

GM/October 23, 2001

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 7:00 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, we are now in our final session of the day of the Special Senate Committee on the subject matter of Bill C-36, which is the anti-terrorist bill which has come to us as a result of the tragic events that took place last month in the United States.

The Senate is engaged in a procedure that is rarely used, called "pre-study". That means that we are having hearings, listening to witnesses and will make recommendations to be sent to the House of Commons, in the hope that it will be reflected in their bill before they pass it and sent it over to us where, again, it will be debated and studied by this committee. We are hoping to get an advance effort into having some of our concerns already present in that bill.

We have been hearing from a wide variety of witnesses today and we are pleased this evening to have with us Patrick Johnston, the President and Chief Executive Officer from the Canadian Centre for Philanthropy. Mr. Johnston is here to talk to us about the effect that the legislation may have in the area of philanthropic and charitable donations. This has been of great interest in the few days that the bill has been made public. We are pleased to have you here tonight. Please proceed.

Mr. Patrick Johnston, President and Chief Executive Officer, Canadian Centre for Philanthropy: Honourable senators, thank you for the invitation to join you this evening. I apologize in advance. I will have to leave at about 8:00. With the cutbacks in the Air Canada service, the last plane to Toronto is at 9:00

p.m. and I must be on that plane. However, we have a good period of time to have a useful discussion, I hope.

I should also qualify that although our legal counsel has instructed me as best as he could on some of the intricacies of the legislation, I am not a lawyer myself and some of the specific provisions of the law sometimes escape me, but I shall do my best to present the position of the Canadian centre for philanthropy.

(Take 1900 Follows -- continuing with Mr. Johnston: I should just perhaps explain that the Canadian...) GM/October 23, 2001

(Take 1900 Begins -- continuing with Mr. Johnston)

I should just perhaps explain that the Canadian Centre for Philanthropy is a national network of 1100 organizations, all of which are charities. By and large they are small, community-based charities. Our members operate in all ten provinces and all three territories.

The provisions of the bill that relate to charities and fundraising obviously are of particular interest to my organization and our members. In fact, we did intervene in some of the discussions around Bill C-16 and did submit a letter to the Solicitor General, in March, conveying some of our concerns about that proposed piece of legislation.

I am here tonight, however, to say that in large measure Bill C-36 and the broader provisions have now addressed the concerns that we conveyed to the minister in March, about the fairly narrow provisions of Bill C-16. Let me briefly summarize what some of those concerns were, and the corollary, why in particular we support certain provisions of this legislation.

Our view about the very limited nature of Bill C-16 stems from the sense that those Canadians who have an interest in providing financial support for terrorist activities are not motivated to do so by the tax receipt they will receive by contributing to a registered charity. That is not the motivator. That is not the driver.

The concern that we had is that Bill C-16 only focused on fundraising for terrorist activities as it was being undertaken by formally registered charitable organizations. Our argument at the time was that we felt that there should be a much broader net cast, that fundraising for terrorist activities should be criminalized and broadened to cover any individual or organization that raises

funds for terrorist purposes, whether or not it is done under the auspices of a formally registered charitable organization.

We are supportive of this legislation because, in effect, it does recognize that fundraising for terrorist activities will be done in a variety of different ways. It is that broader perspective that we argued for and we now see in Bill C-36 and which we support. We argued as well that what was missing in Bill C-16 was any definition of what would constitute a terrorist activity, and that is included in this piece of legislation.

Finally, the real concern that we had about Bill C-16 is that it assumed that the only fundraising for terrorist activities was being done by charitable organizations registered with the Canada Customs and Revenue Agency. We had a concern that it could unfairly taint the registration of all Canadian charities. There is often a spillover effect when there is a scandal that affects one individual charitable organization, very often it can spill over and taint the image of all charities. Again, we were concerned about the narrow focus and limitation of Bill C-16. Therefore, we are supportive of a number of the provisions in Bill C-36 because it does recognize and understand that fundraising for terrorist activities will take place in a variety of forms and guises by individuals, by formal organizations, informal organizations and not simply by registered charities.

Having said that, we do have some concerns about the current legislation. Let me identify two of those concerns in particular. To the extent that we understand the proposed legislation, it appears to us that those organizations that may be subject to Part 6 of the legislation that deals with registration of charities and security and information, there is no requirement for intentionality or knowledge. In other words, it does not explicitly indicate that the organization, subject to that provision, should have knowledge of and been intending to support fundraising for terrorist activities.

The reason that we have some concerns about the absence of any commentary on intentionality or knowledge is that it is conceivable to us that there could be a community-based registered charities, a neighbourhood house, for example, or a settlement house that is providing a range of services to immigrants and refugees. It seems quite conceivable to us that an individual could be a client of one of those organizations, be in receipt of some kind of assistance or service, and that person could ultimately be connected to some sort of terrorist network. The organization would have no prior knowledge. It was not intending to provide any kind of assistance directly or indirectly to anyone involved with a terrorist organization, but it did not have that knowledge that it was not its intent.

We do not believe that those kinds of circumstances are covered by and are the intent of this legislation, however, we are concerned that without addressing the issue of intentionality or knowledge or being silent on that there is a potential for that to happen. We would be concerned about that.

The second concern we have has to do with the procedures of due process, in particular some concern about those provisions of the proposed legislation that would appear to limit access to information about a lack of disclosure about information in terms of the reasons that a certificate was issued or a judge approved the issuance of a certificate to deny or revoke charitable status. As we read the legislation, it would appear that the judge would have the right, essentially, to withhold that information from the charity or the applicant or the charity's counsel. There may be some provisions for a summary of that information. However, given that the revocation of charitable status has enormous and significant implications, we are worried about that limitation in the legislation.

It occurs to us, as well, that it is not inconceivable to think about the possibility that there may be a foreign government, who, for their own particular political motivations or concerns in their country, which provides information through security sources about an organization that they deemed was causing them some grief or problem in terms of a particular issue and they would deem that organization to be a terrorist organization. Unless that information became known to the organization that had charitable status, so that it had some opportunity to provide or counter that information, we would be concerned about the potential for that to happen. It is those two provisions in the proposed legislation that we have some concerns about in particular.

I will close by reiterating that for the most part, we are supportive of the provisions in the proposed legislation as they deal with the issue of fundraising for terrorist activities because it does address some of the concerns and shortcomings that we identified in Bill C-16. We are generally speaking supportive of the provisions.

Again, I do wish to reiterate, however, that it is our view that a good portion of the fundraising that will be undertaken by individuals or organizations in Canada in support of terrorist activities will be done in very invisible ways. I was saying to someone yesterday that almost the dumbest way that you would want to go about trying to raise funds for terrorist activities is to do it through a charitable organization because the authorities know them. They have an address. They know where to find you.

(Take 1910 Follows -- continuing with Mr. Johnston: The one thing that we have....)

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(Mr. Johnston continuing)

The one thing that we have discovered, to our horror, about the operations of the terrorist groups that are, in effect, the reason that we are here today is that they very much operate below the radar screens. They operate in completely invisible ways.

It seems to me that for most individuals or organizations involved in terrorism, the entire notion of doing it through a registered charity would be seen by them to be pretty much an oxymoron. That is not really the way they will be undertaking most of their fundraising. To the extent that organizations with charitable status are engaging in fundraising for terrorist activities, their registration should be revoked.

We want to make the point again that we do not believe that that, in effect, is where much of the real activity takes place. It will be off the radar screens, and invisible to most of us.

Madam Chair, those are my opening comments. I would be happy to respond to any questions. I will try to keep my comments to those provisions of the legislation that deal in particular with charities. I do not feel I have the expertise to comment on many of the other issues.

Senator Beaudoin: We are concerned with this proposed legislation which, to a great extent but not exclusively, is concerned with criminal law. One of the rules of criminal law is that it must be precise. There is also a protection for every citizen which is called the *mens rea*, that is, the intention to do something.

I understand that your two concerns focus on the definitions and the due process. As a preliminary remark, you said that Bill C-16 in the springtime was considered and that you are satisfied with what has taken place since. You are not worried about Bill C-16; is that right?

Mr. Johnston: That is right.

Senator Beaudoin: I agree with you, I think that if we have some concerns with the definition of due process, then this is the time to correct it. A definition is

always difficult. Could you refer us to something specific in the bill with regard to the definition and the issue of due process? In my opinion, those two problems are fundamental.

Mr. Johnston: Senator Beaudoin, the particular provisions to which I would refer are found in Part 6 of the proposed legislation and have to do with clause 6. That is found on page 132 of the bill.

It seems to me that it would be in that clause, to the extent possible, that there might be some refinement of the language that deals with this issue of intent or knowledge. I am not a draftsman or a lawyer, thus I could not suggest the specific wording. It would appear to me that somewhere in there, there might be an opportunity to clarify that we were trying here to identify those organizations, in particular, that willingly, knowingly and with intent were supporting activities that were raising funds for terrorist purposes. That is the first particular concern that we had.

With respect to our concerns about due process, to be honest with you, I am not sure exactly where they are found in the bill. There may be a couple of paragraphs in Part 6 that address that issue.

Senator Beaudoin: You are not satisfied that you have the due process of law, legally speaking, of course; is that correct?

Mr. Johnston: That is correct.

I misspoke myself, sir, and I am sorry. Clause 4 would be the appropriate place to revise language that deals with intentionality or knowledge. It is clause 6 that deals in particular with the concerns that we have about due process. This is where it would appear to indicate that the judge is not required to disclose any information that is contained in the application for the certificate to the minister to the charity or the charity's counsel or the applicant. It is that clause in particular that causes us most concern about due process.

Senator Beaudoin: You have to distinguish very clearly between charity and terrorism.

Mr. Johnston: Yes.

Senator Beaudoin: It cannot be too precise, if I may say so.

Mr. Johnston: Right.

Senator Beaudoin: It is not sufficient, I think, that you ignore the presence of some terrorism provisions. In other words, because it is criminal law it must be very clear. If you have any concerns, then you must point to the exact wording. That is the only thing I will say at this stage. You cannot take a calculated risk. Once it is written, it is written.

I remember the discussion we had a few hours ago on this matter. If this committee is not satisfied with the definition, then we have to say that in our report of this pre-study. We will have to try to find the proper wording.

If you have something in mind, please put it on paper and we can phrase it legally speaking afterwards.

Mr. Johnston: Senator, I may take you up on that offer. I did have an opportunity to get a briefing from our legal counsel only yesterday. We are still working through some of this ourselves. However, I will ask him. In fact, I will extend that invitation to provide, perhaps, some alternative wording that would address specific concerns that we have about both those provisions.

Senator Beaudoin: Your intention may be good enough. The drafting is another matter, but we will take care of that.

Senator Finestone: Mr. Johnston, I am pleased that you find an improvement in the language. I must tell you that I have heard a fair number of complaints about Bill C-16. I am glad that the changes have been made. Have you had a sense of satisfaction from the 111 corporations that make up your roster?

(take 1920 follows: **Mr. Johnston:** Actually there are 1,100...)

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Mr. Johnston: Actually, there are 1,100. It is fair to say, senator, that the large majority of our member organizations would not see themselves affected by the legislation, except to the extent that there was any inference that all fundraising for terrorism was taking place through registered charities and that kind of a spillover or negative impact. That is why I think they would be much more supportive of this legislation than the previous legislation, absolutely.

I should say that there may still be some of our members in other charities who do have concerns specific to their organization about the legislation. We have not yet heard from them. That does not mean that some of them may not be there.

Senator Finestone: I would hope that if you are advised, as Senator Beaudoin suggested, that there is some concern around the language or something that needs to be tightened up, that you will advise us within the next few days.

Under due process, as I gather, you are concerned about the disclosure of information that might come about as a result of a certificate that might be issued. That is the process that will be used by government. Where they have a concern, they will recover the funds that are being raised in whatever type of organization, not necessarily charitable, but some of that would be kept confidential, ad infinitum, I presume. May it is just as well.

I do not know what your other point was. You said provisions that limit access to information for the issuance of a certificate. The issuance of a certificate comes about after there has been an assessment. Many of us around the table in the last few days have been concerned that there might be misinterpretation and the issuance of a certificate in error. That can certainly happen when you have 1,100. If you have a couple, it is a couple too many, because it permanently injures that organization for the fundraising it does for a good cause.

I just read it and it appeared as if the revocation was clear. Perhaps I missed something, and that is possible because I, too, am not a lawyer.

Again, I issue the invitation to bring forward any of the clarifying language in either language. I suggest you check the French as well as the English. Senator Bacon and I have found several language changes that we would like to propose here. It is not unusual to find that.

Is there any other way they will define registered charities where money will be raised but not through a charity? Did you seem to find that that was a concern?

Mr. Johnston: Anyone can raise funds. There is nothing to preclude you from going out and raising funds. We do it all the time. Someone may come knocking at your office door to raise funds for what you are told is their child's activities at school. You fork out \$10. That is done completely informally. It is done outside the purview of any formal registered system. People will come knocking at your door, asking you for a donation for a particular organization.

By and large, those organizations will not be registered charities. They do not need to be registered charities. There is nothing to preclude or prevent the raising of funds for organizations that are not registered charities. This happens all the time. In fact, much of what is donated by Canadians is not donated to registered charities. It goes to other non-profit organizations. They are not caught in the screen of Canada Customs and Revenue Agency. That is the point we were trying to make.

Fundraising takes place in a variety of different forms. If you limit your focus to those organizations known to Canada Customs and Revenue Agency, you will be missing an important part of the fundraising activity that takes place.

As we understand and read the provisions of the legislation, we think, in fact, it would cast a much broader net. It essentially criminalizes any kind of fundraising activity, whether done informally or formally by an individual or a group, by a registered charity or some other body. That is the way it should be, from our point of view.

Senator Finestone: You are satisfied from that perspective?

Mr. Johnston: Absolutely.

Senator Finestone: Were you concerned at all that the process of applying for a registered charitable status was of concern to any of your constituents?

Mr. Johnston: As we understand it, the due process provisions apply both to individuals who are in the process of applying to be a registered charity, as well as those organizations that already had charitable status. The concerns that we had would apply equally whether or not the charitable status had already been conferred by the Canada Customs and Revenue Agency.

Senator Finestone: Mr. Johnston, there has been a significant amount of concern about National Revenue doing a revision of the charities for which they are responsible. John Bryden has had a role to play in that set-up. Do you hear anything about that? Is that involved at all?

Mr. Johnston: Canada Customs and Revenue Agency has much the same approach to registered charities as it does to individual income tax filers. Not every individual income tax return that we as individuals file is reviewed and audited by Customs and Revenue Agency as a matter of course. If it receives information from a charity that seems to be out of order, or complaints, then it will undertake an audit and do random spot audits. This happens as a matter of course

and has for quite some time. There have not been any concerns about the process that Canada Customs and Revenue Agency uses. If anything, the concern is that it may actually be going somewhat overboard in undertaking more audits than are required and necessary.

One of the problems is that the Canada Customs and Revenue Agency tends to operate with a high measure of secrecy and confidentiality because of the tax system. Very often decisions are made and others will not learn from them.

By and large, the auditing process of Canada Customs and Revenue Agency has not been, I can say, a major concern for our members or many other charities as far as we can tell.

Senator Tkachuk: This issue concerns me. At the same time, I understand the government's reasons for doing it. We are trying to find a way, as we have with other issues here, not to hurt people who have done nothing wrong.

I disagree with you somewhat; I think terrorists would act in very normal ways. That is the way they hide in society. They are quite normal. They are involved in the community. They try to act above suspicion. They try to meld in as much as possible. One way to meld in is through involvement in charities.

The second thing is that we have been rather benign, almost to neglect. It was almost radical chic before September 11. The IRA used to travel in the United States and make no bones about it. There would be a bomb in London. People would go to their dinners. The IRA was raising money. For all I knew, they were using registered charitable vehicles to do it. This upset me. I am in the majority now and I feel better about it. I always felt it was obscene that people would actually give money to organizations like this and be involved in them.

I am sure the government is thinking of those two issues. If you can convince me otherwise, please go right ahead, because we are trying to get to the bottom of it here and to do the best we can.

There are two lists here. One is the registered charity the list, which is apart from the terrorist list that we have been talking about earlier. Then once you hit the registered charities list, you go over to the terrorist as well, which, for a charity, you are done like dinner no matter whether or not you did anything wrong.

(Senator Tkachuk continuing: I am not sure how we can solve the problem...)

(Senator Tkachuk continuing)

** I am not sure how we can solve the problem except to take some of other device to see if we can find a way to prevent a misuse of this power.

Second, would your lawyers know about a civil action? Maybe lawyers around the table would know. If I were put on a terrorist list, I would sue the government. I would sue them, and I think I would win and get lots of money for it. There is that avenue for you to use. That is a big threat. The government will be very careful about what they do here.

Senator Beaudoin: That is an action for damage.

Senator Tkachuk: I think it would be a strong action for damage. I am throwing that out for discussion here.

I do not have any questions, but I wonder if you could comment on these points of view and perhaps help us through this.

Mr. Johnston: Senator, I do not wish to imply, infer or suggest in any way, shape or form that there are absolutely no organizations in Canada now that have registered charitable status that are not engaging in activities that are supporting terrorist activities. I would not make that statement categorically because I suspect that there may well be some organizations that have gotten through the screen and are registered with the Customs and Revenue Agency and able to issue tax receipts. To the extent that any of those organizations are raising funds in support of terrorist activities, then their charitable status should be revoked, full stop. We have no issue with that at all.

The point that we were trying to make earlier is that we, however, do need to keep in mind that fundraising takes place in a variety of different fora. It does not need a registered charitable status in order to raise funds. Let us cast the net as broadly as possible if we are serious about trying to eliminate fundraising for terrorist activities. That would include provisions that would affect registered charities or applicants for registered charities much broadly, which is why we are supportive of this legislation.

Your earlier point is part of the broader concern that we all share that while we are fully supportive of the objectives and the intent of the legislation, we also need to be careful that we do not inadvertently affect an organization that is complying with and not acting contrary to the legislation. From our point of view, the best way to do that is to ensure due process.

The one thing that we understand is that the conferring of charitable status implies and provides some credibility to an organization. There is an assumption that if you have passed the test, if you have applied to the Canada Customs and Revenue Agency and been granted charitable status, that there is somewhat of a good housekeeping seal of approval. It is not quite that clear cut, but there is clearly a perception.

The revocation or denial of charitable status is an important event in the life of an organization because of the implications that would have. We need to be clear that as we are casting the net as broadly as possible to try to ensure that we are preventing anyone from raising funds for terrorist activities, that we do not unfairly have even a few organizations that are caught up in that because of some particular activities that are misunderstood.

Senator Tkachuk: That includes activities that you did not know about. People raising money for international reasons may write a cheque to an organization like the Afghanistan Relief Fund when it may really be a front.

Mr. Johnston: There is a potential for that to happen. Those kinds of concerns have been shared by organizations in the charitable sector for some time and are not limited to international fund raising. You will find organizations that will be set up that will have names similar to well known reputable organizations. Instead of the Canadian Cancer Society, you will have an organization set up called the Canadian cancer network that may not be a registered charity; it may be doing fundraising. In the minds of the public there is confusion in this regard. That is an ongoing concern that existed before this specific legislation.

Senator Tkachuk: In order that people watching on TV are aware, registered charities must do an audit every year, which is a rather onerous task. As any public corporation must do an audit, they must file with the provincial and the federal government pursuant to legislation. They must list whom they give money to. All of those things are fairly onerous and detailed. It is difficult to get around that stuff. As you say, it probably does happen and for all I know, the income tax people have not been paying much attention to it. I am sure they will be now.

Mr. Johnston: One of the concerns we have about the potential backlash and focus on charities is that if we think about the role that charities in the United States played immediately after September 11, it was the organizations like the Red Cross, the United Way and the Community Trust in New York that quickly moved into action.

By the same token, it is our sense that as the war in Afghanistan evolves and as the refugee situation mounts, it will be the humanitarian organizations whether that is CARE Canada, World Vision or Oxfam that will be in real need of the support and donations from Canadians to try to relieve the plight of the innocent citizens in Afghanistan that have been used as the pawns of terrorism. We do not want to worry Canadians in any way, shape or form that would cause them to stop supporting those kinds of organizations. We will need the help of those types of international humanitarian organizations much more in the years to come.

Senator Jaffer: Mr. Johnston, ever since this bill and the earlier bill on charities came out, my preoccupation has been one of the things you spoke about. If I am correct, you spoke about Part 8 in the bill. I would like to share some thoughts with you on that.

I have just finished being president of the YWCA of Canada that is part of your organization. That organization is involved to a significant extent abroad working with women. If a country did not like us and reported us, we could lose our status. The YWCA is constantly worrying about losing their charitable status in various countries. This is an important issue for them.

One of the things the minister spoke about, and I was wondering if you could perhaps discuss with the groups that belong to your organization is a specialized court. If this proposed legislation is to work, I believe we must train judges in different countries for them to make these decisions. When the information comes from government X, what does that mean? Is that analyzed as they have started to do for refugee cases?

Have you given any thought and could you comment on that?

Mr. Johnston: Senator Jaffer, this is not an idea that we have given any thought to. However, I will take that back and share it with my colleagues. We are trying to identify and be as constructive as we can to help honourable senators and your colleagues in the House of Commons to move quickly to develop a piece of legislation that we must live with for some time. I know we are all intending to get it right. I will take that issue back.

There have been concerns on the part of charities about the only recourse for any appeals for the revocation or denial of charitable status has been to the federal court. It has not always been clear that organizations had the capacity to launch any action to take them to the federal court or the federal court had any expertise in judging some of these issues that affect charities.

The challenges will increase in time as organizations operate more and more across boundaries. It is not just the private sector that is now operating and globalizing. You will find that many charities are now operating in global ways and across boundaries in other parts of the world.

(Take 1940 begins, Mr. Johnston continuing: The suggestion is an interesting one...)

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(1940 -- Mr. Johnston continuing)

The suggestion is an interesting one. I will take it back and share it with my colleagues and offer whatever perspective we can on this.

Senator Jaffer: My follow-up question to that is: If a charity ends up on the list that the government is talking about, that would, as you have mentioned, send a complete chill over the organization. It could never recover from even the scent of that.

Mr. Johnston: The combination of actually being denied charitable status and then being identified on some kind of a list would really be the death knell for any organization.

Senator Joyal: Mr. Johnston, I refer you to Part 6, clause 2 of the bill. It is a concern that I have expressed in previous sessions of this committee, which does not deal with terrorism activity but terrorism in general. Parts of the bill are very specific. They mention specifically terrorist activities and they list terrorist activities such as violence against persons, against institutions, and so on. This one is much broader. It covers everything.

As you have said quite eloquently in your presentation, there are many governments in the world where, for instance, to support the release of a political prisoner would be seen as terrorism. The advocacy of some human rights -- equalities of various groups -- would be seen as terrorism or as supporting rebellion or in one way or another be seen as activities that threaten the stability of the state. We only need to read the report of Amnesty International to know in which countries it would be easy to label as "terrorism activities" things that are, in fact, along the lines of the Canadian human rights understanding as seen in a democratic society as legitimate activities.

The concern that we have is with the definition of "terrorism" or that mention of terrorism, which is a very broad term. I would feel more comfortable referring to these terrorist activities for what they are. In the bill they are listed. As you know, the principle in criminal law is to define specifically the offence so that citizens, who are not supposed to ignore the law, know what they are doing. It is a fundamental principle of the Criminal Code.

How can we develop a mechanism to create an independent, reliable authority that would scrutinize the request of foreign governments for the exchange of information? This is an important element. We could look into the list of activities of any other groups, and we would find many countries that would use that as the excuse to prevent Canadian NGOs or charities from being active in those countries, where their action is most needed.

Those are the two concerns that I have in respect of this clause. Many of your members will certainly share that preoccupation.

Mr. Johnston: Senator Joyal, I would agree that, in terms of the reference to terrorism in Part 6, clause 2, it should be made clear that the definition of "terrorism" was outlined in earlier provisions of the bill, possibly in Part 1 or Part 2.

In respect of your second question about a mechanism that would fairly evaluate or assess the information that was being provided by foreign governments about Canadian organizations that might be subject to that provision, I do not know what the answer is. I do not know what the mechanism is. Certainly, I share your concerns, which is why we identified those provisions. I quote:

8.(1)(a) The judge shall examine the information and provide counsel representing the Minister of National Revenue with a reasonable opportunity to be heard as to whether the information is relevant but should not be disclosed to the applicant or registered charity or any counsel representing it because the disclosure would injure national security or endanger the safety of any person.

To be honest with you, the question that arose in my mind is: What would an injury to national security be? How would you define that? It would seem to me that, if there is a need for precision in the language, that would be one area in particular that could benefit from more precision. It would be clear for the judge in this instance: What would the criteria be to determine whether the release of

information would injure national security? We share the concerns that you have expressed about the potential for foreign governments to provide information.

If you go back 12 to 14 years, one wonders what the government in South Africa at the time would have said about the ANC, and how they would have characterized the activities and the operations of the ANC and any organizations in Canada that were raising funds in support of the ANC. This is a concern. Again, I do not have any specific concrete suggestion other than perhaps to suggest a need to better define what an injury to national security would constitute or what that would mean.

Senator Joyal: Our imaginations can conjure up all kinds of scenarios. I understand there are countries that do not really support the education of women. A group in Canada that would raise funds for a church in Canada that would be considered subversive -- as threatening the power of the day. If there is a value in Canadian society that we cherish, it is education with equal access to everyone. It is a real contradiction with something that is so fundamental in Canada, but happens to be unsupported by the Government of the day in a foreign country.

We can think of equality for women and many other values for which we feel strongly. It is important to find a way to balance the information that could be passed on by a foreign government and the legitimate preoccupation of the Canadian government that the money is not being used to feed terrorist activities linked directly to what is in the bill. The two are almost intertwined in terms of their interpretation.

Senator Wilson: Suppose a group gets itself on the list of possible funding for terrorist organizations; it is identified publicly; and it loses its charitable status, all of which leads to a loss of public confidence. What is the point of due process? Is not the problem, as you have suggested to Senator Joyal, to look at more precision in the definition of terrorist acts?

(1950 follows -- Sen. Wilson continuing: I referred to that...)

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(Take 1950 - Sen. Wilson continuing)

I referred to that thing this afternoon in regard to the African National Congress. If the bill does not do this with more precision, is due process then not simply shutting the barn door after the horse is out, and the entire burden of things

is for someone to appeal that? The bill should protect people rather than say if they are not satisfied, go to due process. Would you comment on that?

Mr. Johnston: Senator, my sense is it is a matter of trying to do both, to ensure that the definitions, as they apply to terrorist activities, are as clear and precise as possible. However, assuming that no amount or degree of clarity will solve and resolve all possible problems, then you will want to ensure that you do have in place, at the end of the day, fair, open, transparent processes where individuals or organizations that believe that they have been unfairly identified or had charitable status revoked would have an opportunity to defend those allegations, even though tremendous damage would already have been done to that organization's reputation. It seems to me it would be adding insult to injury, almost, if we did not also try to ensure that there were fair and open transparent processes that would allow organizations that found themselves in that situation an opportunity to appeal.

Senator Wilson: I would agree. However, the weight should rest on the bill itself so that citizens are not put in a position of having to defend themselves. The definitions now are extremely broad in my view.

The Chairman: Thank you very much, Mr. Johnston, for coming. Anything that you can send to us that would be helpful, please do.

Mr. Johnston: Thank you very much.

The Chairman: Senators, that wraps up the hearings for today. I thank you once again for your attendance and cooperation. I will declare this meeting officially adjourned.

The committee adjourned.