare the summary of information provided by the judge in the summary. What happens? Would al-Qaeda write to complain that they are on the list, or would the IRA complain that they should not be on the list? What is the process?

**Ms Gauthier:** You are giving me examples that do not require much explanation. However, for a normal file, we would open the file and some analysts and people from our department, our committee and the lawyers will ask CSIS about everything they have on al-Qaeda, for example. We would then go to their office and review everything that they have and take notes. Depending on whether



we need a hearing, we will prepare some terms of reference because then you must open a fair process for the other party to be involved.

**Senator Tkachuk:** Could they have access to that information?

**Ms Gauthier:** Yes.

**Senator Tkachuk:** They will get all of the information that CSIS has on them?

**Ms Gauthier:** No, that is not the way it is done.

**Senator Tkachuk:** I am trying to find out how it is done.

**Ms Gauthier:** We prepare terms of reference to make sure that we give them enough to understand the requirement. However, we do not go into the details, operational activities or facts that would reveal sources or things of that nature.

They would prepare their case. We would then hear the service side of the question. If the two parties can be there together, then the other party will be there and we will be able to cross-examine the witnesses, similar to a real trial.

If it is not possible to have the two parties present in the room at the same time, then the service would present their facts and our counsel will act as the representative for the party who is not present. We would hear the party, and then we would prepare a resume of what we have heard without divulging sensitive information, but providing enough information so that it will be possible for them to defend themselves or to bring forward more facts and explanations. That is the way in which we proceed.

**Senator Tkachuk:** As an example, CSIS investigated the Tamil Tigers who were fundraising in Canada. The process you outlined would apply. They could come to you and say that they should not be on that list.

**Ms Gauthier:** Yes.

**Senator Tkachuk:** They could say that they deserve to continue to have charity status.

**Ms Gauthier:** Exactly. It will go through the courts, but they can always complain to us.

**Senator Tkachuk:** I would like to return to Senator Murray's point about you seeing the information before it was published. If you saw the information on the Tamil Tigers and it was published, does that hurt the integrity of the system if they come back to you afterwards and claim to be unfairly done by you?

What would happen if you had seen it beforehand? Do you give recommendations saying that the information is bad or good? Would it hurt the integrity of the process if you had seen the information before they had made the decision?

**Ms Gauthier:** I talked to you before about conflict of interest. That would be a concern. Each case must be looked at on a case-by-case basis. However, there is possibility for conflict of interest on our part if we accept, review and change our position.

**Senator Tkachuk:** We are all seeking ways to prevent injury, of course. We would like to find it in a less onerous process than what was suggested by Senator Murray.

However, we are all seeking ways to prevent injury because we believe that at one time or another there will be groups put on the list that should not be on the list. I wish to ensure that by suggesting this, that we do not have our hopes too high. Some organizations will be placed on the list in error. It could be a labour union or another organization. If you had seen the process, it could stop it. Thank you.

**Senator Jaffer:** I wish to understand the process. You talked about guidelines. Do you have any guidelines at all? You said that you did not have guidelines because it would be difficult for CSIS to carry out its work.

Do I understand by that that you have no guidelines as to how CSIS operates, in general?

**Ms Gauthier:** No, we do not have guidelines. We review everything that we can. We review all the documents and all the telexes.

What do you mean by guidelines exactly? Perhaps I do not understand.

CSIS does have guidelines. They have an act, first of all, and they have all the directives from the minister and also from their internal policies. Cabinet has priorities in the security intelligence. They abide by that.

We are completely independent. We report only to Parliament. Our guideline is fairness for Canadians, and that is it.

**Senator Jaffer:** I would like to understand if you monitor the specific cases that CSIS looks at, or do you monitor CSIS generally?

**Ms Gauthier:** we monitor generally, but it is vague. Each year we have a program with specific items that we want to review. In the course of the year, if something special happens, we will monitor more closely on that.

Also, we hear complaints as they come. That is how we proceed.

(Take 1510 Follows - Senator Finestone: I would like to...)

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(1510)

**Senator Finestone:** I would like to review this. As I understand it, we are trying ensure that we apply rigorous checks and balances to this bill to ensure that the rights of Canadians are protected. The job of SIRC, in a sense, is to ensure that those instruments we are using, such as CSIS and the Solicitor General, are applying the rights of Canadians in a fair and equitable way.

You will be looking at the lists of names that are compiled. Is that correct? That is causing some confusion for me. There are two sets of ways in which names of people will be entered on these terrorist lists. Names will be entered by CSIS, with the recommendation to the Solicitor General, and you will have the ability to verify those names, if the entry occurs before the fact. That creates one set of concerns. If the entry occurs after the fact, then it is, in a sense, too late.

**Ms Gauthier:** You mean after the fact --

**Senator Finestone:** If you look at the Statutory Instruments Act, it states that you will not have the cases gazetted and you will not know what you do not know. You will not know if a name is on a list or if it is not on a list. How do you know what you are supposed to know? I do not know if that makes sense to you. You do not know what you do not know. If the media or someone else wishes to know why there is a complaint about a specific name, will you not have access to that information? They are not obliged under the Statutory Instruments Act to gazette the information. That may sound like gobbledygook, notwithstanding the fact that that is how I understand it. I need some clarification from you, please.

Would one be able to review the name of an individual who has lodged a complaint because their name is on a list? In a sense, you cannot look at the information that they claim is not accurate, because it has not been gazetted, and you would have no way of accessing the name or the associated information.

**Ms Gauthier:** You are describing the reason why we think we will receive many complaints. People will want to know if they are on the list. People will complain to us that their names are on the list although they should not be. Then the process will begin.

**Senator Finestone:** How will you then access information to verify if whether they should be on that list, if they have been unfairly targeted?

**Ms Gauthier:** We have full access to all CSIS files.

**Senator Finestone:** Perhaps it is a CSIS file, and did I not know that.

**Ms Gauthier:** It could be RCMP files to which we have no access.

**Senator Finestone:** Am I right or am I wrong?

**Senator Kenny:** It is not necessarily a CSIS file.

**Senator Finestone:** That is right. It is not necessarily a CSIS file. The Attorney General has issued a prohibition certificate, which puts them, in a sense, out of any kind of attack or review.

In the United States and in the United Kingdom, we have heard, these names and these certificates are reviewable; in Canada, they are not reviewable. My question is whether you have access, whether they are reviewable by you and not by the courts?

**Ms Gauthier:** They will be reviewable by the court in the proposed legislation. Why do you say that they would not?

**Mr. Filmon:** Are you saying that they would be reviewed before they are made public?

**Senator Finestone:** Yes, there were two points, Ms Gauthier: before the names are listed and CSIS provides the information to the Solicitor General; and after the names are listed where that prohibition --

**Senator Fraser:** If I may, my understanding is that we were told that the famous lists will be published in the *Canada Gazette*.

**Senator Finestone:** But the information that is on the list or the reason why it is on the list are not published.

**The Chairman:** If I may, we are getting into debate. Perhaps we can do that during a break. We have three other senators who would like to ask questions.

**Senator Finestone:** Essentially, Madam Chair, I wanted to know what strength section 54 of the CSIS Act gives SIRC the right to review when the names have been published.

**Ms Gauthier:** Under section 54 we have access to all CSIS files, and we could work on our own initiative or at the request of the Solicitor General. The list does not have to be published for us to begin our work.

**Senator Joyal:** I have a very specific question about the nature and the scope of your capacity to review decisions that could be made by the Minister of Justice, by the Minister of National Defence or by the Minister of National Revenue. I refer specifically to clause 87 and the Access to Information Act; to clause 103 and the confidential agencies; and to clause 105 and the Privacy Act. It states that the minister can issue a certificate declaring that information related to either international activities or foreign activities or national defence or security are involved. As such, those agencies such as the Commissioner to the Access to Information or the Privacy Commissioner and the other commissioners are barred from knowing why the decision was made and what was behind the decision. I understand from your mandate that, if the reason for which the decision was made does not pertain to CSIS, you have no capacity at all for any of those commissioners or authorities to be informed or to scrutinize the decision in a satisfactory way.

**Ms Gauthier:** You are right, Senator Joyal.

**Senator Joyal:** You said that you have far more access to the information than the court has. To which documents in particular are you referring, if, for example, there were a case before the court? Would you have more access to the documents than the court?

**Ms Gauthier:** Those would be the operational files. We can review, for our own satisfaction, all the files in the service's offices. The court and the judge will receive evidence such that he or she will only see what is provided for the court by the CSIS counsel. He or she will present what any good lawyer would provide. We have far more access to all of the files. We do not care if the file has been presented to us; we see all there is on the particular issue.

**Senator Joyal:** In other words, in the case of the new immigration bill, C-11, there is a provision for 72 hours in which to decide if a person represents a security risk to Canada and to decide what is to be done. What is the capacity of your service, if the person is denied access to Canada, to review that decision?

**Ms Gauthier:** Are you referring to the amendment in the new bill?

**Senator Joyal:** Yes.

**Ms Gauthier:** We would not be involved there. We are not involved in that new process, because it will go directly to the court. Only if the person, within the 72 hours, realized that we exist, he or she could complain to us. Then, we would

start our own process. That does not mean it would be ready by the 72-hour deadline.

(1520 follows -- Ms Gauthier continuing: The person would have to...)

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(Ms Gauthier continuing)

The person would have to know about our existence to complain to us.

**Senator Joyal:** In other words, the capacity for you intervene within 72 hour is limited. You cannot stand a file by saying that you are reviewing it because of some of the information provided. The direction to stand the file comes from CSIS, and as such the file is under our investigation?

**Ms Gauthier:** We would not know about all of the cases going to the court. In our general review of CSIS activities, of course, we will know that special cases are going directly to the federal court. We will be inclined to look at these files it to see how CSIS acted in these files.

However, it will be after the fact. It will give us an opinion on how CSIS acted.

To answer your question on this particular person, within 72 hours, there would be no way for us to intervene without that person coming to us.

**Senator Wilson:** The bill worries me, particularly the definition of terrorism in the preamble. I will ask a more general question here in the context in which you operate.

I would like your comment on this. I am obviously a terrorist from that definition and could be on that list.

**Senator Prud'homme:** As I could.

**Senator Wilson:** Yes, it is very broad. Clause 83.01 addresses any act in or outside of Canada that is committed for a political, religious or ideological purpose, objective or cause. I have devoted my life to supporting causes, for example, the African National Congress in South Africa to overturn apartheid, which was certainly to disrupt the essential services and overthrow. I think of my support for the Kurds. I think, domestically, the interference with essential services that have been undertaken in Canada by the teachers and the nurses.

Certainly they are illegal acts but are they terrorism? I am not at all happy with the definition of terrorism that is in the bill, which is so wide that it could capture almost anyone. I would like to have your comments on that.

**Ms Gauthier:** You are right; it is a very broad definition of terrorism. It would be more cumbersome in of the burden of proof to establish that it complies with the definition. It will be open to the courts and to the lawyers to debate on the application of the definition. They would need to determine if any activity is within the definition of terrorism. There will be debate on that.

We are more at ease and more knowledgeable about the definition of terrorism under section 2 of the CSIS Act, which is in place since 1984. The definition is not as broad, but it has been applied in a very good manner so far.

I am not defending one definition in comparison to this new definition of terrorism. However, this one is for other agencies, it is not only for CSIS. It has a broader application. Perhaps at this point in time in the history of Canada, the public is ready to go with this definition.

**Senator Wilson:** Perhaps it is not.

**Ms Gauthier:** Perhaps it is not.

(French Follows - Senator Prud'homme: Je remarque que...)

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(après anglais)

**Le sénateur Prud'homme:** Je remarque que les cinq membres du comité sont aussi membres du Conseil privé.

(Sen. Prud'homme: I have asked that question before and I voted against...)

(anglais suit)

(Following French - Senator Prud'homme continuing)

I have asked that question before. I voted against CSIS in 1984. I have never apologized. I thought that we should have modernized the RCMP. That is a long story, and we will get back to that at the end of the day.

I read your brief, and it is very interesting to see the numbers. I wish that this would be part of the testimony. However, the number of people who are looking into security is high.

(French follows - Senator Prud'homme continuing: Vous nous avez...)



(après anglais) (Sen. Prud'homme)

Vous nous avez fait la liste de ce que vous n'examinez pas. Tout le monde a sa chapelle et moi, je crois que concernant les questions de sécurité, plus qu'il y a d'organismes, plus il y a de désordre, plus il y a de la difficulté de coordination. On l'a vu et aux États-Unis avec au-delà de 30 organismes et c'est l'imprévisible catastrophe qui s'est produite.

La question suivante, je l'ai déjà posée au comité sur la sécurité. Vous êtes assermentés comme membres du Conseil privé pour des raisons publiques évidente, mais votre personnel qui analyse et qui vous soumet des rapports, sous quel secret est-il tenu, puisque votre personnel ne fait pas partie du Conseil privé?

(Sen. Prud'homme : Finally, I join with...)

(anglais suit)

(Following French - Senator Prud'homme continuing)

Finally, I join with Madam Wilson, I am very troubled by page 13, which reads: "an act or omission, in or outside Canada, (i) that is committed (A) in whole or in part by a political, religious, or ideological purpose, objective or cause..."

(French follows Senator Prud'homme continuing: C'est tellement...)

(après anglais) (sen. Prud'homme)

C'est tellement vaste que cela peut englober tout ce qu'on voudra. Tous les services de sécurité le savent, je ne cache pas mon appui à la cause palestinienne et ce, depuis 40 ans.

(Sen. Prud'homme: It has been...)

(anglais suit)

(Following French - Senator Prud'homme continuing)

It has been 40 years that I have been trying to convince people that the Palestinian question is a very important question. I lost my energy, but I am still here.

Under this definition, you can catch half the members who show up to meetings talking about the Palestinian cause to a group of people who claim, rightly or wrongly, that they should have their land.

That is only one of the examples. Senator Wilson has named others. That is troublesome for some of the members on the committee. You know them.

Senator Finestone is a devoted human rights person. All of my colleagues are strong defenders of freedom. Our job is to try to get the best bill.

I know someone who was told that if he did not cooperate, he and his organization would be put on the list. Is that the kind of Canada we want to see developing? I am not too sure. I would hope not. However, this is being done. If you do not cooperate, and I am quoting exactly, "we will have you and your organization and/or your organization on the list."

(French Follows - Ms Gauthier: Pour repondre...)

(après anglais)

**Mme Gauthier:** Pour répondre à votre première question, tout notre personnel est soumis à la Loi sur les secrets officiels et possède la cote sécuritaire de troisième niveau. C'est la norme régulière.

Concernant votre deuxième question, je comprends très bien vos préoccupations et il faut des gens comme vous pour débattre du sujet comme vous faites. Nous vivons dans un pays libre et il est important que les Canadiens le sachent. Il ne faut pas que cela change, mais dans les circonstances exceptionnelles que nous vivons, je pense qu'il y a avait des mesures à prendre et le gouvernement fait des recommandations à cet effet.

(Mme Gauthier: Les gens qui croient....) (français suit)

(Following French, TAKE 1530)

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(après français)(Mme Gauthier)

Les gens qui croient être maltraités ou qui auront été sur les listes pourront encore, je crois, dans notre pays, faire réviser ces décisions. Je ne veux pas dire que ce sera facile ou agréable, mais ce sera encore possible. Des organismes comme le nôtre sont là et vont tout faire pour aider ceux qui voudront se présenter devant nous.

(The Chairman: Thank you. Sen. Murray: Madam Chair, I have a request...)

(anglais suit)

(Following French)

(1530)

**The Chairman:** Thank you.

**Senator Murray:** Madam Chair, I have a request of our witnesses, before they leave. It would be helpful, indeed important, if they were to provide for us, in writing, a precise indication of what changes, they believe to be necessary in this bill to accommodate some of the preoccupations that they have expressed in appendix A. For example, in respect of the Official Secrets Act, their role and the responsibility of their committee is left undefined in the bill. In respect of the Canada Evidence Act, they mentioned that the potential requirement that they would have to disclose summaries of *ex parte* proceedings could prove problematic. They said that would also apply in respect of the Charities Act and the absence of counsel during an *ex parte* proceeding. They pointed out that their designation for purposes of a grievance under the Public Service Staff Relations Act, and the current wording of the statute that governs them, do not give them jurisdiction to entertain this kind of complaint.

In a nutshell, we should invite them to let us have in writing an idea of what changes, if any, they think are necessary. Also, we might put them on notice that, if this bill passes the House of Commons and if it receives second reading in the Senate and is referred to this committee, we may wish to have them back then.

**The Chairman:** Thank you, Senator Murray. I agree that would be very helpful to the committee. We would be pleased to receive that information.

**Ms Gauthier:** We will do that with great pleasure. Thank you.

**The Chairman:** Thank you. Honourable senators, we are pleased to have with us this afternoon Mr. George Radwanski, Privacy Commissioner of Canada. Please proceed.

**Mr. George Radwanski, Privacy Commissioner of Canada:** Honourable senators, I appreciate the opportunity to speak with you today. There are important issues before us. As you will hear, I wish to enlist your help and your active interest in one aspect of this matter that concerns me a great deal.

I will begin by saying that since I took my position a little over one year ago, I have been saying that privacy will be the defining issue of this new decade. There were many reasons for that, even before September 11. Now, I believe that will be the case more than ever. Privacy, as you know, is a fundamental right, recognized as such not only by Canadian law, but by the United Nations. It is not only a fundamental right, but it is a right from which a great many of our other freedoms flow -- freedom of speech, freedom of assembly, freedom of expression -- and just about any freedom you can name.

The challenge we face, after September 11 and the response that obviously will go on for some time, is to ensure that Canadian values and freedoms, of which privacy is a very important one, continue to endure.

I have had occasion to say that this particular terrorist offensive is even different from some other ones. Usually, terrorism is aimed at a particular limited goal, whether it be the replacement of a particular government or independence for

a particular area. This particular type of terrorism is really an attack on values -- values of the United States but, by extension, on all western values and our freedoms. The quality of our response in respect of self-protection without sacrificing what is fundamental to our approach to society is the great challenge we face in all of this.

That being said, I wish to make it clear that, as Privacy Commissioner and as an officer of Parliament, I certainly would not stand in the way of changes or initiatives that must occur to make us safer, even if they must involve some limitation on the existing right to privacy.

By the same token, I would not and cannot, by virtue of my position, acquiesce to any unnecessary or greater than justified limitations or restrictions on the right to privacy.

I believe that any initiative that would seek to limit privacy rights must be looked at individually -- case-by-case -- and calmly and on its own merits. A certain number of specific tests should be applied. First, any such limitation on the fundamental right to privacy must be demonstrably necessary to meet some appropriate goal in terms of making us safer or combating terrorism. It must be demonstrably likely to be effective in achieving that goal.

(1540 follows -- Mr. Radwanski continuing: The restriction or limitation of privacy...)

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(Mr. Radwanski continuing)

The restriction or limitation of privacy must be proportional to the benefit to be derived in terms of security, and it should be demonstrable that no less privacy invasive measure would suffice to achieve the same end.

Measured against those criteria, I must say that from the perspective of privacy, I find Bill C-36 on the whole, with one glaring exception to which I will come, to be a well thought out and balanced piece of legislation that strikes a reasonable balance between the obvious need for enhanced security and not limiting privacy rights more than necessary.

The exception, however, is an enormous one. It deals with clause 103 and clause 104 of the proposed bill.

I will go back a step and explain that last week I met with the Minister of Justice and requested a briefing, obviously not having seen the bill, but as to the directions it would go, particularly with regard to any provisions that would affect privacy rights in the hope that we would have a chance to consult and discuss provisions. If there would be anything of a concern there would be an opportunity to make those concerns known and try to build privacy concerns into the bill before, not after the fact.

In the context of that briefing I was told that there would be a provision that would enable the minister to issue a certificate prohibiting the disclosure of personal information under the Privacy Act to individuals for reasons of security, international relations or defence.

I pointed out at the time that I do not have, as it stands, the power to order the disclosure of anything. I am an ombudsman; I can only make recommendations under the act. There are in the Privacy Act, and in the new private sector law, very specific exemptions from disclosure for such matters as national security for the materials gathered by an investigative body and so forth.

The response I got from senior justice officials was, yes, that is so, but because my finding something is exempt under the act are subject to appeal and review by the federal court there was at least the hypothetical possibility that the federal court could order the disclosure of some highly sensitive anti-terrorist information. As long as this hypothetical possibility existed, some other countries might be unwilling to share sensitive anti-terrorist information with the Government of Canada for fear that some federal court judge, somewhere, some time, might order its release.

Quite frankly, I did not think that was a particularly real concern. In fact, almost 20 years that the Privacy Act has been in effect, there have only been four instances where a federal court judge did order the release of some personal information for which exemptions had been sought.

However, if that was all that was being done, my feeling was that I could live with it in the circumstances. The bill, however, goes far beyond that.

I would particularly focus in this regard on clause 104 because that touches on the Privacy Act. The first part, as you know, would amend the Privacy Act through clause 70.1. The Attorney General of Canada could at any time personally issue a certificate that prohibits the disclosure of information for the purpose of protecting international relations, national defence or security. It is a very general statement.

The next part, which I was not told about, is really interesting. This bill does not apply to information the disclosure of which is prohibited by certificate under sub clause (1).

The first effect of this provision is that not only could there not be disclosure to the individual under such a certificate, but this also removes the possibility of oversight. The Privacy Commissioner would no longer be able to review the material.

As you know I am security cleared to the highest level. I regularly have occasion to review CSIS files. My predecessor conducted an audit of the security establishment. We are able to examine this stuff without releasing it, of course.

The first effect would be there could be no oversight, no possibility for the Privacy Commissioner to say either in a particular instance to suggest to the minister that perhaps the certificate is too broadly drawn and that perhaps some information could appropriately be released. Nor is there the possibility to review the use of certificates and suggest, without ever disclosing the content in any instance that perhaps they are being used over broadly or excessively or for reasons that have nothing to do with the stated goals. That is problem one.

Problem two, which is far worse, is that the way these provisions are drafted, they could have effects far beyond preventing the release to an individual of any given file about himself or herself.



The bill this is drafted to allow the minister to issue a certificate, basically prohibiting disclosure of information whole sale by a given agency, say CSIS, the Communications Security Establishment, the RCMP or a Department of government, say Citizenship and Immigration.

This is drafted with nothing to stop the minister in a worst-case scenario from issuing certificates for every single agency and department of government prohibiting release of information. I am not suggesting that the incumbent minister has any such plan. However, legislation should not be drafted in a way that permits things far beyond its intended scope.

Were the minister to issue a certificate in respect of all information in the possession of a given agency, this would not only mean that it could not be disclosed to individuals who apply for it and could not be reviewed by the Privacy Commissioner, it means that this act does not apply. That means not only the access to personal information provisions do not apply at that moment, but all the provisions of the Privacy Act do not apply, which includes, collection, use, sharing with anyone else, and cross matching.

In the absolute worst case scenario that this legislation as drafted permits, and granted it is the extreme, and laws should not be written that way, it will be possible to repeal the entire Privacy Act by a series of such certificates. The government would be free to compile giant dossiers on every individual, and to collect, match, and use information in any way it wanted. The government would not even be precluded from disclosing it to anyone it wanted, including employers and insurance companies. You name it.

The bottom line is that this is discretion and provision far beyond what is necessary, and certainly that bears no relationship to the stated goal of ensuring that the federal court could not release information. The bottom line in that regard is that we live in a country based on the rule of law, and this provision would have the effect of substituting ministerial discretion, ministerial fiat, for law that governs a fundamental right of Canadians.

Frankly, it is not justified, and it is not necessary, certainly not in terms of what they have suggested. My officials and I have developed an amendment that I believe would address this. As soon as the provisions in the laws as they are became clear to me and as soon as we had analyzed them, I requested a meeting with the Minister of Justice to discuss my concerns. She could not find the time. I requested a meeting with top officials. Mr. Rosenberg, the Deputy Minister was prepared to meet with me on November 1, 2001. I had requested an opportunity to meet with either the minister or the officials in advance of my appearance this morning before the house committee or this afternoon before you in the hope that I would be able to say definitively that this is a problematic provision.

(Take 1550 Follows - Mr. Radwanski continuing: We have had...)

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(1550 – Mr. Radwanski continuing)

We have had good, constructive discussions, I am confident that the problem was understood and will be fixed. Regrettably, I am not in a position to tell you that.

The amendment that I would recommend, and I believe copies have been prepared and have been passed around, would meet exactly what the stated intention of this was -- to amend the Privacy Act and similarly the Private Sector Act to create new subsections 51 (4), (5) and (6). They would be as follows:

(4) The Attorney General of Canada may at any time following an application to the federal court under section 41 or 43 personally issue a certificate that prohibits the disclosure of information for the purpose of protecting international relations or national defence or security.

(5) The Attorney General shall cause a copy of the certificate to be served on:

(a) the person presiding or designated to preside at the proceeding to which the information relates or, if no person is designated, the person who has the authority to designate a person to preside

(b) every party to the proceeding

(c) any other person who in the opinion of the Attorney General of Canada should be served.

(6) The Statutory Instruments Act does not apply to a certificate made under subsection (4).

This would address the wish to ensure and give other countries comfort that there are no circumstances under which this information could be made public by order of the court. However, without enacting a law that by its very nature could strike at the very heart of the Privacy Act and of privacy rights.

The Minister of Justice was asked a question in the House in question period today. She responded that the amendment in question gives her very limited powers in very limited circumstances. Regrettably, though I do not doubt that was the intent or I hope that was the intent, that is not what the law says. It gives the minister unlimited power in unlimited circumstances. I am here to ask you, honourable senators for your help in ensuring that this provision does not become law in this form. Thank you.

**Senator Beaudoin:** I have one question on the proposed amendment. I agree entirely with you, Mr. Radwanski, that privacy is the main concern of us here. I also agree that the federal court should be involved. My only concern is with the wording of the amendment. "The Attorney General of Canada may, at any time following an application to the federal court..." Does this mean that the Attorney General may act before the ruling of the court? If not, there is no protection at all and therefore, the amendment will be useless. Why do you say "at any time?"

**Mr. Radwanski:** The Attorney General may act at any time following an application. In other words, the moment an application is filed, the minister can intervene with a certificate that precludes review by the court. However, at any time thereafter, meaning that if, for instance, somehow the proceeding starts and it comes to the attention of the minister that this particular case is problematic, the minister could still issue the certificate during the proceedings. It does not have to be only before the proceedings. Perhaps senators would have ideas to refine it further, because I do not purport that it is or needs to be the final word. The point is that if the concern is to prevent review by the federal court of sensitive cases, then the legislation needs to be drafted to prevent review by the federal court

where a minister issues a certificate, not to prevent oversight by the Privacy Commissioner and not to commit, in effect, the dismantling of the operation of the whole of the Privacy Act quite apart from any action of the federal court. That is the intent. That is why, anytime following an application, it can certainly be the moment an application is filed or it could be three weeks into the hearings.

**Senator Beaudoin:** I am in favour of an equilibrium. It is a difficult matter, but it is not bad to have the judicial branch of the state involved because they are a neutral party. If it is a question of policy, it should then go to the minister, but if there is a question of law, the court is in a much better position to rule on this.

Either the court has the power or it has not. If the court has no power, then we do not need an amendment. However, if the court has the power, I am not aware of any precedent where we or the executive will act before the court rules. We have access to the court and we ask the court to tell us what the law is and what the charter of rights is. We should give them the right to make their ruling. I do not think the executive should intervene at that stage.

**Mr. Radwanski:** Senators, the difficulty is this: As I said at the beginning, I am not persuaded that this provision is absolutely necessary at all -- this entire set of proposed amendments in these clauses.

In nearly 20 years, the federal court has actually intervened on review to order disclosure of information on only four occasions. This hardly strikes me as a problem that would require such a drastic measure. However, the Department of Justice may say that they must curb the power of the federal court to order disclosure of personal information under the act because otherwise, other countries will not share information with us. I have no basis for knowing how valid that concern is or how serious a problem that is.

If you can persuade them to drop the amendments -- clauses 103 and 104 -- that is wonderful. My concern is that if they are determined that review of the federal court of request for access to personal information, where there is some security, international relations or defence consideration, must be precluded, my attempt was to limit the effect of these amendments to precluding review by the federal court. Let us not, above all, end up precluding not only review by the federal court, but also oversight by the Privacy Commissioner, and not only oversight by the Privacy Commissioner, but also the operation of the whole Privacy Act.

My worry would be that one not get bogged down in an argument about the powers of the federal court in such a way as to let this amendment slip through to create far greater harm -- to basically gut the Privacy Act.

I am quite sympathetic to the broader point you are making. I am simply being pragmatic when I say that I am not persuaded the government can be brought to wanting to curb the possibility of such information being released. At the very least, I would like to circumscribe these provisions to their stated intent.

**Senator Beaudoin:** The idea is good, and I will think about it. If I find a solution in alternative wording, I may let you know, but the idea is certainly good.

**Mr. Radwanski:** The intent is, if the purpose of these provisions is to limit the Federal Court, to limit the federal court and nothing else. That is really all I am saying.

(1600 follows -- Sen. Beaudoin: When we address ourselves to a court...)

Victoria Aucoin/Anti-terrorism #38348/October 23, 2001.

(Following Take 1550, Mr. Radwanski, That is all I am saying. TAKE 1600 begins here)

**Senator Beaudoin:** When we address ourselves to a court, I am a bit reticent to say that I will stop them.

**Mr. Radwanski:** You must be careful that that reticence does not lead to the acceptance of this broader provision, which is not as openly aimed at the court but it has that affect and more. That is the problem we face, if you follow me.

**Senator Beaudoin:** I will think about it.

(French follows: Senator Bacon, Monsieur le...)

mcl -- 23-10-01

(après anglais)

**Le sénateur Bacon:** Monsieur le commissaire, je disais tout à l'heure qu'une valeur chère aux yeux des Canadiens est le droit à la vie privée et la garantie que ce droit est respecté et protégé.

Certaines dispositions de la loi C-36, combinées avec celles du projet de loi C-24, facilitent l'utilisation de la surveillance électronique. Le fait de ne plus avoir à prouver que la surveillance électronique est un dernier recours est-il quelque chose d'essentiel pour que le SCRS recueille des informations efficaces dans le but d'arrêter les terroristes sur notre territoire ou s'agit-il d'une mesure trop large et trop contraignante au droit à la vie privée et qui n'offre pas un réel avantage pour la sécurité de la population?

Je réfère ici à une fiche d'information que nous avons lue sur la loi antiterroriste qui reliait cela avec le projet de loi C-24. Ne croyez-vous pas que la période de validité de l'autorisation d'écoute électronique qui passe de 60 jours à un an soit nécessaire à la bonne marche des activités du SCRS ou s'agit-il là d'un moyen proportionnel aux objectifs recherchés?

**M. Radwanski:** Je crois que ces amendements ne dérangent pas tellement. Que ce soit le dernier ou l'avant-dernier recours, il arrive parfois qu'on veuille agir avec les méthodes les plus efficaces et les plus rapides. Que ce soit le dernier recours ou non, je ne pense pas que cela soit tellement grave.

(M. Radwanski : There is no question that it is a limitation...)

(anglais suit)

(Following French, Mr. Radwanski continues)

There is no question that it is not a limitation. Frankly, it is the most effective way but not necessarily the only recourse. I can see the argument in the circumstances we face. It is the same for the situation involving the length of the warrant or “before notification.”

I am prepared, again, in the context of finding the right balance, to accept that, in the circumstances we face, if the authorities believe this is necessary and helpful, it does not dramatically change the circumstances. As a practical matter, I am informed that it is not all that difficult in many instances to obtain a warrant if one wants to do so, but it can have built-in delays involving not having the right judge in some instances, to be totally candid. These are provisions that limit privacy, but we are in an extraordinary situation since September 11. It does not seem to be improving at this point. I am prepared to accept that a reasonable balance still remains between security and privacy rights while accepting these amendments.

(French follows: Senator Bacon, Est-ce que le....)

(après anglais)

**Le sénateur Bacon:** Est-ce que le procureur général pourrait soustraire de l'information accessible au comité de surveillance du Service des renseignements et priver le SCRS de remplir son mandat?

**M. Radwanski:** Je m'excuse, je ne comprends pas exactement votre question.

**Le sénateur Bacon:** De l'information est actuellement accessible au comité de surveillance. Cela signifie-t-il que le procureur général pourrait soustraire de l'information actuellement accessible et priver le SCRS de remplir son mandat?

**(M. Radwanski: I don't think that's what this provision says...)**

(anglais suit)

(Following French: Mr. Radwanski continues)

I do not think that is what this provision says. However, with this provision in place, the minister could prevent disclosure to the individual under the Privacy Act. Under the Privacy Act, every Canadian has a right to request and obtain access to the information that the government has about him or her and to review it to ensure that it is accurate, except for a list of exemptions which includes national security, and so on. This would enable the minister to prevent that disclosure in the first instance. It is not aimed at other security bodies. On the contrary, it is aimed at the individual right. However, it would also prevent not only that individual from obtaining that information but also the Privacy Commissioner from reviewing whether the certificate is appropriately used, or worse. The way the second part is worded when it says that the act would not apply could have the effect of giving the government free reign to collect information in ways it would otherwise be prohibited by the act; to use it in ways it would otherwise be prohibited by the act; and to share it and disclose it, lord knows where, in ways that would otherwise be prohibited by the act. In such a circumstance, it would have the effect of making the act inoperative.

Nothing in this bill limits the actions of security acts. As I explained, I now have oversight over the Communications Security Establishment and CSIS with regard to whether they are obeying the law and respecting privacy rights, even while carrying out the work which is mandated under law -- or the RCMP, for that matter. This bill could remove all oversights and all restrictions that the Privacy Act imposes and give them a free reign, for no reason, because the Privacy Act is not a threat to security. The Office of the Privacy Commissioner is not a threat to security, so there is no justification for provisions that are drafted as if the opposite were the case.

**Senator Andreychuk:** You have answered most of the questions I had. Basically, you are saying that there would be no check or balance on the executive exercising this power and there would be no assurance of any privacy being protected for individuals in Canada?

**Mr. Radwanski:** That is right. I am saying that, for the stated purpose of achieving a very small thing, precluding a repeat of the four times in 20 years phenomenon of the Federal Court overturning an exemption for some information -- that is, to achieve that limited goal -- these are provisions that give the minister the power by fiat, at the stroke of a pen, to nullify all the privacy protections that Canadians have in their dealings with a government department, with a government agency, or with the whole Government of Canada. Without having to suggest that any minister would do that, the fact is that we do not normally draft our laws in the hopes that the worst will not necessarily happen or will not transpire. We draft our laws to achieve their stated purposes and to ensure that fundamental human rights that the Parliament of Canada has recognized and seen fit to protect with this legislation cannot be arbitrarily withdrawn by a single individual.

(TAKE 1610 follows, Sen. Andreychuk: You have alluded to four cases in the courts,...)

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(1610)



**Senator Andreychuk:** You have alluded to four cases in the courts. That does not help me unless I know how many applications have been to court.

**Mr. Radwanski:** In all fairness, senator, I do not have that information, but I can try to get it for you. We did a quick review. There is not a large number of these applications. Normally, people apply to the Privacy Commissioner when they have been refused access to the personal information. If it has been refused on the basis of an exemption because it is in one of the banks, I have to inform them that, because of a certain provision being invoked, I cannot even confirm whether, in fact, there is information about them or not. I can only tell them that if there were such information, it would be exempt from disclosure under such-and-such a provision.

I have to tell them that, having reached this finding, if they wish they may turn to the federal court for review of this finding.

**Senator Andreychuk:** If we go back to your annual reports of the Privacy Commissioner...

**Mr. Radwanski:** I suppose it would be possible to calculate. There is not a large number of these cases because it costs money and the chances for success are very slim. The four cases that I cited are quite limited disclosures. Usually there is only a partial disclosure or a portion of the information that was really not that sensitive.

**Senator Andreychuk:** I found your opening statement rather compelling as to how a government should go about intruding on privacy by taking the least intrusive method in curtailing rights and freedoms.

We have known about terrorism for some considerable time, although perhaps we have not acted on it by way of legislation or otherwise.

The minister came before us and said this was not an emergency. She was not asking for this legislation because of an emergency situation, thus characterizing these changes to the Criminal Code and the consequential amendments to all these acts as an ongoing need. Would you have a different opinion if it were characterized as an emergency?

**Mr. Radwanski:** I would not, senator. It is an interesting question. I know there is debate about sunset provisions versus review.

**Senator Andreychuk:** I am thinking more along the lines of the Emergency Measures Act and the War Measures Act versus the ongoing need to deal with terrorism.

**Mr. Radwanski:** The government could have invoked the War Measures Act and curtailed everyone's freedoms.

**Senator Murray:** It does not exist any longer.

**Mr. Radwanski:** The government could have passed similar legislation that would have curtailed everyone's freedoms, but it chose not to do that.

Do we face an emergency situation? It is, only to the extent that people are crashing airliners into tall buildings and other persons unknown are doing regrettable things with anthrax and lord knows what will happen next. Sure, it is

an emergency situation. However, when we have cause to be frightened and to feel uncertain about what happens next, it is all the more important to reaffirm our commitment to our core values. We will say, yes, to doing what it takes to make ourselves safer, as reasonable, not simply to make ourselves feel safer, with extravagant though ineffective measures, and certainly, we will not devour ourselves wholesale. We will not move away from the very core values of freedom, of which privacy is one, that make our society what it is, because that would be a terrible victory for terrorism.

To answer your question, would I feel differently? I would not, because someone would have to demonstrate to me on this issue why it is necessary to suspend other aspects of the Privacy Act and why we are safer from terrorism if the Privacy Commissioner who, after all has no powers to disclose anyway, has the power of oversight and is able to say to tell a minister such things as: "I really think you might not need to have the certificate quite this broad;" or "Look, certificates are being issued for reasons that clearly have nothing to do with security or international relations or defence."

I do not think this is a great victory for terrorism and I do not think it makes us one iota less safe. It reaffirms our core values. From that point of view, the argument of emergency should never be applied to forget everything and do whatever seems good at the moment, without proving necessity, effectiveness or justification. That is not the way this country operates, and it has not been the way this government has approached this whole matter.

I had really wished, quite honestly, that having brought this concern, which I had hoped was a drafting error, to the attention of the Department of Justice, or to the minister's office, they would have understood and offered to fix it. It would have taken time to make the changes to the wording, but they could have addressed it.

I became very concerned when I did not receive that response, but rather a very vague suggestion to meet with me sometime to discuss my concerns. They were open to amendments, but nobody actually said that I was right and that they intended to do this. That concerns me very much.

I hope the assembled intellectual power of this room can persuade them of the error of this particular approach.

**Senator Finestone:** The outline that we received from the justice committee states:

The legislation, which is an antiterrorism act, is an important part of our commitment to defy and defeat the renewed threat that terrorism poses to all civilized nations. This legislation essentially parallels the actions of our international partners. We include rigorous checks and balances to ensure that the rights of Canadians are respected.

It also states that it meets the requirements of the charter. Mr. Privacy Commissioner, do you feel that it reaffirms core values the way that it is drafted?

**Mr. Radwanski:** It does not, in those clauses, senator.

**Senator Finestone:** Those clauses are found to affect the Access to Information Act, Bill C-6 in respect of the Personal Information Protection and

Electronic Documents Act and the Privacy Act. The language is identical in all three cases.

You said something that I think should cause some concern. You believe that a certificate of prohibition by the Attorney General could essentially wipe you off the map. That means it could also wipe the Access to Information Commissioner and his responsibilities off the map as well as wipe Bill C-6 off the map. I do not think so. I do not think you meant it to that extent.

**Mr. Radwanski:** I do not believe that there is any likelihood that the minister would choose to do so. However, the law should not be drafted in such a way as to permit it. The way it is currently worded, there is nothing to prohibit or to prevent the issuing of a flurry of certificates.

It does not even say "information about an individual." It simply says "information." Therefore, there is nothing that would, in the law, prohibit the issuance of a certificate pertaining to every department.

I am not saying that will be done, but laws should not be drafted in such a way as to permit such a thing. It does not even take the minimal step of saying: "The minister may issue a certificate prohibiting disclosure of information about an individual," which would prevent at least wholesale disclosure. It does not even go that far.

**Senator Finestone:** Let us suppose that you are dealing with me, an individual, not with a charitable organization. Let us suppose that I discover that my name is on this famous list, along with the name of my colleague, Marcel Prud'homme. That would be quite a pretty scene.

(1620 follows -- Sen. Finestone continuing: We do not agree we should be targeted on that list...)

Victoria Aucoin/Anti-terrorism #38348/October 23, 2001.

(Following Take 1610, Senator Finestone, Our names were on the list. TAKE 1620 begins here, Sen. Finestone continues)

**\*\*We do not agree that we should be targeted on that list. We are good public citizens of Canada and we support all aspects of Canadian life and we appreciate our diversity, our collegiality and everything else. I then go to the court because I want my name removed from the list. The court is not able to clear my name.**

As the Privacy Commissioner, should I have gone to you first to say, "Look here, something has happened to me as an individual and my rights have been abridged?"

**Mr. Radwanski:** As I understand this law, as Privacy Commissioner, I do not have any control over who is on a list or who is investigated and in what way by the authorities. However, you could come to me and say, "I would like to see the personal information about me that is held by the Department of Justice, or by CSIS, or by whomever it may be, that leads them to believe that I should be on this list."

At that point, they have the option of providing that list or of invoking national security or the work of an investigative body or one of those other provisions and of saying, "This is completely exempt from release to you." There is no injury test

in that. I would know whether or not they have it, but I cannot tell you. In that scenario, I could not tell you that because they have invoked this provision. It ends there.

You could go to the Federal Court -- not to clear your name, though -- and say, "I am told this is being exempted under security. I want you, the court, to review this to see if I cannot have that information." Very rarely, as I have indicated, has the court chosen to step into that and overturn something that is in an exempt bank or something where national security is being invoked. The stated purpose of this legislation was to ensure that even that 1 per cent chance would not exist. I can live with that if necessary, but can I not live with the way this is being extended.

I would like to come back to one thing you said at the beginning, because it is very important. You said that this applies equally to the Privacy Act, the private sector law -- I hate using the correct name for it because it is such a mouthful -- and to the Access to Information Act.

**Senator Finestone:** It is short.

**Mr. Radwanski:** Yes, I know. It is important to draw a distinction between these pieces of legislation in terms of the particular import of this kind of provision as it is drafted.

First, as I have often said -- and the Supreme Court has said the same thing; I am not alone in this -- privacy is a fundamental human right; access to information is an important administrative right. They are not on the same hierarchy of rights to begin with.

Second, in a circumstance of war or of emergency such as we face, it is not abnormal to say that information about what government is doing might not be as readily available as in other circumstances. In other wars we had censorship, and so on. That is very different. Government-disclosed information is a very different matter from information about individuals disclosed to the individual. They are not the same in that regard.

Third, if these provisions were to stay as they are and were to be applied to the Access to Information Act and to the Privacy Act, in the case of the Access to Information Act, if you say the Access to Information Act does not apply because the minister has issued a certificate, all that happens is there is no access to information. That information cannot be released, period.

If you say that the Privacy Act does not apply because the minister has issued a certificate, a whole lot of other things follow from that, namely, there are no longer inhibitions on actual activity, on the collection, use, sharing, compilation and disclosure of information. The former is passive; the other is transitive. There is a huge set of differences. I would recommend examining these provisions on their merits as they apply to the two acts. It may be that the Department of Justice and the government have different rationales with regard to the Access to Information Act, I do not know. It is not my territory. However, I would urge you to look at the impact this would have on the fundamental human right of privacy.

**Senator Finestone:** It may not be your territory but you certainly chose to comment on it in the *Ottawa Citizen* one day. However, I will not go into that.

**Mr. Radwanski:** Go right ahead, senator. I am not averse, if you have a comment to make.

**Senator Finestone:** Based on what you just said regarding fundamental human rights and privacy rights, is privacy right a quasi-constitutional right, a constitutional right or strictly a statutory right? That is what I would like to get at.

**Mr. Radwanski:** We are going a little a field, senator. Certainly aspects of it are covered under the Charter. You have been seeking to make it a constitutional right -- and, I would have been supportive of that if you had not put certain other clauses in your bill -- but I do not think this is the forum to re-debate your bill.

**Senator Finestone:** That is not the point. The point is I think I heard you say that you could live with the rights being restrained if it was under certain aspects both in terms of surveillance and in terms of wireless and things of that nature, which I appreciate. In essence, however, you are asking us to look at the privacy right in a different light than Bill C-6, which is also personal information; and access to information, which could be either very personal or not as personal in its impact. I thought that, perhaps, we could look at whether or not we could approach it from the fact that decisions from the Supreme Court look at it as being quasi-constitutional. Could that have an impact on how we would approach the question of the need for a review or revision of that particular aspect, section 70 and article 104?

**Mr. Radwanski:** Senator Finestone, any approach that leads to the removal of these clauses, with the effect that I believe they would have, I would wholeheartedly welcome.

With regard to Bill C-6, frankly, it relates to with dealings with the private sector. There is no way that the same problem exists where the minister could issue a blanket certificate exempting the whole private sector. That would be hard to achieve. I must admit that I was surprised when I saw this being made applicable to Bill C-6 after the briefing that I had been given. If the intent, apart from anything else, is simply to reassure other countries that antiterrorist information will not be divulged by order of a court if they provide it to the Government of Canada, then there are not a huge number of instances where foreign jurisdictions, for example, would be sharing this kind of sensitive antiterrorist information with Radio Shack or Wal-Mart. I have some difficulty understanding what this provision has to do with anything when it is applied to the private sector in Bill C-6. By the same token, I find it a bit pointless but I do not find it as alarming as I do when it is applied to the fundamental privacy rights with regard to government collecting information and using it, compiling it and disclosing it.

**Senator Finestone:** Before this was written, were you consulted or were you just asked to see it after it was done?

**Mr. Radwanski:** I met with the minister last week.

**Senator Finestone:** It was already drafted?

**Mr. Radwanski:** I presume so, but not finalized. I asked for an opportunity to be briefed on the main provisions and to have a chance to express any concerns before it was finalized, approved and disclosed. I was given what I had hoped was a candid briefing. However, there is certainly no reference to that provision that the act will not apply, so it came out the other end of the process. Once I digested it and understood what was being done, it came as something of a surprise, to put it mildly.

**Senator Murray:** I admit that my instinct in these matters generally is to cut the authorities some slack. We might as well face it that we will have to trust them to a certain extent -- that is, trust in their judgment and in their integrity.

(Take 1630 follows, Sen. Murray: However, one draws the line where...)

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(Senator Murray continuing)

\*\* However, one draws the line where there are provisions that are repugnant to natural justice. One such process or lack of process is that which is envisioned for the compilation and publication of the famous terrorist lists.

In case before us, Mr. Radwanski, there is due process in your act. To summarize, if a person is denied information from the government, that person can invoke due process in two stages, as I understand it. The first stage is to go to the Commissioner, and the Commissioner can look into it, hold a hearing and make a recommendation. You cannot overturn, on your own authority, the decision that the minister has made, but you can make a recommendation. If the person involved has not obtained satisfaction in phase one, then he or she can go to the Federal Court. I take it that the Federal Court does have the authority to strike down the decision of the minister.

Your proposed amendment would restore phase one, but it would let the Attorney General cut out phase two. In other words, the minister could issue a certificate at the time of an appeal to the court and say, "No, this is it."

I am not necessarily opposed to your amendment. I think I would support it as far as it goes. I would like a better explanation than I have received as to why it is necessary, in the interests of security, national defence and international relations, to cut out the appeal to the court. My first thought was, "Oh, well, the proceedings are not public." However, I see that where there is an appeal to the court, *ex parte* evidence can be received, *in camera* hearings held and the rest of it.

I suppose it is natural that you would look to your own prerogatives first and restore them. That is fine, I support that.

**Mr. Radwanski:** That is a cynical view, senator, and rather unkind.

**Senator Murray:** I do not mean to be unkind. I do not like the idea, as I said yesterday, of the Privacy Commissioner and the Access to Information Commissioner and others simply being cut out this way, because it is not necessary to do that.

Why would your amendment enable the Attorney General to cut out the court process?

**Mr. Radwanski:** Let me return to first premises, senator. This is not my idea. It is not for me to defend and I do not wish to defend the government's reasoning in this. I can only tell you how they explained it to me last week. The reasoning was this: CSIS, the RCMP, or I do not know who, receive from the Government of France, for example, very confidential information, maybe from highly sensitive intelligence sources, that Mr. Bin Laden, who lives in Toronto, is a dangerous terrorist. They have that information and they govern themselves accordingly. Mr. Bin Laden who lives in Toronto requests to see the file that CSIS has on him.

They deny his request. He comes to me. They invoke the exemption for national security. I tell him I cannot tell him whether they have a file or not, but if they did, he would not be able to get it because such-and-such a provision has been invoked.

Mr. Bin Laden goes to the Federal Court. The fear that the government cites is that some Federal Court judge might very unwisely say, "I do not care, I do not understand this, give him the file," and give him the information the government has on him. Theoretically, this could compromise the informants, the confidential sources and so on. Therefore, there is a concern that if the hypothetical possibility of a judge being able to do this exists, France, in this hypothetical example, may never give us that information for fear it is could fall into the hands of the terrorists.

It is not for me to judge how real that concern is. I think the chances of a court doing that are small. I cannot judge to what extent those concerns have been expressed by other jurisdictions. I have no way of knowing. It is not that it is my idea and I say, "Let's limit the powers of the Federal Court." I say that if the government is bound and determined in the interests of Canadian security that it must close this "loophole," so be it. However, at the very least do not in the process, forgive the cliché, throw out the baby with the bath water. Do not throw out oversight as well and do not go beyond dealing with an individual case to maybe being able to give blanket exemptions from the Privacy Act to entire departments and do not permit maybe exempting great chunks of the government from the operation of the Privacy Act.

**Senator Murray:** When you have considered an appeal from a person on one of these cases, are you free to go public with your recommendation? If you make a recommendation that the information be disclosed and the minister, the government or the official still says "no," are you in a position to go public? I would be reassured if I thought you were able to finger the minister or the official who, notwithstanding your recommendation, was maintaining his position against disclosing the information?

**Mr. Radwanski:** The first aspect is that if the exemption for national security is invoked, the one that is already in the act, there is no injury test. Once they invoke that, there is not much I can do. I can try to persuade them with some parts of it, that some parts of the information clearly do not fall within the ambit of that, but that is about it. Could I go public and say they are unreasonably withholding the file? I could; my counsel can correct me if I am wrong. That has not arisen. I certainly could not divulge the contents of the file. I could not confirm that there is a file. That is what the catch might be in that instance. If they are invoking the provision under which one cannot even confirm the existence of a file, then what do I say, publicly? If there is a file, which there may not be, then the government should be releasing it? In that instance, that would not be likely to happen.

What would be more likely would be that I would first of all try to persuade the government, and I am not unpersuasive, to look carefully at what it is doing in a particular instance. Quite often, my office does succeed in whittling down what is exempted. That happens regularly. What I certainly can do is say, systemically, that I am concerned that the use of these exemptions seems to be growing or that they are being applied to things to which they should not be applied. I could do that in a special report to Parliament. I could do that in my annual report. I could issue a statement saying that I am concerned that this is being done. I probably would not do it on the basis of an individual, because apart from anything else I

would probably be violating the individual's privacy right by making his or her circumstance public in the first place.

**Senator Fraser:** Mr. Radwanski, it seems to me that you are troubled on several different grounds: First, the removal of your jurisdiction; second, the hypothetical ability of the Attorney General to issue certificates that would cover whole departments; and, third, the absence of proper judicial review. Are those the grounds that disturb you?

(Take 1640 begins, Mr. Radwanski continuing: I am truly less concerned about the judicial...)

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**Mr. Radwanski:** I am truly less concerned about the judicial review aspect. As I said, if it had been simply that the minister is able to issue a certificate that in a given case precludes the court from overruling, I would find that a reasonable balance in the circumstances, because if the concern is not in a specific case but the possibility as perceived by other jurisdictions that a court would, then the only way to fix that is to remove that option of oversight by the court, if you follow me.

I cannot disclose. The court could. Therefore, if that assurance is needed that it can happen, then the only way to do it is to have a method of absolutely precluding it, and that is part of where I find a good balance.

My first concern is, yes, the possibility of a blanket certificate.

**Senator Fraser:** That is what I would like to come to now, if you do not mind. I have a question. It may even be an observation rather be a question, but I would like your response to it.

I am not sure that your amendment as drafted would address that second question of breadth. Would it not be simpler just to say that the information whose disclosure is prohibited must be specific, rather than just any old information? It must be specific information whose disclosure would be likely to be injurious to international relations, national defence or security?

**Mr. Radwanski:** I would go further. Not so much specific; I would happily make that provision read, "information about an individual." That would prohibit a blanket issue because the information would have to be about Joe bin Laden.

**Senator Fraser:** One could envision circumstances in which we would be reaching beyond a given individual and where naming the individual might be difficult.

**Mr. Radwanski:** In this instance, under the Privacy Act, we are talking about access by individuals. This is quite different from a circumstance perhaps under the Access to Information Act. Under the Privacy Act only an individual can apply or can demand, in a sense, to see his or her file, subject to certain exemptions. Therefore, it certainly would not be difficult to say that so-and-so's request cannot be met; there is a prohibition. That could be done, I believe. That is not problematic. That would narrow the scope and would certainly prevent the blanket certificates. That is certainly a fall-back position on my part.



Even then, though, I do not like and I do not see the need for the second part that reads that in these circumstances the act does not apply.

**Senator Fraser:** I understand you do not like it, but I have another question. Would you be happier if there were sunset provisions built into this?

**Mr. Radwanski:** It does not do it for me, senator. I come back to the fact that this does not meet any of the tests that I believe are appropriate for any measure that reduces privacy rights. Its necessity has not been demonstrated. It is not demonstrably effective in achieving whatever goal it is meant to do beyond preventing review by a judge. The incursion on privacy rights is not proportional to the stated goal, which is preventing judges from overturning something.

**Senator Tkachuk:** I just have one question. When you got here you talked about the minister in Question Period and a response she gave. Could you repeat what you said, just to make sure I understand what happened there?

**Mr. Radwanski:** I certainly do not want to go too far afield in trying to report directly what she said.

**Senator Tkachuk:** I will follow it up myself. I just want to know what you thought.

**Mr. Radwanski:** She was asked a question about my presentation this morning to the Justice Committee. She said, to the best of my recollection, that the provision in question gives her limited power in limited circumstances, or in limited situations, and went on to say that she knew that I had testified this morning and proposed an amendment that her officials had not had the time yet to study; I guess they will not until at least November 1 when they meet with me, which is a different matter.

She went on to remark to the effect that my presentation reflected the kind of responsible approach that people are taking before the committee and she wanted to thank me, at which point the Speaker cut her off and went to an unrelated follow-up.

Her point was that this gives her limited powers in limited circumstances. I am afraid my comment to you is, it gives, in this regard, unlimited power in unlimited circumstances with regard to privacy rights.

I would like to take one second to bootleg a conclusion to what Senator Fraser asked me on sunset provisions. If something is unjustifiable and unnecessary and would gut privacy rights and the privacy law for no good reason, then saying maybe in three years we will stop doing something unjustified and unnecessary does not do it for me in this instance, without reference to the merit of sunset provisions and other matters.

**Senator Tkachuk:** If further testimony we get proves you are right on this issue, as I believe you are, then the Minister of Justice does not understand this particular provision of the bill, if she said it is just limited powers?

**Mr. Radwanski:** I would have no comment on that. It is not for me to characterize the minister.

**Senator Tkachuk:** I am just asking you, considering that she is the one putting it forward and she was the one here testifying. I always suspect that if someone

does not understand one part, it is possible he or she does not understand the whole thing.

**Mr. Radwanski:** She may be referring to the intent rather than the effect.

**Senator Tkachuk:** I am sure her intent is honourable, but we should not develop tools of totalitarianism in common law anyway. We should, as you say, try to fix the problem with the law and not simply use the courts as an instrument. We should probably keep people away from court, actually, rather than force them to go to court.

**Senator Joyal:** Taking into account the four tests you outline in your opening presentation and joined to the fact that there is no declaration of state of emergency, according to Canadian legislation in that domain -- I am thinking of the Emergency Measures Act -- and taking into account that it seems, according to what you have alluded, that neither Great Britain nor United States have adopted similar provisions to clause 104, are you of the opinion that this provision is unconstitutional and would not meet the test in the court?

**Mr. Radwanski:** I will not go there, senator. I appreciate the question but it is beyond my scope to offer that kind of constitutional opinion. I have not researched the constitutionality of it. My concern would be, in any event, that by the time it was fully contested in court and a finding was reached, if it had the effects that I fear, an awful lot of privacy would have gone down the drain and many rights would have been lost for no good reason. I would personally much prefer that Parliament in dealing with this bill fix this problem rather than hope that it is tested by the courts, a process that might take two years. However, I do not want to venture an opinion on the constitutionality of it.

**Senator Joyal:** Sooner or later, if the bill stands as it is written, in relation to that provision, the constitutionality issue will remain open. Taking into account that privacy rights have been found by the Supreme Court to be protected by the Constitution of Canada, at the point in time the court would be seized of such a demand.

(Take 1650 follows: Mr. Radwanski new speaker: That is certainly possible...)

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(1650)

**Mr. Radwanski:** That is certainly possible. Were that to happen I would not be shy in participating in such a court action. My office has gone to court on a number of issues, but I would prefer to have this fixed in the first instance.

I have another set of thoughts and they are probably not constitutional, as such, about the extent of this provision in a worst case scenario situation. If there were to be a blanket issuing of blanket certificates, that would, in effect, make it possible to nullify the whole Privacy Act and to practically appeal it. I do not know about the constitutionality, but there are senators here who are experts in these matters. It certainly would not strike me as good parliamentary practice to have a law that would give a minister the effective power to repeal a piece of legislation duly passed by Parliament; and to basically remove a fundamental right of Canadians by the stroke of an individual's pen. That does not strike me as the way our laws are supposed to operate. One would have to seek opinion as to whether it is constitutionally prohibited in a parliamentary system. It may not be prohibited, but

as a long-time student of government, I will certainly not counsel it as a way to make laws.

**Senator Joyal:** Did you review the U.K. legislation in respect of the exemption that is given regarding the exceptions for the protection of international relations or national defence or security?

**Mr. Radwanski:** I have not had the opportunity to do so yet, senator.

**Senator Joyal:** Could you do that for us and return to us in the next few days so that we could have an idea of how they have been coping with the balance that has to be struck between what an individual has as protection and what the state has as the right to protect its security and its democracy?

**Mr. Radwanski:** I would be glad to do that, senator, and provide my findings to this committee. I would add the caveat, in any event, that British privacy law is not exactly the same as ours. Britain, has more than 2 million surveillance cameras observing people as they go about their lives. We do not have that, thus far, and I certainly have views on that. Certainly, we have not gone down that path.

If I find in this review that Britain is showing a low degree of privacy rights in this respect, that would not entice me to consider this provision any more necessary, but I will be happy to report back.

**The Chairman:** Senator Beaudoin, did you have a final word?

**Senator Beaudoin:** The right to privacy is constitutional. We have many such cases before the Supreme Court. As Minister McClelland said at the outset, no right is absolute. The whole debate for this week is probably, to a certain extent, about section 1 of the Charter. To what extent can we restrict a constitutional right while maintaining regard for circumstances?

The Supreme Court was very generous towards the constitutional right of privacy. There is no doubt about that. If you wish to defend clause 104 and claim in court that it is constitutional because the restriction is reasonable in a free and democratic society, you will win the case. However, it is quite an onus to establish. Such a restriction is demonstrable in a free and democratic society. Obviously, it will be the argument of the Government of Canada, and only the court will decide in the last round.

**Mr. Radwanski:** My hope, senator, is that the legislative process will engage this issue and that on this particular point we will never have to find out what the courts would will do. In one way or another it is relatively easy to fix, without having to get into that situation.

**The Chairman:** Thank you, Mr. Radwanski.

(1700 follows -- The Chairman continuing: Honourable senators, I would like to thank...)

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(Following Take 1650, TAKE 1700 begins here, The Chairman continues JOIN CHKD.)

Honourable senators, I wish to thank the witness before us, Commissioner Giuliano Zaccardelli of the Royal Canadian Mounted Police, who has made a

special effort to be here today. He is on his way out of the country the minute he steps out of this committee hearing tonight. I understand you have a brief statement. Senators will then respond with concise questions and, hopefully, everyone in the room will have a chance to ask their questions and get your equally concise answers before you have to leave. Please proceed.

**Mr. Giuliano (Zack) Zaccardelli, Commissioner, Royal Canadian Mounted Police:** Thank you for the opportunity to be here tonight to discuss Bill C-36, the proposed Anti-Terrorism Act tabled in the House of Commons on October 15 of this year. My remarks will be brief but will highlight three important messages.

First, the RCMP is taking a measured and sustained response to terrorist activity; second, the proposed legislative change will enable law enforcement agencies such as the RCMP to continue to fight terrorist activity in a balanced way; third, all that we do at the RCMP is consistent with Canada's legal framework and the values that Canadians cherish.

The RCMP is taking a measured and sustained response to terrorist activity. Before I speak to you about the RCMP response to terrorist activity, let me begin by setting the stage. What is terrorist activity? Terrorist activity is indiscriminate, global in scope and destabilizing in effect. Those who carry out terrorist activity have no respect for human life. They will stop at nothing in their effort to achieve their goals. Terrorist activity is carried out by groups and individuals willing to commit suicidal acts of mass destruction against innocent civilians. They think nothing of strapping a bomb around their waste, detonating it and themselves in a location strategically selected to result in the greatest possible loss of life and destruction of property.

Terrorist groups are intricate, complex, sophisticated and clandestine criminal organizations. Terrorist groups have long-term goals: To infiltrate and assimilate into society and establish individuals with sleeper roles.

Terrorist activities pose an extraordinary threat to society, as evidenced by the tragic events of September 11. The fight against terrorist activity terrorists for extraordinary action. Since the tragic events of September 11, the prime objective of the RCMP has been and will continue to be to ensure public safety. There has been a heightened awareness of the need to remain vigilant. That heightened awareness remains solidly in place at the RCMP since the attacks on Afghanistan and Afghan positions by American and British forces which began on October 7. But our actions do not stop at awareness and vigilance. So what has the RCMP done? Post-September 11, the RCMP initiated a full-scale domestic investigation to determine if there is any Canadian involvement in the events of that tragic day. This includes an effort to determine if there are threats to Canada coming either from within the country or from outside Canada.

In addition, task forces dealing with the events of September 11 have been established in key locations around the country. Investigative efforts are also underway in an attempt to ensure that terrorist funding is cut off. These investigations are transnational in nature and require a coordinated international effort by law enforcement. As a result, the RCMP is working closely with national and international partners in all of its activities. Since terrorist groups are intricate, complex, sophisticated and clandestine criminal organizations, our investigations will require long-term intensive efforts.

Our measured and sustained response was further bolstered on October 12, when the government of Canada announced new funding to assist the RCMP in its work on anti-terrorism. The RCMP received \$59 million for new measures that will strengthen Canada's ability to prevent, detect and respond to existing and emerging national security threats. The RCMP is pleased that the Government of Canada has provided this additional funding.

As I told the Standing Committee on Citizen and Immigration last week, this money is helpful and the RCMP could use even more resources.

In terms of working with our partners, on the domestic front we have put into place some concrete activities to ensure that our partners are in the loop on law enforcement initiatives with regards to terrorism. For example, in every province and territory where the RCMP is the police force that provides provincial policing, we have briefed all of our respective counterparts at the provincial and municipal levels, policing and political authorities. These regional initiatives include regular briefings of provincial Departments of Justice, police services at various levels and briefings to municipal mayors, provincial emergency measures organizations and airport authorities. As you can see, we are constantly sharing information with our partners as well as evaluating the national security situation and modifying needs according to the circumstances at hand. We are also working very closely with the Solicitor General to contribute to the National Security Committee headed by the Minister of Foreign Affairs. We are providing advice and intelligence on how to best ensure public safety, and we are sharing information and intelligence whenever we can with our international partners. In all circumstances, we feel we have done what we can to heighten vigilance, readiness and response capacity.

Some people say that Canada already has a strong legislative framework and enforcement capacity to deal with terrorist threats. It has been our experience, based on our investigation into the tragic events of September 11, that that is not true. Notwithstanding our efforts, it has become evident that there are some significant obstacles preventing law enforcement organizations such as the RCMP from detecting, deterring, and destabilizing terrorist groups. Traditional investigative tools are inadequate in some cases.

(TAKE 1710 follows, Mr. Zaccardelli continues: It is our view that Bill C-36, the proposed Anti-terrorism Act, will make a significant contribution to the ability of law enforcement to fight terrorism in this country and

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(Following Take 1700, Mr. Zaccardelli, Traditional investigative tools are inadequate in some cases. TAKE 1710 begins here, Mr. Zaccardelli continues)

\*\*It is our view that Bill C-36, the proposed Anti-terrorism Act, will make a significant contribution to the ability of law enforcement to fight terrorism in this country and abroad.

More specifically, Bill C-36 will criminalize terrorist financing, establish a procedure to freeze, seize and forfeit proceeds for and proceeds of terrorist activities or terrorist groups. It will enhance our ability to protect sensitive information. It will create new investigative tools and allow for preventive arrests when needed to address the serious threat posed by terrorist groups and those who would carry out terrorist activities. It will establish a means to identify and list terrorist groups.

The draft legislation proposes limits to be placed on the activities of police, and as exists now, police actions are subject at all times to the limits placed on them by the Charter of Rights and Freedoms.

To sum up, I want to underscore that the RCMP is supportive of Bill C-36. Not only does Bill C-36 provide the necessary tools for law enforcement to combat terrorist activity, it also provides important safeguards to ensure that the exercise of these powers is not solely at the discretion of law enforcement officers. You have heard me say many times that at the RCMP our role is to uphold the law and to strike that balance between the protection of society and respect for individual rights. We constantly strive to make how things are done as important as what gets done.

Our behaviour as an organization and as individuals must at all times be based upon integrity, honesty, professionalism, compassion, respect and accountability. Our values must respect those of Canadian society and I believe that they do. We will not abandon this important goal.

Thank you for the opportunity to share the RCMP's views on this proposed legislation with you today. I will now answer your questions.

**Senator Kinsella:** Commissioner, it is good to see you. We go back a long way in the province of New Brunswick and we miss you very much down there.

Is there anything not in the bill that the RCMP would like to have seen in the bill?

**Mr. Zaccardelli:** As a law enforcement officer, this is a good package for us. In my time as a police officer, I am not sure that I have ever seen a better package of initiatives or changes to the law, so I am very pleased. That is not to say we could not have got some more, but I am extremely pleased with this package.

**Senator Kinsella:** That is very helpful, Commissioner. In your opening remarks you described the bill, and the approach of the RCMP, as a balanced way. Would you explicate a little bit what you meant by "a balanced way?"

**Mr. Zaccardelli:** In the RCMP we have a philosophy, what we call the measured response. That measured response means we start from speaking to people to moving up the ladder, the continuum, until we use force as an absolute and last resort. We talk about that continuum.

In my view, prior to September 11, we would never have been discussing this type of legislative amendment in this country because I do not believe that was required prior to September 11. However, the world changed on September 11. The circumstances have changed, and I think what we are doing think through this bill in this country is trying to find that balance of ensuring that we protect and respect people's rights in the liberal democratic society that we are as much as we can while also trying to provide the law enforcement agencies with the necessary tools to do their work in a very balanced way. Nothing that the police authorities get should be given automatically. It should be earned. It should be a last resort when we make these types of changes. I have said this publicly many times. I believe this is a balanced response to the situation we face.

**Senator Kinsella:** I think it is clear to everyone that these new circumstances are requiring new ways of thinking. Therefore, it is important that think outside the box.

From the human rights and civil libertarian point of view, which you have indicated you are extremely respectful of, would it be helpful if we were able to come up with a creative way of having some kind of oversight of the powers exercised under this bill, perhaps like the way in which the Canadian Intelligence Review Committee provides oversight of the extra powers of CSIS officials? That would not involve micromanagement but oversight from the standpoint of providing that creative margin of comfort from the civil liberties point of view.

**Mr. Zaccardelli:** I understand the concerns that have been expressed about the potential abuses in this legislation. They are legitimate concerns. In my discussions with other police officers and the Department of Justice, we have discussed those concerns. However, this is an extraordinary power for a limited time of heinous activity. It is very important that we remember that. This does not apply across the spectrum of criminal activity or criminal investigative power. This is dedicated limited to the most heinous type of activity that produced what we saw on September 11. I understand why the question would be asked or some people might suggest that there should be a need for an oversight. I do not support that. I believe that would be wrong in our system of law. I believe the safeguards in the system where we have the Attorney General and the courts that will have to approve this every time the police officer acts. The one exigent circumstance is where, in an emergency, a police officer may have to act based on the grounds that are established in the act but still bring that person that may be arrested before the courts within 24 hours. I believe that is the proper way for police forces or police officers to be directed and held accountable, namely through the courts. That system has worked extremely well and I believe the safeguards in this legislation do bring that balance there.

**Senator Fraser:** Mr. Zaccardelli, thank you for being here this evening. I would like to talk about the preventive detention provisions. You act with the consent of the Attorney General, unless it is an emergency. The criteria are that the peace officer must believe on reasonable grounds that a terrorist activity will be carried out and must suspect on reasonable grounds that the detention is necessary.

Could you tell us how you interpret these key words, "believe on reasonable grounds" and "suspect on reasonable grounds?"

**Mr. Zaccardelli:** You have hit an important issue. Obviously, what you have just described is a lower threshold than what we are normally used to seeing in this country. That is why these provisions are considered to be extraordinary. We are in active discussions about what this means because the devil is in the detail, as we know. It is easy to read, but it is how we apply and how we interpret this which will determine how this really works. We are in active discussions with our lawyers and with lawyers from the Department of Justice to determine what this means. We are talking to our investigators and we will be training and having discussions with them. Obviously, you must have solid information and intelligence. Some of it will be questionable; some of it will not be questionable. You take your best information and your best intelligence and make that determination. That is how our system works. It puts into the hands of the police officer the authority to exercise that, but it has to be exercised on solid basis.

The threshold is a little bit lower. In these cases, clearly these are not traffic officers who will be applying these provisions.

(TAKE 1720 follows, Mr. Zaccardelli continues, We will look at...)

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(1720 -- Mr. Zaccardelli continuing)

We will look at having highly sophisticated officers involved in these types of investigations. Thus, we will have sophisticated officers combined with a close liaison with the Crowns to obtain direction from the courts. All that will come to bear on what this will mean. Obviously, it will be based on the best information we can possibly have from all sources.

It will be difficult in some cases for an investigator to make that fine distinction, and I would tend to guess the officers will go more to the side of caution in moving on this. That is how I believe that our officer would interpret this.

**Senator Fraser:** Have you had any cases, without divulging secret information, where a power like this could have been used and where you knew this and you could have brought the guy in?

**Mr. Zaccardelli:** I cannot give you a case to talk about, but we have never had a September 11, either.

A Senator: There was the Air India disaster.

**Mr. Zaccardelli:** We did have Air India, but we did not consider that as anything but a one-off. September 11 changed the world, and everything we do since September 11 has been related to that date. We did not consider days and times in that way after the Air India disaster. I understand the issue, and it is very important. However, September 11 is much different from Air India independent. Maybe we should have acted differently after Air India, but that is something we can only reflect on.

**Senator Beaudoin:** We have a Charter of Rights that applies in peacetime, wartime and in emergency cases. This is why we have a charter. A constitutional charter is of that nature.

We had the advantage of hearing the Minister of Justice speak to us yesterday and we asked her the question: "Is it an emergency measure?" She said, "It is not an emergency measure." That implies that the act will continue for many years. To use the word "permanently" is, perhaps an exaggeration. Very few laws are permanent.

The events of September 11 will be on our minds for a long time. It may be that the courts of justice would react differently, if the measure is considered emergency or permanent. This being said, the charter exists, whether there is an emergency measure, and there is no doubt in my mind.

How do you feel about this if it were to be enacted for many years? Would you react the same way if it were an emergency situation, or in the same way if it were not an emergency? As a policeman, what is your reaction to that?

**Mr. Zaccardelli:** Thank you for the question, Senator Beaudoin. When I speak about this, I believe strongly that the charter must, at all times, be respected without question and without exception. These provisions, although they are extra powers, do fall within the charter.



My answer is based on the fact that my read of the environment that we face -- the threat that we face from this issue of terrorism -- is something that tragically will be with us for many years to come. Therefore, the laws that we have -- the tools that we have -- must have some sustainability while we have this threat and this balance. Obviously, we need emergency powers in certain cases, but these powers, I believe, we will need for some time to come.

When you look at the types of investigations that we are doing and we foresee doing, they will take many years. Many of these investigations are ongoing. The ability to understand the cause and to follow the people who are involved -- people who literally can go underground for years and years -- and we have to be aware of what is going on, we need that ability to respond. This is a law that I believe we need for a long time to come. I do not distinguish between an emergency situation and a long-term event, because every one of these situations can become a huge emergency, whether it is an Air India or a September 11 event. As long as the threat is there, we need the legislation.

**Senator Beaudoin:** In 1988, we adopted the new Emergency Act, which was well received by the Parliament of Canada. Of course, the system is much more refined than the previous system of the first two World Wars and other events, in that sense. Of course, since that time we have enshrined the Charter in the Constitution.

Your answer is that this act will be with us for a long time, perhaps.

**Mr. Zaccardelli:** Obviously, it will be subject to the political decisions that are taken by the elected officials.

**Mr. Zaccardelli:** If the government wished to declare an emergency power in Canada, it would be easy to do. It could be done and Parliament would confirm or be against the declaration. Our laws are very well drafted since 1988 in this respect.

In Quebec and in Ontario, we have the R.C.M.P. and the two provincial police forces. In respect of this case, what is the intent between the two -- federal and provincial -- police forces? I hail from Quebec and I always ask that question. It is the same situation in Ontario, but it is not the same in the other provinces.

**Mr. Zaccardelli:** That is a good question, senator. Whenever I travel throughout across Canada, I am often asked about the relations in Quebec. What they really mean to say is, "How bad are the relations in Quebec." I always tell them that, in terms of law enforcement, senator, the best examples of cooperation and multi-disciplinary approaches and task forces in this country are in Quebec. That is something some people do not realize. The best task forces and the best cooperation among law enforcement agencies are in Quebec. I can tell you that because I know from personal experience.

From a law endorsement perspective, this is not an issue. I refer to my comments that we have task forces on the ground as we speak. We have them in Quebec, Ontario and throughout the country. Law enforcement has responded in a unified way like we have never responded to any emergency before. That is not an issue. We are actively working on these together, along with CSIS, under the direction of Mr. Ward Elcock.

There has been a collaborative effort in Canada that has never existed before. I have never seen it before, senator. I am extremely proud of these efforts and I believe we lead the world in integrated policing. We are a fair example of this. It is working well in Canada, and we can assure Canadians that their law enforcement agencies and security agencies are working collaboratively in the best interests of Canadians.

**Senator Kenny:** What is wrong with the rest of the country, Commissioner?

**Mr. Zaccardelli:** There is nothing wrong with the rest of the country, but I wanted to make the point because there is a perception that in Quebec it does not work. I grew up there, I worked there, and I can tell you that the best examples are in Quebec. Law enforcement is working well, and the other issues are dealt with by other people.

**Senator Kenny:** What is your total budget, Commissioner?

**Mr. Zaccardelli:** I believe that it is approximately about \$2.2 billion.

**Senator Kenny:** So \$59 million would be considered a drop in the bucket.

(1730 follows -- Mr. Zaccardelli: We were grateful for the \$59 million...)

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**Mr. Zaccardelli:** We were very grateful for the \$59 million, but there is a clear commitment. The government and the minister have publicly stated they will give us more money and we are talking about more resources as we speak.

**Senator Kenny:** In terms of the money, can you tell us where it is going? Is it going into more people? Is it going into equipment? Are you focusing on the criminal intelligence directorate?

**Mr. Zaccardelli:** It is a balanced approach. It is not going to any one area. A considerable amount, about \$30-35 million, is going to technology at the airports, improving our infrastructure, improving our intelligence capacity with technology and so on. I believe \$5 million is going to protect VIPs and diplomats in this country. About \$10 million will go directly into hiring more people. It really is a balanced approach.

**Senator Kenny:** You have had overtime problems?

**Mr. Zaccardelli:** Yes. That is the other thing. Although we have \$59 million, we have an understanding and an assurance by Treasury Board that everything that we have devoted to this issue -- and give or take between 2,000 and 3,000 of my personnel have been redeployed to this issue -- all the expenses, the overtime, whatever equipment we have had to buy for this, will be funded. We have the \$59 million but we are also getting extra millions. Obviously, every day the figure goes up. It is not fair to say just \$59 million. There are other millions we are spending on a daily basis.

**Senator Kenny:** Even so, people are distracted and you cannot train them. You are missing other things because it takes "X" years before you have people who can handle them.

**Mr. Zaccardelli:** We have had to redeploy, and it is true that there are certain low-level priority files that are not being done today.

**Senator Kenny:** How many members do you have, civilian and uniform?

**Mr. Zaccardelli:** We have in total between 22,000 and 23,000 employees, of whom between 16,000 and 17,000 are police officers. Fifty-four per cent of those are in contract, the provincial and municipal. I do not have specific figures, but those are some of the breakdowns.

**Senator Kenny:** What I was leading up to was to ask you about language capabilities within the force and recruiting visible minorities. How many languages, for example, does the Force have the capacity to deal with?

**Mr. Zaccardelli:** In a city like Toronto, which, if I am not mistaken, is the most diversified in the world, we have to be able to speak 110 or so languages.

**Senator Kenny:** Can you?

**Mr. Zaccardelli:** We cannot. The issue is not whether we can, but whether we have access to people whom we can trust and use. Obviously, we have to be able to leverage our resources with other resources available to us. That is what we try to do. I do not have men and women who can speak 110 languages, no.

**Senator Kenny:** Historically, there has been a problem in some communities from countries where the police are distrusted. These communities bring that distrust here with them. How do you conduct intelligence if you do not have people who can actually read the papers, talk the language, and think the way new Canadians are thinking?

**Mr. Zaccardelli:** You have identified a very important issue. That is a very important challenge. Obviously, after September 11, we have had to reconsider some of our approaches about understanding certain parts of the world and certain languages in a way we did not before September 11. We are making moves to deal with that. It is a serious challenge, but as part of our process of ensuring that we provide the best possible service to Canadians, we ensure that we have the right resources and linguistic capacities. If we do not have them, we try to get access to them, whether we share those with our partners at CSIS or other departments.

Even our American allies have told us very clearly that they determined after September 11 that they were deficient in some of these areas. It is not a Canadian problem. This is a problem that is faced in all democratic countries.

**Senator Kenny:** If you push the button on the 12th of September, is it a decade before you have that capacity?

**Mr. Zaccardelli:** There is no short-term solution.

**Senator Kenny:** What do you do in the meantime?

**Mr. Zaccardelli:** In the meantime, you start today. If I wait till tomorrow, I am one day further behind.

We have already started. We have to get the resources; we have to identify the problem and what we need to respond to it. There is no magic solution here. Let us be very clear. Canada is not as safe as it was before September 11, although it is still the safest country in the world. People have to realize that.

**Senator Kenny:** You mentioned there were new tools in the bill. Can you elaborate on what you see as new tools for you?

**Mr. Zaccardelli:** I think the preventive arrests and our ability to better protect some sensitive information are key elements.

**Senator Kenny:** I was wondering if there was something other than the specifics you mentioned.

**Mr. Zaccardelli:** I believe as a package it is a very good bill. It helps us. As a package, those are all good tools.

**Senator Kenny:** If I can come back to Senator Fraser's comment, you have talked about a lower threshold that is presumably in the law at your request. You are having difficulty defining the lower threshold or indicating how it will be implemented. If you are facing that problem as the agent of the state, how are we supposed to address it in terms of legislation if we do not have any sense of how you will use this lower threshold? If we do not get a definition from you or a description from you that is more detailed than what we have had so far, how do you expect us to say that this is a good piece of legislation to go ahead with?

**Mr. Zaccardelli:** Obviously, the legislation has to be applied against a certain set of facts. That is what we do. We do understand very well what the law says, but it is the interpretation and the application of the law that will determine what the law actually is. That is what the courts do for us. We will do the best we can to interpret the law in the spirit of and with respect for the Charter at all times, and then the courts will help us interpret it.

That is the way we always do it whenever there is a new law. We struggled with the wiretap law when it was brought in. What did it really mean? We do that all the time with a new law. A new law on the books does not mean anything until it comes alive through a case and a specific set of circumstances. We will apply a reasonable test to that law. We will try to understand it in a reasonable way in terms of what the legislature meant. We will factor it all in and try to interpret it from the point view of police officers, who are not sophisticated lawyers and have not sat on the courts.

We happen to do that pretty well in this country, compared to most countries in the world. We will do our best to interpret that.

(French follows: Senator Bacon: Madame la présidente...)

(Take ends in French)

Ah/23-10-01

(après anglais)

**Le sénateur Bacon:** Madame la présidente, le sénateur Kenny a posé l'une de mes questions. Je voulais savoir comment était perçue l'adoption de ces mesures dans le projet de loi C-36. Certains collègues se sont réjouis du dépôt de ce projet de loi lors de la conférence internationale sur le blanchiment d'argent. L'un de vos collègues avait l'air très heureux d'avoir pondu 171 pages en trois semaines. Cela donne sûrement de meilleurs outils aux forces policières.

On vient d'entendre le témoignage du commissaire de la protection de la vie privée. Ce dernier soutient qu'il n'est pas nécessaire pour protéger la sécurité nationale que le procureur général puisse empêcher une personne de consulter des informations à son sujet que détient le gouvernement. Qu'en pensez-vous?

**M. Zaccardelli:** Ce n'est pas moi qui ai déposé la loi. Ce n'est pas moi qui ai écrit la loi. Je n'ai pas vraiment une opinion à ce sujet.

**Le sénateur Bacon:** Vous ne voulez pas répondre?

**M. Zaccardelli:** Ce n'est pas à moi à répondre.

**Le sénateur Bacon:** Dans ce projet de loi, on n'aura plus à prouver que la surveillance électronique est un dernier recours. Il est essentiel pour le projet de loi C-36 de recueillir des informations efficaces avant que les terroristes commettent des crimes sur notre territoire. Pouvez-vous me donner votre opinion là-dessus?

**M. Zaccardelli:** Je suis d'accord avec le fait que cela ne devrait pas être le dernier recours de la loi afin d'obtenir de l'écoute électronique.

(M. Zaccardelli, On peut le faire sans passer par)

(français suit) ES/Oct. 23/01

(Following French) Ah/23-10-01

(après français) (M. Zaccardelli)

On peut le faire sans passer par d'autres étapes, cela est important. J'appuie ce changement à la loi et j'en suis content.

**Le sénateur Bacon:** Cela vous donne de meilleurs outils?

**M. Zaccardelli:** Oui. Cela concerne seulement le terrorisme, on l'oublie. On a tendance à croire que cela sera appliqué à tous les autres champs d'application du droit criminel. Cela s'applique seulement au terrorisme.

(Sén. Jaffer, commissioner, I very much appreciate when you talk)

(anglais suit)

**Senator Jaffer:** Commissioner, I appreciated it when you talked about Canadian values. I want to commend you on the leadership that you have shown since September 11. I can tell you I have seen first-hand across the country how your forces helped to calm nerves. The protection that you have provided around mosques, synagogues and churches has been useful, and last weekend with the bombing having a police officer on television calming people, saying that everything, people's rights will be looked after, and those who breach the law will certainly be punished.

I also want to commend you on the sensitivity training that I have seen in the last 20 years in your force. I wish some other groups or organizations would have the kind of sensitivity training that you provide.

Things have changed, as you have said, since September 11. I have been travelling a lot across the country, and so many mothers have said to me that their children ask, "Am I a terrorist," what they see on the media. One of the greatest problems that people like me are worried about is racial profiling. Perhaps the kind of sensitivity that you and or your force has shown may change after September 11. I would like you to comment on that.

**Mr. Zaccardelli:** Senator, on the point of racial profiling, we do not do racial profiling. We investigate criminal acts or acts that we believe are criminal in nature. We investigate those and try to prosecute those as best as we can. We do not look at a person, the gender, the colour or the religion of the person. We simply investigate criminal acts.

We do some profiling. It is not racial profiling. Obviously, in the domain of drugs, for example, we look at certain countries that produce drugs and so on. We look at certain people that might be involved in the drug trade, or other contraband, so we try to do that type of profile. We profile modes of transportation but never racial profiling. That is unacceptable, in my view, in this country, and I will never accept that as part of a policy of the RCMP.

**Senator Jaffer:** That is reassuring. Knowing the kind of work your force does, I accept that. However, I want to bring a concern to you with respect to exactly what you have said, which is the profiling. I was with a group of youth in Toronto last weekend, and they were very concerned about the profiling. It may not be racial, but when they are saying, "We are frightened to walk on the streets because we are worried we will be perceived as looking like the terrorists," it is sad to see that kind of fear of young Canadian youth. I bring that concern to you and would like you to give us an assurance that with the profiling, you will continue with the good sensitivity training that you have been doing so that innocent people are not brought under this bill.

**Mr. Zaccardelli:** As part of the activities I described before, one that I did not mention is throughout the country we have had a series of meetings with ethnic communities throughout the country to talk about these very issues. I believe there is more we can do, and we will be doing more. On Thursday, for example, I am meeting with the Deputy Minister of Justice, and we are meeting with some leaders in various ethnic communities to talk about some of these issues, that this legislation is not aimed at any group or class of people in our society.

I understand the concerns and the fears out there. It is part of my job and part of all of our jobs to alleviate those fears as much as we can in this society.

**Senator Jaffer:** Commissioner, you were talking about the allies and the issue of speaking the languages. If I may be so bold to say that here in Canada, the force is way ahead of any in the U.S. with the work you have done. That is not giving you too many compliments. You are way ahead of the U.S. In the U.S., they do not know the difference between an Afghanian person and a Sikh. You have done great work in the Sikh community. We are ahead, but I would like to hear from you what other work will we do to make sure that if not 110 languages, the force is speaking at least 50 languages?

**Mr. Zaccardelli:** You are absolutely right, and it goes back to what Senator Kenny said about the need. The world has changed. It is important that we change, adapt and align ourselves to these needs. Obviously, the question of expertise is not just in the linguistic area. We have gaps in a whole series of areas, not just on the terrorist side, but also on the criminal side. When we talk about organized crime, for example, there are some gaps. As good as we are and as hard as we work, there are always gaps. What I try to do is strive to close that gap as best as I can knowing full well we never close the gaps, but we strive to make this country as safe as we possibly can.

**Senator Jaffer:** Have you got any programs that you started since September 11 to help achieve this? Will you be using any of the \$59 million to achieve some of these objectives?

**Mr. Zaccardelli:** We have had meetings throughout the country. I just came from a meeting with my chief human resources officer to talk about recruiting different types of people and making better use of some of the resources, so we are doing that. However, we are in the middle a serious crisis. There are limitations on us to do a number the things, but we clearly have to start now. We try to do those things as we manage our way through this crisis, and we are doing some of those.

**Senator Finestone:** In doing a comparative look at the distribution and responsibility roles of the police force here in Canada, how do you place that in perspective with what is being done in the United States and in France? There was a little exchange during a coffee break here with two of my colleagues, Senators Beaudoin and Bacon. We were discussing France and the success France has had in the approach to terrorism and the fact they have had to be more vigilant than we had ever anticipated we would have to be. Have we lessons to learn from them, and are those lessons reflected in the legislation before us, or as Senator Kinsella asked you earlier, is there something in its legislative mandate and rights and responsibilities that you could add to yours that could make it more effective? Could we be France number two?

**Mr. Zaccardelli:** I just want to be Canadian number one. That is what I want to be. That is a very good question. I am not a lawyer or a legal expert, but I do know there was serious consideration, obviously, being given to this legislation in terms of especially the American and British legislation, and there are some commonalities here and some harmonization. Your point is well taken. I believe this issue is bigger than Canada or France or the United States. This is a threat to all democratic societies. What I believe has to take place and what we are leading in Canada is the fact that we have to go and create a truly global alliance of law enforcement.

(Take 1750 follows, Mr. Zaccardelli continuing: That is what is required...)

Victoria Aucoin/Anti-terrorism #38348/October 23, 2001

(Following Take 1740, Mr. Zaccardelli, alliance of law enforcement. TAKE 1750 begins here, Mr. Zaccardelli continues)

\*\*That is what is required because we all face this common problem. People always ask me this: Does Canada have enough resources to the deal with the problem? That is the wrong question. The question should be this: Do the democratic countries of the world have the resources to deal with this common threat? That is what must be done. There are best practices in every single country. We need to harmonize those best practices and create the synergies from those practices so that we can defend ourselves against these threats that all democratic countries are facing. That is when we will truly be effective. That is what I am supportive of, that is what I am pushing and that is what I continue usually push for. Yes, there are things we can learn from France but France can learn an awful lot from us. I will not go any further on that.

**Senator Finestone:** Is there anything that we can do in that regard in a comment approaching this legislation that would say that our strength will be in the collaborative effort so that we can effect internationally?

**Mr. Zaccardelli:** I would not certainly oppose that. One of the things we must understand -- and, again, there are people more knowledgeable than this than I am -- often the laws and systems that are in place in a country are based on the culture and the history of those countries. I am leery, when someone says to me, "Just take this American system or process and bring it into Canada or take this French one." Those things do not work. About two years ago I was talking to some French officials about the fact that the world was changing and we had to look at harmonization and look at working in a collaborative way. The French official said to me:

(French follows)



Ah/23-10-01

(après anglais)(M. Zaccardelli)

Nous ne sommes pas Anglo-Saxons, on ne peut pas changer. C'est difficile à changer en France.

(M. Zaccardelli, so what I said to him I said yes I am not)

(anglais suit)

(Following French, Mr. Zaccardelli continues)

I said to him, "Yes, I am not an Anglo-Saxon either, I am an Italian by birth, but the world is changing and we have to change in response to the new reality." It is how we come together in this collaborative way. Canada is leading the way in talking and leading about truly creating this integrated global alliance of law enforcement. It is doable. The only thing preventing us from doing it is our own behaviours. September 11 has been a huge impetus to move in this direction. Out of tragedy come great challenges and Canada, I am proud to say, is leading the way in responding here.

**Senator Finestone:** I am glad to hear you respond like that because this happens to be the thirtieth anniversary of the Canadian Multicultural Act. Senator Haidasz, who brought that into being, can be very proud to see the social experiment that is still evolving in the attitude in Canada, which is far different than anywhere else.

My last question relates to a change that I noted. I am not quite sure if I understand the import. You must get a warrant in order to do a surveillance set-up, wiretapping and/or camera surveillance. I believe the RCMP has certain latitude in terms of time and the kind of approach that you go to the bench for the warrant. I do not think you have the same reporting responsibilities that the ordinary police force now has. They have a one-year term; I think you have three years and CSIS has three years. They must advise the party that they were investigating after the one-year period is up. You do not have to do that.

I heard a radio report yesterday which is what causes me to ask you the question. In the view of this retired CSIS officer, this was one of the worst things that we could do. If you alert the parties that you have been surveilling, albeit by telephone or wire or wireless or whatever, they just go underground and they disappear. All the links that they had will run away. What you have as a right and what CSIS has as a right protects the Canadian citizen in a better way and allows the surveillance and the building of your documentation or your needed information.

Do you have a comment on that? Should we be addressing the fact that there should not be this kind of difference for the police force and yourselves?

**Mr. Zaccardelli:** I want to clarify several things. CSIS get their authority under a different act. We deal with the Criminal Code. First, in normal wiretaps for a normal criminal offence under the Criminal Code you have to show that you looked at other avenues of trying to obtain this information. As a last resort, you then have to make your case. When we deal with this very specific issue of terrorism, you do not have to go to this last resort. You can apply it right away for that. Normally under any offence covered under the Criminal Code dealing with wiretaps, you must notify the subject of your wiretap 60 days after the termination of the operation. There are provisions to extend that in normal circumstances to one year.

In this case, when you deal with these specific provisions of terrorism, we will have the luxury of not having to advise them for a year and possibly extend that to three years. The reason is that these investigations tend to be lengthy in nature and the legislation is trying to accommodate the concern that you just raised. Obviously, if we notify too soon, or whatever, that can have a negative impact.

Again, I accept what the legislatures give us as laws and we apply them within the Charter of Rights. If someone were to change that, however, and give us more time, I would not be opposed to that.

**Senator Stollery:** There is nothing new about terrorism, in spite of the spectacular nature of the events in September. It was pretty spectacular when the U.S. embassy was captured in Iran in 1980 or 1981, and they were taken by surprise. People are always taken by surprise. That is the nature of the game, I guess. However, 16 years have gone by since 310 people, most of whom were Canadian citizens, dove into the Atlantic on a plane that was bombed. So far, no one has been convicted. The families are no more wiser now than they were 16 years ago. If this bill had been passed 15 years ago, would we have seen convictions?

**Mr. Zaccardelli:** Senator Stollery, I obviously cannot speculate on that. I do not know the cases. The Air India case has taken a long time and it is before the courts right now. The prosecution has taken place. Some people might say it should not have taken that long. I think it speaks to the tenacity and the dedication of a lot of men and women to bring it to trial. I cannot speculate on whether that might have assisted. I honestly do not know that. What we have done is the right thing in this country, by looking at a tragic situation that happened. We are trying to respond in the best way we can. Maybe 10 years down the road someone will look at this and have some issues to take with it but we have done the best we can at this particular time, based on the facts that we have.

**Senator Stollery:** We do have Bill C-36. I would have thought that the RCMP would be interested in taking their unpleasant experience from the Air India bombing and applying some of the tests to the bill. It is in that sense that I ask the question. I think it is a fairly reasonable question because the whole point of Bill C-36 is as an anti-terrorist bill and the biggest terrorist attack that I can think of in Canadian history was the one against those 310 people.

**Mr. Zaccardelli:** In our discussions, the Air India situation was part of the discussions and it was factored in. However, to speculate on what might have happened had we had certain things does not accomplish a lot. I do not deal in speculation in the past. I have too much to worry about ahead of me. Your point is well taken but I cannot give you an answer to that.

(French follows: Prud'homme: Je me joins à ce qui a été dit e...)

(après anglais)

**Le sénateur Prud'homme:** Je me joins à ce qui a été dit et je suis très heureux que notre commissaire soit présent. J'éprouve à l'égard de la Gendarmerie Royale un grand respect que tous connaissent. Ce n'est pas un secret qu'en 1984, je me suis fortement opposé au projet de loi C-10. J'y croyais avec hésitation à l'époque, et à mon avis, je continue de croire à la même chose.

(Sén. Prud'homme, Il y a trop de forces pour s'occuper des chose importantes, donc)

(français suit)

MJ/October 23, 2001 AT 38348

Ah/23-10-01

(après anglais)(Sén. Prud'homme)

Il y a trop de forces pour s'occuper des choses importantes, donc il y a une division dans le leadership. On a beau me dire et essayer de me convaincre qu'il y a une étroite collaboration entre les corps policiers, je sais que ce n'est pas la vérité. Il y a des nuances.

Vous avez dit que le monde a changé depuis le 11 septembre et je le crois aussi. Vous n'êtes pas sans savoir que je travaille sur un projet où je voudrais que la Gendarmerie Royale du Canada soit la grande force qu'elle doit être, qu'elle est et qu'elle devrait être encore plus pour s'occuper des choses modernes dans un monde en pleine évolution. Bientôt il faudra annuler les contrats conclus avec les provinces pour faire de la Gendarmerie Royale la force principale où tous doivent se rapporter. Mme Jaffer, avec sophistication, nous a indiqué toute la sensibilité, nouvelle il faut le dire, il ne faudrait pas exagérer, dont vous avez fait preuve.

Je n'ai donc pas de critique virulente contre tous les projets de loi. Le Canada a le droit de se défendre. Mes craintes sont fondées lorsque je vois dans un projet de loi les mots « action ou omission commise au Canada ou à l'étranger au nom d'un but, d'un objectif ou d'une cause de nature politique, religieuse ou idéologique ». Cela m'inquiète. Ce n'est pas clairement défini. Cela demandera beaucoup de sophistication à ceux qui auront à s'en occuper. Je reviens à la case départ, la GRC doit s'en occuper et je ne changerai pas d'opinion.

Dans tout ce que vous avez dit dans votre témoignage, une question m'a un peu chicoté, votre définition du terrorisme, ces gens qui s'entourent de bombes. Cela me rapproche un peu trop d'un sujet que j'essaie de défendre depuis 40 ans, la question palestinienne. Je n'aime pas tourner autour du pot. Je suis connu des forces policières.

En 1970, j'ai été un excellent ami du commissaire, M. Strong, un grand homme. Vous savez, cela demande beaucoup de sophistication. Où commence le terrorisme et la libération normale? Récemment, on a nommé M. Mandela citoyen canadien honoraire. Je suis d'accord sauf que je n'aime pas le processus.

(Sén. Prud'homme, we have to develop some processes...)

(anglais suit)

(Following French -- Sen. Prud'homme continuing)

We have to develop some processes. You cannot arrive at a job and suddenly declare someone an honorary citizen. It should be done in an orderly fashion, if it is to be done.

I look at many other names that come up in history. Count Demitus was assassinated and also Lord Moyne, with the British in the Middle East. The people involved in those assassinations became Prime Ministers and we embraced them -- Mr. Begin and Mr. Shamir.

Are you not concerned about the definition? How will we be assured that this, in which a whole or a part for a political, religious or ideological purpose, objective or cause?

(French follows -- Sen. Prud'homme continuing: Cela me semble tellement...)

(après anglais)(Sén. Prud'homme)

Cela me semble tellement vaste que je voudrais que l'on me fasse réfléchir un peu plus, en particulier sur cette phrase?

(M. Zaccardelli: Senator, I understand your concerns...)

(anglais suit)

(Following French)

**Mr. Zaccardelli:** Senator, I understand your concerns, but I believe that the application of the law, whether it is through wiretaps or informants or any other way, will be used by us to do our investigations. I will look for people who had intent -- people who are intending to commit the most heinous crimes we have seen, in terms of serious violence that is directed towards the destruction of human lives and property in this country, as is defined by this proposed legislation. It will have to be interpreted, no question, but I believe that we have always done well in interpreting legislation. With the lawyers and with the police officers and with society as a whole applying our Canadian values, I believe we will be able to zero in on those heinous acts or the intentions of those people who are committed to creating those acts, and concentrate on those. It will not stray into dissent, different views or opinions.

People have asked me if someone could have been arrested at the Quebec Summit under such legislation as this? I said absolutely not. Protest and even violent protest that we might see sometimes, does not come anywhere near the definition that we are talking about here. That is the way it will be applied, in my view.

I do understand the concerns. This law takes us where we have never been before. It gives us some extra powers, but I believe the safeguards are appropriate. When we have to go to the Attorney General or when we have to go to the courts to be subjected to those reviews, it will be applied in the right way for the right things.

I questioned some of this myself in our discussions, senator, but I believe we have to. It should not be easy for the police to exercise the powers we have. It should be very difficult in our society and, as the Commissioner, I am committed to ensuring that these laws will be applied in a very careful and thoughtful manner against the most serious offences that might take place in Canada. I hope that I never have to apply this law, in all sincerity, senator, but I need to be ready to apply them if the situation calls for it.

**The Chairman:** Thank you.

The committee adjourned.