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Chair

Mr. Paul Zed

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● (1535)

[*English*]

The Vice-Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Good afternoon, ladies and gentlemen. Welcome.

Pursuant to the order of reference of December 9, 2004, study of the Anti-terrorism Act, we welcome today Irwin Cotler, Minister of Justice. The minister will have a preamble. He'll have a 10, 15, or 20-minute talk, and then we will go through the regular order of the official opposition and back and forth.

Minister, welcome. We await your comments.

Hon. Irwin Cotler (Minister of Justice): Thank you, Mr. Chairman and colleagues.

[*Translation*]

I am pleased to appear before you this morning to participate in this examination of the Anti-Terrorism Act, which in section 145 has mandated "a comprehensive review of the provisions and operations of the act".

[*English*]

Indeed, this parliamentary review is not only an implementation of your mandate under section 145 of the Anti-terrorism Act but an important parliamentary oversight of governmental accountability.

[*Translation*]

May I begin by thanking the committee for adopting the motion brought forward by the Member from Windsor-Tecumseh to undertake to examine section 4 of the Security of Information Act.

I requested the committee's assistance in studying this same provision last February, before the dissolution of Parliament prior to the last election. I am pleased to see that you have formally added this matter to your agenda.

[*English*]

As well, I note that you have added the difficult question of security certificates to your committee's mandate. As you know, these certificates, which provide a mechanism for deporting individuals who are deemed to be a danger to the security of Canada and are thus ineligible for admission to this country, are not part of the Anti-terrorism Act. They have been part of Canadian law for many years. They are now housed under the Immigration and Refugee Protection Act. However, these security certificates appear to have emerged as a remedy of choice to protect Canadians from terrorist activity, just as they were intended to protect Canadians from other threats, including war crimes, organized crime, and the like, and generic threats, one might say, to our human security.

I know from my recent meeting with members of the cross-cultural round table on security that these certificates are viewed by members of Canada's visible minorities, particularly Muslims, as a standing threat to them, while they are closely identified with the Anti-terrorism Act itself. Certainly, these certificates have emerged as a powerful symbol of the altered security environment that we've all had to come to terms with since 9/11. This is an important concern, and I look forward to receiving the views of this committee in respect of them.

Indeed, yours is an important oversight role because you are reviewing the relationship between security and rights that devolves from a government's and our government's twofold responsibility. The first constitutional responsibility of government is to protect the safety and security of its citizens, including the protection of its citizens from terrorist threats, sometimes known as the protection principle. The second duty of government is that in the course of protecting its citizens, it does not violate the rights of its citizens, an analogy to the Hippocratic oath—governments do no harm—and that may be characterized as a restraint principle.

In a larger sense, then, this parliamentary review is engaged in the great existential issues of the day. Given the importance of the subject matter and the importance of your review, I trust, Mr. Chairman, that you may be somewhat accommodating as to time, as I have prepared a somewhat comprehensive submission on the points that I know you have been concerned with and that indeed are of concern to Parliament and the public at large. I am prepared to come back a second time to answer any questions, if that be appropriate or desirable.

Accordingly, what I propose to do this afternoon is to share with you some of the foundational principles and related values and policies that underpin the Anti-terrorism Act and my approach to it —in a word, to propose a principled approach to anti-terrorism law, security, and human rights. I say this because in the years since 9/11, I have participated in a series of counterterrorism conferences and in appearances before parliamentary committees where the organizing theme, as expressed or reflected in a discussion with my colleague, Deputy Prime Minister Anne McLellan, often found expression in the question, how much of our freedoms should we give up?

The problem, if I may suggest, is that such questions, however legitimate, may invite an inquiry into the freedoms to be surrendered as distinct also from the rights to be secured; a discourse on the dangers to our democratic way of life from counterterrorism law rather than on the safeguarding of democracy itself from the terrorist threat; a characterization of the anti-terrorism law in terms of national security versus civil liberties; a zero sum analysis, when what is involved here is human security legislation that seeks to protect both security and human rights.

I turn now to the foundational principles that underpin our anti-terrorism law and, which taken together, constitute what I propose is a principled approach to terrorism, security, and human rights for Canada and indeed as we've shared them with our counterpart democracies and other developing democracies abroad.

● (1540)

[*Translation*]

The first principle is the relationship between security and rights. The underlying principle here is that there is no contradiction in the protection of security and the protection of human rights. That counter-terrorism itself is anchored in a twofold human rights perspective.

First, that transnational terrorism constitutes an assault on the security of a democracy and the most fundamental rights of its inhabitants, namely the right to life, liberty and security of the person. Accordingly, counter-terrorism is the promotion and protection of the security of a democracy and fundamental human rights in the face of this injustice — the protection of human security in the most profound sense.

[*English*]

If anti-terrorism law therefore is the promotion and protection of security and human rights from the terrorist threat, the second human rights perspective must also be borne in mind, and that is that the enforcement and application of this anti-terrorism law must always comport with the rule of law. No individual or group should be singled out for differential and discriminatory treatment. Torture must always and everywhere be condemned. In a word, we cannot, in the course of protecting human rights under our anti-terrorism law, thereby violate human rights. These two principles were indeed annunciated by the Supreme Court and in the opinion of Justices Louise Arbour and Frank Iacobucci, as they then were, as members of the Supreme Court of Canada. I quote from their remarks in reference to section 83.28 of the Criminal Code:

> The challenge for democracies in the battle against terrorism is not whether to respond, but rather how to do so.
>
> Although terrorism necessarily changes the context in which the rule of law must operate, it does not call for the abdication of law. Yet, at the same time, while respect for the rule of law must be maintained in the response to terrorism, the Constitution is not a suicide pact....

In the words of Thomas Powers, one of the more trenchant commentators on terrorism and human rights, “In a liberal republic, liberty presupposes security; the point of security is liberty.” And that is the basis of the first principle, namely the protection of human security.

This brings me to principle 2, toward a zero tolerance principle regarding transnational terrorism. We must be clear that terrorism, from whatever quarter, for whatever purpose, is unacceptable, as in fact contained in the zero tolerance principle in resolution 1373 of the United Nations Security Council.

But one of the most important, yet I believe oft-ignored, features inhibiting the dynamics of this principled counterterrorism approach has been the blurring of the moral and juridical divides expressed in the mantra that one person's terrorist is another person's freedom fighter—a moral and legal shibboleth that has blunted the basis for a clear and principled counterterrorism law, which is our shared objective. Simply put, the idea that one person's terrorist is another person's freedom fighter cannot underpin any principled approach to anti-terrorism law. Freedom fighters do not set out to capture and slaughter school children; terrorist murderers do. Freedom fighters do not blow up trains or buses containing non-combatants; terrorist murderers do. Democracies cannot allow the word “freedom” to be associated with acts of terrorism.

● (1545)

[*Translation*]

The third principle is what might be called the contextual principle. By the contextual principle, I am referring to the approach that was taken by the Supreme Court of Canada, which its jurisprudence noted that Charter rights, and any limits imposed on them, must be analysed not in the abstract, but in the factual context that gives rise to them.

[*English*]

It is clear that, as Professor Paul Wilkinson stated in his testimony before this parliamentary committee examining Bill C-36 at the time, we passed a strategic watershed on September 11. I would add that we passed a juridical watershed domestically and internationally.

Accordingly, any effective anti-terrorism law and any appreciation of the validity of that anti-terrorism law must factor into it, as the Supreme Court has said, an appreciation of the contextual principle —in effect, the nature and dimensions of this transnational terrorist threat. This would include the increasingly lethal face of terrorism as in the deliberate mass murder of civilians in public places; the growth and threat of destructive economic terrorism and cyberterrorism; the increasing incidence of suicide bomber terrorism underpinned by radical extremism or fanaticism; the potential access to, if not prospective use of, weapons of mass destruction; and of particular importance in this contextual approach, the increased vulnerability of open and technologically advanced democratic societies like Canada to this genre of terror.

Principle 4 is the international criminal justice model.

In brief, we're not dealing here with your ordinary or domestic criminal, but with the transnational super terrorist; not with ordinary criminality, but with crimes against humanity; not with your conventional threat of domestic criminal violence, as serious as that may be, but with a potential existential threat to the whole human family. In a word, we are dealing with Nuremberg crimes and Nuremberg criminals. We are dealing with *hostis humanis generis*, those called the enemies of humankind. In that sense the domestic criminal law due process model standing alone is insufficient, for the juridical struggle against terrorism cannot be fought here or won by one country alone.

Accordingly, the international criminal justice model anchored in this transnational threat also finds expression in the international juridical response in Bill C-36. I'm referring here both to the domestic implementation by Canada of 12 issue-specific anti-terrorism treaties, as well as the domestic implementation by Canada of United Nations Security Council mandates, as set forth in UN Security Council Resolutions 13, 73, 77, and the like.

[*Translation*]

In sum, the Anti-Terrorism Act is intended not only to mobilize the domestic legal arsenal against international terrorism, but to help build and strengthen the international mechanisms to confront the new supernational terrorism.

[*English*]

Principle 5 is the purposive principle.

In determining the pith and substance—as constitutional lawyers put it—the essence of a law, the most important consideration, as the jurisprudence has put it, is the purpose of that law. Accordingly, when the Anti-terrorism Act was first introduced as Bill C-36, the government stated as its purpose that this legislation would—and I'm just referring to it at the time and summarizing it—strengthen our capacity to prevent terrorist activity before it can occur; disrupt, disable, and dismantle terrorist groups before they can act; meet Canada's international obligations, as I've indicated; ensure respect for human rights and constitutional principles while enhancing public safety and national security; and affirm the values of tolerance, diversity, and equality.

These remain our purposes today. Indeed, these purposes are consistent with the stance taken recently by the United Nations Secretary General in articulating the five pillars of anti-terrorism law. It is this very purposive principle and understanding we have sought to embrace in our own anti-terrorism law and policy, which found expression in the words of the Minister of Justice and Human Rights of Indonesia, the largest Muslim democracy in the world, when, on a visit to Canada as part of the Canada-Indonesian human rights dialogue, he said as follows, and I quote:

> Our first priority as a government is the combating of international terrorism where we assume our global responsibility, and make it clear that Islam and terrorism are utterly incompatible. Our second priority is the promotion of democracy and the protection of human rights, and where it is also clear that democracy and Islam are as compatible as terrorism and Islam are incompatible.

Principle 6 is the prevention principle. It was clear to those of us involved with the enactment of Bill C-36 in 2001 that a new remedial legislative approach was required to address the unique challenges posed by transnational terrorism, as I described earlier—an approach geared toward preventing the terrorist acts to begin with. Therefore, we needed remedial legislation to allow us to apprehend suspected terrorists, or disrupt and frustrate their designs, before they detonated explosives or boarded airplanes.

We needed investigative tools to help us obtain information on terrorist groups before they embarked on their murderous attacks, and we needed mechanisms that would allow us to disrupt nascent terrorist plots before they were carried to fruition. In doing so, we did not depart from traditional principles of criminal liability in so enacting our laws.

Principle 7 relates to the Charter of Rights and the proportionality principle. The enactment of Bill C-36, as with all legislation, must comport and proceed from the Charter of Rights. This does not necessarily make the legislation charter-proof. Rather, as a government we must examine all laws—and that included especially this law—to ensure they do conform to the Charter of Rights. In a word, the charter is a law for making laws, and the jurisprudence has highlighted the importance of the proportionality principle in assuring charter compliance.

● (1550)

[*Translation*]

The proportionality principle — that the juridical response to terrorism must be proportional to the threat — requires that we factor into our assessment of our anti-terrorism law the dangers of the contemporary transnational terrorist threat so that we can appreciate whether our response meets the rights based proportionality test.

[*English*]

In summary, while we are dealing with special legislation, responding to an extraordinary threat, that legislation must still comport with the principle of proportionality—of just remedies serving just objectives.

Principle 8—and I'll go more quickly, Mr. Chairman—is the comparative principle. Simply put, in enacting our anti-terrorism law, we looked to see what other free and democratic societies were doing. We found those other free and democratic societies were all enacting anti-terrorism legislation, or had already enacted it, and—when looking at their *travaux préparatoires*—for the very purpose of keeping their societies secure, free, and democratic.

Principle 9 is the due process principle.

While I have argued earlier that an analysis of our anti-terrorism law should proceed from a more inclusive, international criminal justice model, this does not mean the domestic due process model is unimportant or irrelevant. On the contrary—and here I speak as one who has defended political prisoners in different parts of the world, many of whom were charged with acts of terrorism—the domestic due process model is a necessary model and safeguard, and one that has to be included in our appreciation of the foundational underpinnings of the legislation.

Principle 10 is the minority rights principle.

This principle addresses the particular concern of protecting visible minorities from being singled out for differential and discriminatory treatment in the enforcement and application of our anti-terrorism law. This was also a central concern in the submissions of civil libertarian groups and visible minorities, Muslims among them, in the hearings in respect of Bill C-36. The submissions have continued to find expression in the concerns today respecting racial profiling.

Accordingly, we've established a cross-cultural round table on national security to provide feedback on the impact of the anti-terrorism law and to reflect our principled approach to counter-terrorism as an expression of our shared citizenship.

May I reiterate again what has been my longstanding principle and policy in this matter—that discriminatory practices, including the targeting of minorities, have no place in law enforcement and security and intelligence work.

Principle 11 is the anti-hate principle.

● (1555)

[*Translation*]

Mr. Chairman, this principle — yet another variation of the minority rights principle — seeks to protect visible minorities from any hate on the Internet or in the public communications sphere, which can have the effect, not only of singling them out as targets of hatred, but also as targets of terrorist acts.

[*English*]

That's why our legislation contains protections against both incitement to hatred and incitement to terrorism, in order to particularly protect visible minorities who may be targets of hate, as they sometimes may also even be targets of terrorism.

This brings me now to principle 12. This is the last principle I refer to, the oversight principle.

[*Translation*]

This is a particularly important principle which finds expression in oversight mechanisms in the anti-terrorism law to ensure both parliamentary and public accountability.

[*English*]

My paper, of which you will have a copy, identifies some ten oversight principles, including, for example, the application of the Canadian Charter of Rights and Freedoms, international human rights norms, annual reports of ministers, requisite authorizations or consents...for consent by requisite ministers, and the like.

[*Translation*]

In addition to judicial and parliamentary oversight, the media, NGOs and an engaged civil society also oversee the operation of the Act and, therefore, promote the Act's overall integrity and efficacy.

[*English*]

In conclusion, Mr. Chair, this committee has the advantage of examining the act with the perspective that comes only with time. In undertaking this review, you will have the benefit of three years' experience with this legislation—both its provisions and its application; with the expertise and experience of those officials and academics, Canadian and international, who will appear as witnesses before your committee; with the wisdom and guidance provided by our courts; and with the experience of our diverse communities that make up the Canadian mosaic.

[*Translation*]

The importance of this legislation cannot be understated. Canadians need to be reassured that their government has both done all we can to protect them against terrorist acts without unnecessarily infringing on their individual rights and freedoms. In effect, in developing a comprehensive anti-terrorism law, the challenge is not one of balancing the protection of national security with the protection of human rights, but one of re-conceptualizing human rights as including national security and vice versa. The inquiry is not one of the freedoms that should be surrendered, but of the rights that should be secured. The two are inextricably linked.

[*English*]

Accordingly, the Government of Canada must have a principled approach to the protection of security and human rights, which we share with this committee, as we have sought to build upon it in our relationships with our international partners and in our work with our provincial counterparts.

Mr. Chairman, the valuable work of this committee on Bill C-36 and the recommendations that were made at the time enhanced and strengthened this legislation. Similarly, we are looking forward to the outcome of your deliberations in the months ahead, and in particular to receiving your views and recommendations on the provisions and operation of the legislation. I am looking forward to the submissions and testimony of the witnesses appearing before you, and if invited, I would also be pleased to appear before you again.

I wish you every success in this review. I welcome your questions and comments.

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Mr. Minister.

We will proceed to the first round of questioning, beginning with Mr. MacKay from the official opposition.

Mr. Peter MacKay (Central Nova, CPC): Thank you, Mr. Chair.

Thank you, Professor Cotler—Minister—your officials. We're glad to have you with us this afternoon. I thank you for that very comprehensive presentation.

I'd like to begin, if I could, Minister, with one of the more, shall we say, controversial elements, although it is separate and apart from the legislation. It is something that we have included in our mandate to examine, and that is security certificates. These are timely. They're in the news, as you know. In fact, as recently as yesterday, Justice Dawson held up a security certificate against Mohamed Harkat based on evidence that we know is presented in secret.

My question doesn't relate to the decision because that would be inappropriate, but rather whether justices who hear these cases, or similarly, cases in investigative hearings, cases involving in some cases the type of warrant for preventative arrest, are being afforded special training; whether they are given special background information due to the sensitivity of these cases and some of the important, comprehensive information that's necessary to make the informed decisions, such as you've outlined; and whether they are given this information to help recognize these national and international security concerns that would exist. Finally, are these justices given security clearance to hear this evidence?

I say this in the context of the Anti-terrorism Act having amended the Official Secrets Act, Minister, as you know, that creates this Security of Information Act, which includes provisions for special operational information—that is, to ensure that those persons who hear information that is believed to be essential to Canada's security will be permanently bound to secrecy, and that those persons are then granted access to this privileged information.

We know that as recently as the last year your government has announced the intention to expand this to include some other areas of government departments, including the foreign and defence policy secretariat of the Privy Council Office, legal services branches of CSIS and CSE, and the national security group in your department, at the Department of Justice.

My question is, will judges be added to that? Do you deem that appropriate? I would ask as a subtext to that question whether Justice O'Connor's commission of inquiry into Maher Arar will also be added to that. I don't expect you to give any commentary on the Arar case. I know you've recused yourself from that.

My question specifically is about judges now being put into that special category of individuals who will be cleared and be granted special access to that information, and the training component.

● (1600)

The Vice-Chair (Mr. Kevin Sorenson): Minister.

Hon. Irwin Cotler: Thank you for your question.

Let me say with regard to the matter that you first referred to—whether the judges are being afforded any special training—that people who sit on the judiciary and who have been chosen as judges because of their deemed merit, their deemed experience and expertise in both findings of fact and conclusions of law are deemed able to address these issues that contain matters of fact and conclusions of law, admittedly within the particular realm of what might be called a national security law, or national security along with human rights law. But judges do this as part of their ordinary work and fact finding and conclusions of law, and in fact it is not only the Federal Court that deals with these matters but the Supreme Court as well.

I might add that in terms of training, judges are always experiencing ongoing judicial education and training, particularly as the law evolves. I myself have participated in my previous life in some of those training seminars, which dealt with engaging issues such as the development in international human rights, humanitarian and criminal law, or the domestic dimensions of charter law, as they may apply to national security instances and the like.

So I suspect that you will find that our judiciary is both prepared for it by reason of the expertise they initially secure in fact finding and in legal reasoning and in terms of the ongoing training.

Mr. Peter MacKay: I'm sorry, Mr. Minister, but I want to make one point clear. You're saying there is no special program to train judges in this area. You're saying it's just the normal course of their training and selection process.

I want to be very clear on that. You're saying there isn't any intent on the part of the government to have a special selection process for judges who hear these cases.

Hon. Irwin Cotler: Let me just answer. I'm about to get to that particular point. There is the National Judicial Institute that is engaged in the ongoing education of our judiciary and that includes education in matters arising out of these issues.

But you asked a particular question that related also to the matter of designated judges for purposes of secrecy and the like, and I want to cite subsection 10(3) of the anti-terrorism law that says:

> The following persons may not be designated as persons permanently bound to secrecy, but they continue as such if they were persons permanently bound to secrecy before becoming persons referred to in this subsection:

Amongst those categories, reference is made to a judge receiving a salary under the Judges Act. So that's the issue with regard to secrecy, but I might ask my colleague, Stanley Cohen, who has dealt with the education and training of judges to perhaps further respond on this point.

● (1605)

The Vice-Chair (Mr. Kevin Sorenson): Just to make it abundantly clear, in the first round we have seven minutes for questions and answers. So keep your questions fairly succinct and your answers short as well.

Mr. Cohen.

Mr. Stanley Cohen (Senior General Counsel, Human Rights Law Section, Department of Justice): I'll try to be short on this.

The National Judicial Institute is an institute that is charged with the ongoing and continuing education of judges, and that institute, I know from first-hand knowledge and involvement, has had programs that directly address the Anti-terrorism Act, its provisions, and its scope of operation. These are not restricted to officials from the Department of Justice, where I work, but include the preparation and presentations of submissions by experts in the field from across Canada.

Mr. Gérard Normand (General Counsel and Director, National Security Group, Department of Justice): Mr. McKay, if I may add, the judges who hear those security certificate cases are designated judges from the federal courts. Those are the same judges who hear the matters under the Canada Evidence Act, the objections that are based on national security. So that is the same group of designated judges.

The Vice-Chair (Mr. Kevin Sorenson): Mr. Ménard.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you very much, Minister. I've always been impressed by your remarkable career. The depth of your presentation makes me want to re-read it again immediately. Be assured that our objective is security. We recognize that special efforts must be made to counter terrorism. Our concerns, however, relate to the abuse that may have occurred as a result of the extraordinary powers granted at the time.

I'd like to take you back 20 years, Minister. Would you not have been, at the very least, extremely uncomfortable with the knowledge that in Canada, the law allowed for people to be incarcerated indefinitely without having to prove their guilt?

[*English*]

The Vice-Chair (Mr. Kevin Sorenson): Mr. Cotler.

[*Translation*]

Hon. Irwin Cotler: First let me say that the principles I have shared with the committee today are the same ones I espoused 20 years ago. During my time as an academic 15 years ago, I had called upon the government to enact anti-terrorism legislation. In fact, I was convinced terrorism posed an international threat of major proportions. A government's primary responsibility is to ensure the safety of its citizens and to protect fundamental rights such as the right to life, liberty and security. As I said, I see no contradiction in the protection of security and the protection of human rights.

Let's talk about the security certificate and the judicial process. I wish to point out that in its study, the Supreme Court of Canada established that the judicial process in place was constitutional and reasonable, including the Anti-Terrorism Act and the security certificate provided for in our Immigration and Refugee Protection Act. The court held that the process did not violate the rule of law.

Furthermore, pursuant to the contextual principle, it is important to acknowledge the threat to our security and to view security measures as a response to that threat. Rights are not immutable. The whole rights issue must be weighed in the current context.

● (1610)

Mr. Serge Ménard: I understand, but in both cases on which the Supreme Court ruled, the issue wasn't freedom, but rather the expulsion of persons from Canada.

Does that not go against all of the principles of law that we have learned? Your comments in defence of this law could just as easily be seen as a broad defence of the Criminal Code or of any other piece of legislation. Would you not agree? Do you not feel that we've gone too far when a Canadian government — and not necessarily your government — can invoke current laws to incarcerate people without proof of their guilt?

Hon. Irwin Cotler: It's not a question of incarcerating people without having proof. To do that the government requires a certificate, signed by two ministers, issued on the basis of existing evidence. Subsequently, there is a judicial review and the court must determine again if the evidence is sufficient and reasonable. Furthermore, an inquiry is held and as a rule, a portion of that inquiry is conducted behind closed doors. However, the fact remains that the judge reviews and summarizes the evidence presented. Counsel for the defendant has an opportunity to cross examine the government on the matter.

If you're asking me whether the process is perfect, I would have to answer no. Nevertheless, having representing several political prisoners charged with committing terrorist acts, I would have liked to have been able to avail myself of this judicial process and to have had an opportunity to respond to the allegations made, even though this process may not be fully adequate.

Mr. Serge Ménard: Time is going by too quickly. I have another question for you.

Let me now take you back 35 years, to the time of the terrorist crisis in Quebec. Do you feel that the legislation on the books today would have prevented these terrorist acts in Quebec?

Hon. Irwin Cotler: I cannot speculate about that. It's difficult to say if these acts could have been prevented. However, by way of a response, I would have to say that our legislation has provided for the issuance of security certificates for almost 30 years now. This is not a measure resulting from the passage of the Anti-Terrorism Act.

[*English*]

The Vice-Chair (Mr. Kevin Sorenson): Very quickly.

[*Translation*]

Mr. Serge Ménard: During the October crisis, 300 innocent persons were arrested and subsequently released. Do you think that fewer mistakes like this would have been made had more specific anti-terrorism legislation been in place?

Hon. Irwin Cotler: Perhaps.

Mr. Serge Ménard: For example, perhaps Pauline Julien would not have been arrested.

Hon. Irwin Cotler: Further to our experiences at the time, a new act was passed to correct problems. As for the current act, it's hard to know what would have happened had in been in force back then, but it does contain many provisions aimed at protecting human rights.

[*English*]

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Mr. Minister.

Mr. Comartin.

● (1615)

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thank you, Mr. Minister, for being here.

To start off, I know this is a bit unusual, but are there any plans by your department to make any changes to the anti-terrorism law?

Hon. Irwin Cotler: Just let me say, Mr. Comartin—because you weren't here when I began my remarks—that I said initially that we were open to any recommendations that might proceed from your examination. I indicated that in the examination of Bill C-36 at the time, the legislation was initially in fact changed by reason of the amendments that were offered by members of that committee. I was one of them at the time who offered a number of amendments, so it is certainly open to this committee, in your consideration of the witness testimony and in the course of your deliberations, to make proposed recommendations. If they serve to enhance the legislation, if they serve to make it better law, then of course we are open to it.

Mr. Joe Comartin: I take it by that, at this point, you're waiting for the committee's recommendations. There's nothing specific coming from the Department of Justice.

Hon. Irwin Cotler: There's nothing specific coming from Justice at this time, although we are examining...and this goes back to earlier questions on the security certificates. We do find ourselves in a situation where we are faced with a kind of polar situation—detention, on the one hand, to protect against a risk to our national security and the security of Canadians, or removal, on the other, to a country where there may be a substantial risk of torture. That is something that is both contrary to international law...and in domestic law the Supreme Court has said permissible, but only in exceptional circumstances. We are exploring middle-range options that may allow us to have, as in the United Kingdom, supervisory orders in such a way that we will not have to be faced with these two polarities. It may well be in the course of our exploring of these options you will come up with better recommendations that we can then incorporate as a matter of our law.

Mr. Joe Comartin: In that regard, in terms of your considerations, are you taking into account the decision by the House of Lords in December and by the Supreme Court in New Zealand in the new year?

Hon. Irwin Cotler: Yes, we look to other countries, as we did in terms of the initial enactment of our law, and we look to other jurisdictions in terms of the evolving nature of the law and jurisprudence in those jurisdictions.

I might add parenthetically that I was in the United Kingdom shortly after the judgment of the Law Lords, and I discussed the judgment with several of the Law Lords who delivered it, as well as with the Attorney General of the United Kingdom and others. So as I say, where we can learn from the experience in other jurisdictions and jurisprudence, we will do so.

Mr. Joe Comartin: Was there—your officials may help—a decision on Jaballah released in the last 24 hours? I haven't seen it, but I got an e-mail on it earlier this afternoon.

Mr. Daniel Therrien (Senior General Counsel, Office of the Assistant Deputy Attorney General, Department of Justice): Yes.

Mr. Joe Comartin: Could you share with the committee what that decision was?

Mr. Daniel Therrien: The conclusion of the court was that.... It was a security certificate case, but there were two issues potentially before the court—whether the certificate was validly made, whether it was reasonable, and the court delayed its decision on that because of its decision on the second point, which was the decision of an immigration delegate that the person could be removed. The court found that this determination was unlawful for a number of reasons that do not go to the issue that the minister raised, which is whether we can remove the torture.... So for what I would call a number of procedural reasons, the court set aside the decision that the person was not at risk of torture. The end result of this is that the determination will have to be remade whether the person is at risk of torture. In the meantime, the decision under reasonableness of the certificate is delayed.

Mr. Joe Comartin: What about the continued incarceration?

● (1620)

Mr. Daniel Therrien: Because the person is still facing a proceeding on the reasonableness of the certificate, the law is that during that proceeding the person must be detained.

Mr. Joe Comartin: How long has he been detained?

Mr. Daniel Therrien: Mr. Jaballah? I cannot say for sure. It's certainly been more than two years.

Mr. Joe Comartin: Is this the case where it's the second time around?

Mr. Daniel Therrien: For Jaballah, yes.

Mr. Joe Comartin: So he was detained for some period of time the first time and it's been at least two years the second time.

Mr. Daniel Therrien: That's correct.

Mr. Joe Comartin: Mr. Minister, you made some comments in response to Mr. Ménard's question. I want to challenge you on those of the certificates and the way they've been used. The reality is that the way they're being used now is much more restrictive than the way it was when SIRC was responsible for the certificates. I'm referring specifically to the use of independent counsel. Are you open to reintroducing that element into the process, so that a person who's the subject of these certificates would have some greater opportunity to put forward their case to the judge through an independent counsel as opposed to their own counsel?

Hon. Irwin Cotler: I think you're referring to the possibility of having an amicus curiae—

Mr. Joe Comartin: Yes.

Hon. Irwin Cotler: —that would be part of the process. Yes, we are open to considering that matter. And as you know, the present process has reviewed this. We've had two Federal Court cases that actually have rejected that submission, but in my view the fact that part of the inquiry does take place in camera, although there is a fulsome inquiry in camera that is made by the presiding judge...we are prepared to consider the idea of an amicus curiae.

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Mr. Cotler.

Mr. Wappel.

Mr. Tom Wappel (Scarborough Southwest, Lib.): Thank you, Mr. Chairman.

Mr. Minister, welcome. As I said to Minister McLelland, this is a very difficult act for me to get my head around because you have to flip so many pages, check so many acts, and things go so quickly. As an example of things going quickly, you cited a section of something in response to Mr. MacKay's question regarding judges. I wonder if you could say it again, so that I could find it. It had to do with secrecy.

Hon. Irwin Cotler: I referred to subsection 10(3) of the Security of Information Act that says:

> The following persons may not be designated as persons permanently bound to secrecy, but they continue as such if they were persons permanently bound to secrecy before becoming persons referred to in this subsection:

And it refers amongst those to a judge receiving a salary under the Judges Act.

Mr. Tom Wappel: So then in fact it was the Security of Information Act.

Hon. Irwin Cotler: Yes.

Mr. Tom Wappel: All right, good, because I was looking all though the Anti-terrorism Act in section 10 and couldn't find it. So there's a specific exception for judges. Don't you find that curious, that judges are exempted from secrecy laws? They are hearing evidence from people who are under secrecy and they are hearing evidence that is secret and is potentially detrimental to the state, yet they are not bound by any secrecy provisions.

Hon. Irwin Cotler: I don't find that unusual. We have vested trust in our judiciary. They've been performing this fact-finding function for years. They come across security-related information not only in these matters but in other matters. This has been part and parcel of the judicial function. I don't regard it as being unusual or in my view disturbing.

Mr. Tom Wappel: And you don't find it unusual that the Governor General is exempted but not the Prime Minister?

● (1625)

L'hon. Irwin Cotler: I'm not sure what the *travaux préparatoires* were with respect to the identification of the Governor General and not the Prime Minister, but some of my colleagues may be able to respond to that.

Mr. Stanley Cohen: All I can say is that with regard to the Security of Information Act process, the adding of people to the list of persons permanently bound to secrecy is not fixed. It's something that evolves.

Mr. Tom Wappel: I wasn't even thinking of questioning along this line. It's just that it came up, and I find it curious as to who's listed and who isn't and why. Yes, of course, we trust our judges. We certainly hope there are no problems. I just find it odd that the Minister of Justice, I presume, is bound by security and by secrecy—I certainly trust him—and yet a judge isn't.

I just find it odd in the context of the kinds of things that people will be hearing in today's world. Once that judge retires and is no longer a judge, that judge is not bound by any provision of secrecy, I presume, and can, under whatever circumstances he or she wishes, discuss what he or she heard because the judge is not bound by provisions of secrecy. Is that correct?

Mr. Gérard Normand: If I may, people who are permanently bound to secrecy under the Security of Information Act are for a very specific purpose that is in relation to potential disclosure of information that would not be authorized. Although people who are not covered by the exception are, as you probably know, not automatically covered, only people with intimate and regular access to this type of information will be designated personally.

In addition to people who do have regular access to this type of information—if you don't have that regular access, you will not necessarily be designated—you have people out there who have some type of access to special operational information who will not become permanently bound to secrecy. It's a balancing act, taking into account those who have this. This was a policy that was added to the government security policy, as to the instances where someone would become personally bound to secrecy.

Mr. Tom Wappel: Okay. Just so I understand it—and again, I repeat, I wasn't even going to go here, but I'm just curious about it—is it true that a judge could hear very secret testimony of the highest security level as part of a case, retire, and then talk about it, under the current law of Canada?

Mr. Gérard Normand: One of the concepts taken into account to exclude the judges was the independence of the judiciary. In the context of hearing matters, the judiciary are not part of the executive, so the people who will be designated as permanently bound to secrecy are people within the executive or contractors. The judiciary being independent from the executive, it was felt they should remain outside of that—

Mr. Tom Wappel: Monsieur Normand, I'm not asking for the rationalization. My question is very simple. Is it true a judge could hear very secret, very sensitive testimony, retire, and then talk about it, under our current laws?

Mr. Stanley Cohen: There are restrictions, just as there are for all citizens of Canada who come into possession of information that is protected. So if someone were indiscreet in the way in which they handled national security information, they would be at risk for potential prosecution under our legislation.

Mr. Tom Wappel: What legislation would that be?

Mr. Stanley Cohen: That is the—well, I'll leave it to my colleague.

Mr. Gérard Normand: It could be the same legislation.... The difference is if you are permanently bound to secrecy, some specific offences apply to you. Those offences are under sections 13 and 14. If you are such a person and you are disclosing special operational information that is defined there, in order to get a conviction we would not need to establish the veracity of the information and we would not need to establish the harm. That does not take away the possibility of being prosecuted, for instance, under section 4 of the same act.

Mr. Tom Wappel: That is the Security of Information Act?

Mr. Gérard Normand: Yes.

● (1630)

Mr. Tom Wappel: Okay. How much time do I have?

The Vice-Chair (Mr. Kevin Sorenson): You're 30 seconds over. Thank you, Mr. Wappel. It was a good line of questioning, and we'll get back to you.

Mr. MacKay.

Mr. Peter MacKay: Just continuing along this line, the current provisions presumably would preclude the publishing of books by individuals acting in this capacity. I'm thinking in particular of John Starnes, former head of the RCMP Security Service, who wrote a very interesting book about his life and times within that service. Mike Frost wrote a book called *Spyworld* some years ago. That would presumably preclude that kind of authorship. Is that correct?

Mr. Gérard Normand: That would be correct, unless they are authorized to release that information.

Mr. Peter MacKay: That would presumably prevent you, Minister, from publishing your memoirs in future years.

Hon. Irwin Cotler: That might benefit the public; it may not be a bad thing.

Mr. Peter MacKay: It might very well.

Mr. Stanley Cohen: In fairness to Mr. Starnes and others who have written books, there was always an Official Secrets Act in Canada, and there was always the potential to prosecute under that act, which of course was even broader, and in fact heavily criticized for the breadth and scope of its provisions. Mr. Starnes, I am certain, was making very certain he would have been walking the appropriate line in terms of what he could and could not divulge in his memoirs.

Mr. Peter MacKay: Without a doubt.

Speaking of authors, Minister, I have a copy of an article you wrote on September 14, just a year and a few days after September 11. It's entitled “Two cheers for anti-terror laws”.

> Liberal MP Irwin Cotler gives his government credit for its legislation against terrorism, but says much can be improved, including the definition of terror and the so-called sunset clause.

I'm wondering if you still share that opinion.

Further to that, the article, among other things, is critical of section 38 of the Canada Evidence Act, which enables the Attorney General of Canada to personally issue certificates prohibiting disclosure of information. This was one of the major critiques you had of the legislation at the time. You said the 15-year life span for Attorney General certificates was too long, and “the capacity for judicial review is still unduly constrained”. I am wondering if you could explain those concerns at that time and whether you still consider this to be problematic. If so, what changes would you consider as part of that type of amendment?

In the article—and I would like you to address this as well—you also expressed an opinion that the listing of terrorist entities by the executive branch remained a problem, because there was insufficient notice, and there were procedural fairness problems before the listing takes place. Again, I ask you if you still have that opinion. Have you changed that opinion? What would you do to correct it?

In your opening remarks you said a fine line sometimes exists between terrorists and freedom fighters. I am quick to point out that your government has deemed the Tamil Tigers are not to be listed in Canada, although there is ample and mounting evidence they're engaged in very active terrorist activity, including the training of children to be suicide bombers, which was noted in the House today. Do you consider the Tamil Tigers to be terrorists or freedom fighters?

Hon. Irwin Cotler: Let me begin on the matter of the Attorney General's certificate. Actually, you didn't report the full force of my criticism. I said I regarded the situation at the time as such that if the Attorney General's certificate—which was then unfettered, unreviewable, indefinite, secret—would remain in the legislation, it would be grounds alone for me to oppose the legislation. So I took that very seriously at the time.

I'm pleased a number of recommendations were then included in the legislation, with a series of safeguards. The certificate can now only be personally issued by the Attorney General. More importantly, the certificate may only be issued after an order or a decision that would result in the disclosure of the information had been made under the Canada Evidence Act or under an act of Parliament, so you have to have a legal process.

The certificate may only be issued in connection with a proceeding for the purposes of protecting information obtained in confidence from, or in relation to, a foreign entity, as defined in subsection 21(1) of the Security of Information Act, or for the purpose of protecting national defence or national security.

The certificate now has to be published in the*Canada Gazette* without delay:

> A party to the proceeding...may apply to the Federal Court of Appeal for an order varying or cancelling a certificate

—which is a judicial review process that was not in place. The judge reviewing the certificate has the power to confirm, vary, or cancel the certificate, which had not been in place.

The life of the certificate is 15 years—then it was indefinite—unless it is reissued by the Attorney General of Canada, etc.

In other words—

● (1635)

Mr. Peter MacKay: That was the major criticism, the 15-year time span. You took great issue, great umbrage, with that.

Hon. Irwin Cotler: No, I took—

Mr. Peter MacKay: I'm looking at the legislation. It still concludes that it expires in 15 years.

Hon. Irwin Cotler: Right, but my initial criticism was there was no time limit. I then still was not satisfied that the time limit was 15 years, but if I had seven criticisms and six and a half were accepted, I felt I could then go ahead and support it. Do I still have the concern about the 15 years? Yes.

Mr. Peter MacKay: You do? Thank you.

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Mr. Minister.

Hon. Irwin Cotler: On the other two issues you mentioned, with regard to the listing of terrorist entities—again, without going into detail in that regard, I made some recommendations with regard to that issue. A number of those recommendations were accepted, and as a result I felt I could support that part of the legislation as well.

On the matter of the Tamil Tigers, it's important to appreciate that Tamil Tigers don't have any kind of exculpatory immunity from anti-terrorism law. Like anyone else, if they commit any of the offences, they are subject to the law. Sometimes there is some suggestion—not that you were making it, but I'm just making it for the record—that they are actionable under the law. Indeed, under the United Nations regulations—where they have been listed—any financing of Tamil Tigers in Canada in that regard is also prohibited as a matter of law.

The only thing we have not done there is the actual listing, as you have mentioned, as a listed entity under the anti-terrorism law. That matter is still under review. The reason such a decision has not yet been taken has been that since the beginning of the peace process—and you will find this in other countries as well—those kinds of decisions have been suspended pending the peace process, but not so as to give them any kind of immunity from the law or to allow for any fundraising on their behalf. That's also prohibited.

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Mr. Minister.

Mr. Macklin, five minutes.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): Thank you very much, and thank you, Minister, for being here with us today.

One of the things that arises from this legislation is more and more concern being expressed by those who are affected, rightly or not necessarily correctly.

One of the questions we should be looking at is what we, as a government, have as an obligation to a person who, for example, has been listed inappropriately—we've had one example, it appears—leading to the person in effect losing their business and I suppose a great deal of what was left of their life in terms of going forward. In fact, sometimes it does appear that errors are made, so should we be putting certain balancing protections within this legislation to assist when an error is made?

Hon. Irwin Cotler: When you look at the listing of entities, there are a number of safeguards. First, you have to have that kind of evidentiary threshold—a reasonable grounds test and intention elements—incorporated into the listing process to begin with. In other words, before placing an entity on the list, the governor in council—that's already after a multi-layered evidentiary review process—must be satisfied there are reasonable grounds to believe that:

> *(a)* the entity has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity; or
>
> *(b)* the entity is knowingly acting on behalf of, at the direction of or in association with an entity referred to in paragraph *(a)*

—as I have just indicated.

In terms of protective aspects, a listed entity may apply to the Solicitor General to be removed from the list of entities. The Solicitor General must decide within 60 days whether reasonable grounds exist for the removal of the entity from the list. An applicant can also apply to a judge to seek judicial review from that decision by the—now—Minister of Public Security not to remove an entity from the list on the application for judicial review. The judge must determine whether the decision of the Minister of Public Security to recommend listing is reasonable, based on the information available to the judge. If the judge determines the listing was not reasonable, then the judge must order the applicant's removal from the list.

Mechanisms to address cases of mistaken identity are included in section 83.07.

Finally, the list of entities must be reviewed every two years by the Minister of Public Security in order to determine if there are still reasonable grounds for an individual or group to remain a listed entity.

So you have a series of protective safeguards with respect to accountability by the executive with respect to judicial review, with respect to the orders a judge may give in that regard. All this follows from, as I said, the multi-layered evidentiary threshold you need to satisfy in order to get to the point of asking the governor in council to have that authorization to begin with. So there are safeguards.

Admittedly, at the time, as a member of the parliamentary committee I made one or two other recommendations in that regard, in terms of notice that might be given to the prospective entity to be listed, but, as I said, most of the recommendations I made, and to which I now refer, were included in the legislation.

● (1640)

The Vice-Chair (Mr. Kevin Sorenson): Mr. Macklin.

Hon. Paul Harold Macklin: Another area flows from this. I think it's on the basis of the concept that you protect the public before an act has actually occurred. I guess from your history as a human rights lawyer, the question is raised as to why reasonable suspicion is the right standard to justify detaining any person. Isn't this really a fundamental shift from where we have been, in terms of the standard we would apply of state powers over any individual? It strikes me we are somewhat precipitate at times in how we approach this. What are your feelings in terms of that standard?

Hon. Irwin Cotler: I'm not sure, but I suspect you're speaking about the recognizance with conditions, which is one of the two areas regarding a preventive approach in the anti-terrorism legislation that has given cause for concern, and where those words appear.

Having dealt with it and written on it at the time as a member of Parliament, and having had my own concerns initially on it, I think it's important to appreciate the framework of the legislation. To begin with, the consent of the Attorney General of Canada or his lawful deputy is required before a peace officer may lay an information to bring a person before a provincial court judge. And now we get to the specific point that you mentioned, which is that two standards must be met before an information is laid. The officer must (a) believe on reasonable grounds that a terrorist activity will be carried out, and (b), suspect on reasonable grounds that the arrest of the person or the imposition of a recognizance on the person is necessary to prevent the terrorist activity.

The second aspect goes down to "suspect", but as I said, it's the entire framework of the legislation that needs to be appreciated. The requirement of reasonable belief lends objectivity to the standard required. Only a provincial court judge can receive an information and cause the person to appear before him. The presiding judge must be satisfied by evidence that the suspicion is reasonably based. The judge must come to his or her own conclusion about the likelihood that imposition of a recognizance is necessary to prevent a terrorist activity.

Now, we are also speaking about a process and a procedure that is not otherwise unknown in Canadian law. We have these preventive features with regard to sexual offences against children, with respect to spousal abuse, with respect to organized crime. These models exist elsewhere in the Criminal Code and are well founded constitutionally. The Ontario Court of Appeal dealt with it in the Budreo case.

So as I say, this is not something that is *sui generis*. It is known elsewhere. But it is particularly relevant and important with respect to the preventive aspect of anti-terrorism law.

● (1645)

The Vice-Chair (Mr. Kevin Sorenson): Thank you.

Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: I've read some of the criticism, in particular the submission drafted by several law professors prior to these hearings. The fact of the matter is that the Criminal Code already contains provisions to deal with terrorist offences. Personally, I don't see how any terrorist activity would not be considered a Criminal Code offence, even twenty years ago. The danger I see is increasing the number of measures, which may be justified in the case of the most serious offences, but which may have too broad a reach.

Let me give you an example. I think that given my position, everyone knows that I have no desire to protect organized crime. I spent many years of my life waging an effective fight against organized crime. However, you very eloquently speak of the need to fight terrorism. We hear references to incidents such as the train bombings in Madrid or the events of September 11. As I see it, laws can't prevent these types of incidents from occurring. Rather, the intelligence gathering efforts of law enforcement agencies and improved coordination of intelligence sharing operations have more to do with preventing terrorism than laws as such.

If everyone in the Western world feels the need to adopt legislation — and this comes as no surprise to me, because the Western world isn't necessarily a model — surely it's because those who govern feel the need to show the public that they are doing something to address the problem. As lawmakers, the only thing they can do is pass laws. However, the real key to resolving the problem is police work and intelligence gathering.

I'm not sure how you feel about the kind of overlap between the provisions on terrorism and the traditional Criminal Code provisions when it comes to violent acts and to charges of conspiracy, of being an accessory before or after the fact, and so forth.

Hon. Irwin Cotler: I agree with you about the importance of an adequate intelligence gathering service. Without such a service, improving our laws would do nothing to prevent terrorist acts. Intelligence gathering is a critical operation. The Anti-Terrorism Act contains provisions to that effect which, along with the Criminal Code, can help us to prevent terrorist acts.

I'm not saying that we no longer need the Criminal Code, but merely that certain acts of terrorism are singled out in the Anti-Terrorism Act and this is an important step in keeping with the principle of preventing terrorist acts, as I mentioned in my opening remarks. Deliberately inciting someone to commit a terrorist act or deliberately facilitating the activities of a terrorist group are actions specifically defined as offences, whether or not the terrorist act is carried out, or whether or not the accused person had knowledge of the specific nature of the planned terrorist act. In the absence of a clear framework within the context of the Anti-Terrorism Act, it would be difficult to adopt a preventive approach and to initiate the measures required to prevent acts of terrorism.

● (1650)

[*English*]

Mr. Stanley Cohen: Perhaps I could add to one or two matters.

With respect to your question on whether or not the general law would be adequate, I think one has to begin with the basic proposition that even the police must act under the umbrella of the rule of law. I know you're sensitive to this. You've given organized crime as an example of where the criminal laws have a broad reach, and we are basically subjecting the police to the organizing and regulating strength of that particular law. Now, that law, as it turns out, is essentially the template for the participation offence, for example, in the Anti-terrorism Act.

Then you come to certain circumstances that are not reached by the current criminal law. If we didn't have a capacity to try to reach out and prevent certain actions, we could find ourselves short of an ability to actually intervene. That's where you get into the preventive arrest and investigative hearing provisions. In those circumstances, and those two particular powers, you can act at a preliminary stage.

As the minister has already indicated, of course, these are matters that already have antecedents in our general laws as well; they simply hadn't been adapted, before the Anti-terrorism Act, to this changed era in which we live.

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Mr. Cohen.

We will go to the government side, with Mr. Wappel.

Mr. Tom Wappel: Thank you, Mr. Chairman.

Mr. Minister, yesterday it was suggested to me by your colleague that I ask you a couple of questions in your capacity as Attorney General, so perhaps we could turn to the Canada Evidence Act.

Yesterday I gave a hint, I believe—Minister McCallum's wording—about a briefing note I have from the Department of Justice. It says, and I'll quote, with regard to the certificate you would issue under section 38.13:

> Since the certificate can only be issued under section 38.13 of the CEA "after an order or decision that would result in the disclosure of the information," a certificate can only be issued where this occurs in an ATIA, PA, or PIPEDA proceeding.

I think that is an incorrect statement. The reason I think it's an incorrect statement is that the actual section itself permits you to issue a certificate under the Canada Evidence Act or indeed any other act of Parliament. There is no restriction in that section to the three acts that are referred to.

I'm wondering, am I reading the section incorrectly, or is there a problem with the briefing note?

Hon. Irwin Cotler: I'm going to tell you, Mr. Wappel, that I answered earlier about the Attorney General's role under section 38 of the Canada Evidence Act and the like. I asked my senior counsel, Doug Breithaupt, exactly the type of question you asked, following your concern about that. Since he gave me such a good answer, I thought it might be best for him to answer you, so that you can be the same beneficiary that I was in terms of his expertise.

Mr. Tom Wappel: Thank you.

The Vice-Chair (Mr. Kevin Sorenson): Thank you. We're looking forward to a good answer.

Mr. Douglas Breithaupt (Senior Counsel, Criminal Law Policy Section, Department of Justice): Thank you for the question, Mr. Wappel.

No, the last sentence is not wrong, but we can understand why it may be confusing to you. It must be seen within the context of the title of this particular briefing note, which is "Anti-Terrorism Act Amendments to Access to Information Act, Privacy Act and Personal Information Protection and Electronic Documents Act". It's in that context that the Attorney General's certificate is involved in those processes. That's explained in this particular note, whereas there's an additional note in your briefing book that deals with Canada Evidence Act certificates in general.

It's difficult to compress a great deal of information into these notes, so we've chosen to do it this way. If you look at the other tab, under Canada Evidence Act, you'll be able to see a fuller description of the use of the Attorney General's certificates under that briefing note. This just relates to those particular amendments.

● (1655)

Mr. Tom Wappel: That sounds like a good answer to me.

What tab was the other one under?

Mr. Douglas Breithaupt: Tab 21.

Mr. Tom Wappel: Tab 21? Okay. I'll have a look at that. Thank you very much. That explains that.

I now turn to the Security of Information Act. I brought this up yesterday as well. Monsieur Normand, I'm sure, is waiting for a question on this one.

Before I get to that, I wasn't on the committee, Minister, and you were. You've mentioned it a couple of times, so you may have the answer off the top of your head. As I understand it, sections 4 and 5 of what's now called the Security of Information Act were not amended in any way by the Anti-terrorism Act. Those sections make reference to things done in a manner "prejudicial to the safety or interests of the State". Section 3, which was added by the Anti-terrorism Act, defines what a purpose "prejudicial to the safety or interests of the State" is. Am I correct, then, that prior to this act there was no definition, and now there is a definition? I have two questions flowing from that. Why was it felt necessary to have a definition when the act had existed for a long time without a definition?

Secondly, section 3 appears to be determinative. In other words, there are no words that say "including". A "purpose" is defined, so I'm assuming there can therefore be no other example of a purpose that is "prejudicial to the safety or interests of the State", other than those listed in the current section 3. I would find that to be reasonably dangerous, because terrorists are always coming up with different ways of doing things that we might not be able to think of. Under the old sections 4 and 5, it would have been put to court interpretation what a matter "prejudicial to the safety or interests of the State" is, but now there's a specific list that is a closed list, as I read it.

Secondly—and I know those are two questions—it's under the rubric of "Offences". I ask the question, is section 3 creating an offence? I don't think so. If it isn't, should that word not have been removed as part of the anti-terrorism bill in the first place, with "Miscellaneous Offences" just left above section 4?

I hope those questions are clear.

Hon. Irwin Cotler: Mr. Wappel, you've correctly identified Mr. Normand as being the expert witness in this matter, so I will turn it over to him.

Mr. Gérard Normand: Going back to the first aspect of your question of yesterday, although section 3 does not create an offence, as you pointed out correctly, it defines a concept that is used in an offence, the same as in section 8, which is also encompassed under the general heading of "Offences". You have definitions that were left in there because they are so closely related to the provisions that follow. It was therefore felt appropriate to leave them close to those provisions. From a drafting perspective, that is the explanation provided. These concepts need to be near the concept of the offences that they qualify or that they explain.

Mr. Tom Wappel: But we're agreed that they are not offences in and of themselves; they're merely definitions.

Mr. Gérard Normand: Absolutely.

Mr. Tom Wappel: All right.

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Mr. Wappel.

Mr. Tom Wappel: Sorry, he didn't answer the other two questions yet.

The Vice-Chair (Mr. Kevin Sorenson): Mr. Normand.

Mr. Gérard Normand: Very quickly, it is a closed list, as far as items or situations are concerned. I would point out the reference in paragraph 3(1)(n) to a number of other situations that could take place that are linked to the preceding items that have been enumerated. It was felt that these descriptions of situations were wide enough to cover any situation.

● (1700)

Mr. Tom Wappel: Why did the department feel the need to include a definition in something that had not heretofore been defined?

Mr. Gérard Normand: I guess that as legislation is looked at, we're always finding ways to better the legislation. So at that time, from a policy perspective, it was felt it was appropriate to have these definitions included in the legislation.

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Mr. Normand.

Mr. Comartin.

Mr. Joe Comartin: Mr. Minister, I want to pursue the issue of section 4 of the Security of Information Act. Given that certain cases are outstanding against a certain reporter/journalist from the *Ottawa Citizen*—I'm not sure if we're going to get very far with this—I would be interested in any suggestions as to how we might be able to look at this section and amend it so that journalists conducting their business, as that particular one was, would not have the fear of being charged hanging over their heads in this country.

I understand you may not respond because the charges are outstanding and the litigation is ongoing. But I preface this with the fact that even the Prime Minister quite clearly, in his initial reaction, was both surprised and...well, I think there was a general outrage in the country over the way those proceedings were conducted, by both the police forces and the prosecution.

So is there any analysis by the department that section 4 should be amended to prevent the type of process that was undertaken against that particular reporter?

Hon. Irwin Cotler: Thank you, Mr. Comartin. I will answer the question you posed with respect to the role of this committee, how it might be assisted by our department, and what questions you might consider, which is really the sort of generic basis of your question.

I won't deal with the specifics of the case you mentioned, apart from the fact that I can't do so because anything that relates directly or indirectly to the Maher Arar issue—because I've recused myself—I can't deal with. But I will answer your question, leaving that aside, as follows.

First let me say that my department would be pleased to provide the committee with an issues paper, if you feel that would be helpful on these matters. To give you a sense of the issues that an examination of section 4 might consider, let me just enumerate them for purposes of your inquiry.

Number one, to whom should the offence apply? Two, what sort of information would need to be protected by such an offence? Three, what should be the applicable *mens rea*? Four, what activity should be criminalized? Five, what kind of harm or threat of harm, if any, would need to be caused for the offence? Should the statute provide for a public interest defence, and if so, what would be the nature of such a defence?

Dealing somewhat more particularly with the questions in relation to the media, what is or should be the legal role and responsibility of the press and other media? Are special defences required in this matter?

Should there be any other defences or exceptions? How many offences would there be, and what would their penalities be? Have other countries dealt with this issue, and how? What can we learn from the manner in which other countries have dealt with this issue?

This is just an inventory of some of the questions that might be able to guide your work and where we may be able to assist in that regard.

I'll ask any of my colleagues if they want to add anything further on this.

Mr. Gérard Normand: Well, the only matter, as you indicated, Mr. Comartin, is before the courts. As you know, the constitutionality of section 4 has been challenged. It would be inappropriate for the Attorney General to comment any further.

Mr. Joe Comartin: There has not been a paper prepared up to this point that addresses those issues in more detail.

Hon. Irwin Cotler: No paper has been prepared, other than what I have just shared with you, which has been an identification of the issues. As I say, we can assist in terms of responses to those issues so identified.

● (1705)

Mr. Joe Comartin: Mr. Chair, if I could, perhaps this is something we could take up at some subsequent meeting in terms of planning the schedule of the committee.

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Mr. Comartin. We will definitely take that into consideration.

We'll also remind the minister and put it on the record that if he could provide that issues paper to the clerk, the clerk will make sure that it is circulated and that all members have the ability to take a look at that paper.

I'm going to give you another 30 seconds.

Mr. Joe Comartin: Thank you.

This is on racial profiling. Regarding papers, there was some media attention recently—I think in the last week or two—about work that your department has done on racial profiling, and there was some dispute over whether the paper was going to be made public. So I have two questions: does a paper exist, and are you prepared to make it public?

Hon. Irwin Cotler: I'm prepared to make it public. I just want to say that it was a preliminary draft of a discussion paper that was being circulated, as these things often are, among different officials in the department. It represented first thoughts by one official within the department. So we will make it available with that caveat in mind.

It did not reflect a policy position, or even policy options, of the Department of Justice. As I said, it was a very preliminary exploration of the issue.

On the matter of racial profiling, however, I would just reiterate what was my position before and remains my position since I became Minister of Justice. That is that the enforcement and application of this law or any law must not single out any individual or group for differential and discriminatory treatment. We are open to exploring all the options with respect to ensuring that the principle of equality before the law and the prohibition against racial discrimination is in fact applicable here.

One of the problems we have in the matter of racial profiling is the variance regarding its definition. We don't yet have an agreed upon consensus as to what we mean when we speak of racial profiling. Are we talking about race as the only criterion that is being singled out? Are we speaking about it as part of a range of criteria?

Regardless of that—and I can go into other issues—our national action plan against racism, which we released several days ago, addresses the concern as well. We, as the Department of Justice, have a responsibility under the national action plan against racism to explore race-based issues in the criminal justice system. This is one of those issues. We will be exploring it in that draft to which you referred and which, as I said, was a very preliminary discussion paper in that regard.

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Mr. Minister.

We would also make the request that this briefing as well be submitted to the clerk so it can be circulated.

Mr. Macklin, you have five minutes.

Hon. Paul Harold Macklin: Thank you very much, Chair.

Two of the sections of the act, the investigative hearing process as well as the recognizance with conditions, to the best of my knowledge, have not been used, although I understand recognizance with conditions was close to being used in terms of the investigative hearing in the Air India case. I believe it was actually brought before the court for some preliminary inquiries.

When you think about it, how useful is recognizance with conditions if in fact we're dealing with suicidal terrorists? In fact, it would seem to me that it's marginal at best in terms of its usefulness. I would think, based on current practice, you'd never think there'd be any benefit to releasing a terrorist who might potentially be suicidal.

So first of all, why would we maintain it? Second, is there an alternative we might be able to examine or look at that might better deal with the situation of a terrorist we'd like to release on conditions?

Hon. Irwin Cotler: I think one has to appreciate that it's not necessarily intended to capture the suicide bomber; it's intended to get at the people in the planning and participatory process, which then ends up with the suicide bomber. What you're really trying to do here is to detect and deter, to disrupt and where possible dismantle the terrorist network by a preventive, if not pre-emptive, strategy that, as I said, is not unknown in our law but may be particularly important with respect to trying to prevent the terrorist act from occurring to begin with.

So when we're talking about investigative hearings, we're not talking about the accused; we're talking about bringing a witness who may have information that may be relevant for purposes of ultimately being able to interdict the prospective suicide bombing, which is the last chain in the terrorist activity.

With regard to the preventive arrest or recognizance, there again the idea is to bring a person before a judge, with the consent of the Attorney General, where there are reasonable grounds to believe that the person has committed or will commit a terrorist act. And again, in this we seek to detect and deter, to disrupt and dismantle—all within what we have referred to as a culture of prevention, which underpins the entire approach with respect to anti-terrorism law.

But I'm going to also ask my colleague, Stanley Cohen, who has a particular expertise in both of these matters, to add something further to this if he wishes.

● (1710)

Mr. Stanley Cohen: I really think that was a pretty comprehensive response you made. I could go on, but I don't think I would be adding anything to it.

The Vice-Chair (Mr. Kevin Sorenson): You have 30 seconds.

Hon. Paul Harold Macklin: Let us go back to your earlier days. You're in the unenviable position of having first been a critic and then subsequently being the minister.

But earlier on you did criticize the process when the seizure and forfeiture powers were looked at within this bill. In particular you criticized the reverse onus that was placed on owners to satisfy a judge that they were not in fact complicit or colluding in terrorist activity. I wonder, have you examined this again now in your new capacity? Do you in fact still hold the same view that a person should be going through this personal due diligence process before our law?

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Mr. Macklin.

Mr. Minister.

Hon. Irwin Cotler: Let me just say that you're correct in terms of the critiques I offered at the time. Again, some of those critiques did find expression in the changes that were made. The new civil forfeiture regime that we have is modelled after the criminal forfeiture regime, with some modifications; these provisions are relevant to the civil forfeiture regime and are incorporated in it to ensure that the regime is complete.

I might add that I also referred in my writings at the time and as a member of the committee to the International Convention for the Suppression of the Financing of Terrorism. This also applies to what Mr. Ménard referred to earlier, because we did not have provisions in the Criminal Code for addressing the financing of terrorism, which terrorism experts considered to be the soft underbelly of international terrorism. So we have specific provisions in our anti-terrorism law that are effectively a domestic implementation of the International Convention for the Suppression of the Financing of Terrorism.

One of the things that is not always understood is that almost half of our anti-terrorism law is essentially a domestic implementation of 12 issue-specific anti-terrorism treaties, of which the International Convention for the Suppression of the Financing of Terrorism is but one of them. It is also a domestic implementation of the UN Security Council mandate, which specifically mandates us to enact the specific anti-terrorism offences that we have to prohibit the facilitating of a terrorist offence, the harbouring...and so on. So states are required to take appropriate measures to freeze, seize, and forfeit property used or allocated for the commission of terrorist activities. This regime permits Canada to meet our international obligations.

So when we look at the legislation, we have to understand the manner in which it is implementing international treaties. We in fact incorporated our own safeguards in it, growing in part out of the considerations of our parliamentary committee at the time.

This relates specifically to your question in that regard, Mr. Macklin. Before issuing a restraint order, or a warrant for the search and seizure of the property, the judge hearing the Attorney General's application must be satisfied that there are reasonable grounds to believe that the property is terrorist related within the terms of section 83.14.

You will not find these safeguards with the same specificity in the international convention, as domesticated in our anti-terrorism law. So we have tried to do two things: we have tried in fact to address the importance of domesticating these internationally mandated terrorist offences regarding forfeiture, or regarding terrorist financing, and to include our own specific domestic protections for civil liberties purposes.

I'll close here. A number of procedural protections that are built into the proceeds of crime section of the Criminal Code apply to the seizure and restraint scheme in section 83.13. In other words, property seized or restrained may only be detained for six months unless proceedings against the person are commensurate or the Attorney General makes application for an extension of time.

One of the ironies is that I now find myself in a position where I'm implementing some of the things I was addressing or concerned with at the time. But we do have domestic procedural safeguards, along with the domestic implementation of our international responsibilities and undertakings.

● (1715)

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Mr. Minister. We appreciate the answer.

Mr. MacKay.

Mr. Peter MacKay: Thank you, Mr. Chair.

I do disagree with Mr. Macklin when he says you are in the "unenviable position" of having been a critic and now a minister. I think most of us aspire to that, sir.

Some hon. members: Oh, oh!

Hon. Irwin Cotler: Some of us might go from being a minister back to being a critic.

Mr. Peter MacKay: I have three questions, and I'm asking three questions because if I ask one, I'll get one answer in the time I have.

The first is with respect to the concept you spoke of, treating people the same. Of course, as you pointed out, no one should be singled out through racial profiling, a form of discrimination my colleague Mr. Comartin referred to. But there is something that does jump out and inevitably does get raised, and that is that under section 77 of the Immigration and Refugee Protection Act the Solicitor General—the minister—can issue a security certificate that applies only to permanent residents or foreign nationals. It doesn't apply to Canadian citizens, so there is a singling out that takes place there.

My second question pertains to the decision in Suresh, which suggests the minister of immigration would be required to grant a stay of removal if there was evidence of a substantial risk of torture if the person was removed. However, Mr. Justice Binnie queried that. The right approach would be that if a suspected sleeper agent or someone with alleged ties or links to a terrorist cell were brought before a Canadian court without there being proof of their having committed any crimes and the government wanted to deport them out of the country, even where there was a risk of torture.... Mr. Justice Binnie went on to state "Do you simply turn them back into the general population, even though there is evidence collected by security authorities that they represent a potential danger to the public?" He's back very much on the sort of philosophical question you referred to about this balance between protecting the individual and protecting the public when you have something that is clearly "of interest", as they say in the security industry, that has led to an arrest and to the issuance of the security certificate.

My question is, how do we hold a person indefinitely, as we've seen now with some individuals being held up to eight years? How do we strike this balance? If there is evidence to hold them on a security certificate but not enough to charge them, and if we don't want to send them back to their country of origin because of alleged threats there to life and limb, what does Canada do? How do we hold on to foreign nationals who meet the bill, if you will, for security certificates, yet are deemed a threat to Canada, and yet are at personal risk if they're sent back to their country of origin?

Hon. Irwin Cotler: Okay. In terms of whether we're making a distinction in the manner in which we approach non-citizens differently from citizens, the Supreme Court of Canada in the Chiarelli case determined that the process that differentiates between citizens and non-citizens in a deportation scheme in Canada does not violate the Canadian Charter of Rights and Freedoms. The court held that there was no discrimination.

While permanent residents, for example, are given the right to take up residence and gain a livelihood in any province under the charter, only Canadian citizens—and this is the fundamental distinction here—who did not obtain with respect to the Law Lords and under U.K. law.... Under Canadian law, under section 6 of the charter, only a Canadian citizen has the right to leave, to remain, and to return to Canada. That's not true with regard to non-citizens.

We can make that distinction here without it being a discriminatory application of the law because the charter makes that distinction to begin with. The U.K. was operating with respect to the European Convention on Human Rights and U.K. law, so a different consideration was obtained.

On the matter that I sought to address earlier about the options we have, which frankly are not satisfactory in either keeping a person in detention or removal to a country where there's a substantial risk of torture...as I said, I think we need to look at other middle-range options here. The U.K. may be helpful in that regard because the U.K. Parliament responded to the recent House of Lords decision by enacting the Prevention of Terrorism Act, 2005. That repealed the former power in U.K. law to indefinitely detain suspected foreign terrorists, which the House of Lords had found to be unlawful.

I might add, just parenthetically, that indefinite power is not one we have here, but still the detention one here is something that of course you're right to address.

In its place there is now a system of what are called control orders. There are two types of control orders: those that do not require a derogation from the European Convention on Human Rights and those that do. The latter kind of control order, a derogation control order, could include house arrest. The power now in the U.K. can be used both against foreign nationals and British nationals, unlike the previous law, which applied only to foreign nationals.

Applying this to our situation, where we don't have to concern ourselves with derogations from a European Convention on Human Rights, but we do have a similar type of concern I think—as I said earlier in response to a question by Mr. Comartin as well—we need to look at what kinds of options we have, such as supervisory controls that would not require us either to detain somebody in a continuous fashion or deport them to a country where there's a substantial risk of torture. We could have a supervisory control that could consist of house arrest, curfews, electronic bracelets, monitoring, and the like.

● (1720)

Mr. Peter MacKay: Are you talking about a system like a Canadian version of Guantanamo Bay? Is that what you're referring to?

Hon. Irwin Cotler: No, I'm not. I'm talking—

Mr. Peter MacKay: A system of detention. What would that be?

Hon. Irwin Cotler: No, I'm talking about a system of supervisory controls where the person is released, not detained. When the person is released, that person is then subject to terms and conditions of release that have been set by the presiding judge, who doesn't have to be faced with either detaining the person or releasing him to where he may be a threat to national security, or deporting him to a country where there's a substantial risk of torture.

What you would have is a release under supervised terms and conditions, which could include, as I said, house arrest, curfews, proscribed communications, electronic bracelets, and the like. That may be something we need to explore. As the U.K. has put it into their U.K. anti-terrorist law 2005, your committee might wish to look at that and see what the options are that we might consider in terms of our own legislation in this regard.

Mr. Peter MacKay: Mr. Chair, a very short question.

The Vice-Chair (Mr. Kevin Sorenson): Just a very short question.

Mr. Peter MacKay: Again—

Hon. Irwin Cotler: I think Daniel Therrien may have something to add on this point, if I may.

Daniel.

Mr. Daniel Therrien: Not much, I'm afraid, because the answer was comprehensive.

I would just underline that obviously we're dealing with very tough choices in these situations. The U.K. indeed has adopted legislation for control orders, which are forms of supervised release that can amount to house arrest. First of all, conditional release may or may not be sufficient to address the security risk that people present in that situation. That's a useful solution, that mid-range solution. There are limits to these solutions. As the minister explained, the U.K. model applies this regime both to foreign nationals and citizens. We need to reflect, obviously, as to whether we want to impose these measures, even in a terrorism context, to citizens.

● (1725)

The Vice-Chair (Mr. Kevin Sorenson): Very briefly, Mr. MacKay.

Mr. Peter MacKay: Mr. Minister, in your previous career as a Liberal member of Parliament you expressed concerns over judicial authorization by the Minister of National Defence for intercept of communications—that is, wiretap and the use of wiretap information.

Are you concerned about the essentially unfettered discretion exercised by the Minister of National Defence on wiretap in that regard? Who else should be involved in the oversight of that? Right now I understand the former Chief Justice Antonio Lamer plays that role. Is there a provision there for parliamentary oversight?

I'd like your opinion generally on parliamentary oversight and its role in these matters.

Hon. Irwin Cotler: As you mentioned, the CSE is subject at this point to a high degree of independent and external review by the office of the CSE commissioner. The commissioner in this regard conducts an independent review of the CSE, so you do have that kind of oversight here by reviewing the CSE's activities to ensure they are in compliance with the law, responding to complaints, undertaking any investigation the commissioner considers necessary, and informing not only the Minister of Justice but, in this instance, the Attorney General of Canada of any CSE activity that the commissioner believes may not be in compliance with the law.

To carry out this review mandate the commissioner and his staff are guaranteed access to all CSE personnel, information, and documentation. I might add that since 1996 each annual report has confirmed the lawfulness of the wide range of activities that are reviewed by the commissioner. I am satisfied now about the nature and scope of the oversight that is being exercised by the CSE commissioner in this regard.

Mr. Peter MacKay: Do I have a—

The Vice-Chair (Mr. Kevin Sorenson): No, Mr. MacKay.

Mr. Wappel.

Mr. Tom Wappel: Mr. Chairman, we're getting very close to the end. Do you have any questions?

The Vice-Chair (Mr. Kevin Sorenson): No, but I would like to give Mr. Ménard another chance. He was trying to get one in last time.

Mr. Tom Wappel: Let me ask one quick question, and then I'll cede to Mr. Ménard.

We were talking about recognizance with conditions. As you know, Minister, that section is going to be sunset unless the governor in council decides that it shouldn't be and convinces Parliament that it shouldn't be. I'm wondering if you have an opinion today, considering that the date is December 31, 2006, as to the usefulness of continuing this section, given that it hasn't been used yet.

Hon. Irwin Cotler: As a matter of fact, I proposed that sunsetting provision at the time, and the provision will sunset, will lapse, unless a motion by both houses of Parliament, if I recall, authorizes its continuance. I still believe that provision may be necessary with the safeguards that have been built into it. If the safeguards were not there, that would be something else. Again, I want to say it is not alone in the criminal process, a procedure of that kind.

I think when the time arises in December 2006, based on the study of your committee and the benefits obtained from this study, we'll be in a better position to make a decision with respect to whether to sunset or not. The only thing I will say is that the fact that a provision has not been used does not mean it may not have to be used or that it may not have served its own utility even though it has not been used.

Those are things to bear in mind with regard to sunsetting as well.

Mr. Tom Wappel: Thank you.

The Vice-Chair (Mr. Kevin Sorenson): Mr. Ménard, did you have a question?

● (1730)

[*Translation*]

Mr. Serge Ménard: Yes. I'll make it quick.

Earlier, you put particular emphasis on the fact that laws governing the financing of terrorist operations are necessary in order to implement Canada's obligations under the international conventions to which it is a signatory.

I'm surprised to see that on this issue, the Canadian Association of University Professors holds the totally opposite view. Let me quote you an excerpt from page 3 of their brief:

[*English*]

> The Canadian Association of University Teachers calls for the repeal of Canada's draconian Anti Terrorism Act. We ask that the very few provisions that may be necessary to implement Canada's international obligations under the International Convention for the Suppression of Terrorist Bombing and the International Convention for the Suppression of the Financing of Terrorism be re-enacted in a way that does not go beyond the strict requirements of the conventions and that is consistent with Canada's implementation of earlier anti terrorism conventions under s. 7 of the Criminal Code.

[*Translation*]

I've read the report in its entirety. It makes a case for the fact that Canadian provisions go well beyond the scope of Canada's obligations under these conventions. You appear to hold a radically different position on this matter.

Hon. Irwin Cotler: You're correct. I disagree with that opinion. In my view, our Anti-Terrorism Act, which gives effect to our international obligations, makes provision for safeguards that are not spelled out specifically in international conventions. These include the protection of citizenship and human rights. As for the professors that you spoke of, I'm still a professor, on an extended sabbatical, and I have to say that professors are sometimes wrong too.

[*English*]

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Mr. Minister.

Just before you leave, I guess if I were to ask any question, it would be your opinion...as we go through Bill C-36 trying to do this balance, do you see any place for parliamentary oversight? We had a national security committee that met, that submitted a report, which we're waiting for the Prime Minister to get back to us with. Some of the recommendations in there dealt with accountability and oversight.

Do you see any role Parliament should have in oversight, as we go into this study?

Hon. Irwin Cotler: I think this very review, as mandated by subsection 145(1) of the act, was included at the time to ensure there would be parliamentary oversight. Note that subsection 145(1) mandates you to engage in a "comprehensive review" of both the provisions and the operations of the act. So this is a very important instrument of oversight, because you're not just dealing with the text of the law, you're dealing with the enforcement and application of the law.

There's also provision for parliamentary oversight because we are obliged to make annual reports to Parliament with respect to the provisions respecting preventive arrest and investigative hearings, and Parliament can put questions on those annual reports.

I would say there's an ongoing role for parliamentary oversight because parliamentarians can ask questions in question period; they can engage as an executive in an ongoing position of accountability to Parliament, as well as accountability to the public. You're in an ongoing situation of holding the executive accountable. At the same time, you have an ongoing judicial review process, which parliamentarians can seize upon in order to further enhance that parliamentary accountability role.

I might add that perhaps the best protection is not so much the sunset clauses, as I indicated at the time, but the sunshine of Parliament, of NGOs, of the media, of civil liberties groups, of the professional bar. That's the best guarantee with respect to oversight, and Parliament is really the expression of the people's will. I don't say this in any kind of Pollyannaish sense. I really believe this.

Maybe I'll close with this, my first introduction to Parliament in any significant sense. When I was 12 years old, my father took me to the Parliament buildings and said to me—today, my son might mock it if I said this—son, this is *vox populi*; this is the voice of the people. My father meant it with all the seriousness and respect that Parliament as an institution deserved and warranted.

I think that's the way we ought to look at Parliament today. This is *vox populi*. This is the voice of the people. You hold us accountable. That's what oversight is all about. I welcome it.

● (1735)

The Vice-Chair (Mr. Kevin Sorenson): With that, I thank you, Mr. Minister.

We're adjourned.

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