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Chair

Mr. Paul Zed

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•(0910)

[English]

The Chair (Mr. Paul Zed (Saint John, Lib.)): Good morning, *bienvenue*. Dear colleagues, *bonjour*. I call this meeting to order.

Before we resume the serious task of reviewing the Anti-terrorism Act, I would like to take this opportunity to welcome our subcommittees back to Ottawa. I hope you've had an enjoyable summer. I want to thank you for putting in this special effort to be here today in advance of the reconvening of Parliament.

The fact is that we have a lot of work to do. Since all of you have agreed to get the next two days of hearings moving forward, I believe we'll actually break the back of the list of public interest groups out there that want to appear. I think we'll actually achieve quite a bit today and tomorrow.

As everyone knows, following the tragic events in Washington and New York on September 11, the Government of Canada committed itself to fighting terrorism and terrorist activities. In a very short period of time, the anti-terrorism legislation was considered by the House and the Senate, and it received royal assent on December 18, 2001. The purpose of that act was to allow the government to ratify international conventions, define terrorist activity, and provide intelligence and law enforcement agencies with new investigative tools. The act also included some measures or safeguards intended to protect human rights under the Canadian Charter of Rights and Freedoms while seeking to ensure human security.

One of the safeguards that we, as parliamentarians, built into this act is that it was to be reviewed within three years of royal assent, so in fact our committee is proceeding by virtue of section 145. We are called upon to conduct a comprehensive review of the provisions and the operation of the act.

During the first phase of the review, the subcommittee heard from the Honourable Irwin Cotler, Minister of Justice, and the Honourable Anne McLellan, Minister of Public Safety and Emergency Preparedness, as well as officials from intelligence and law reform agencies such as CSIS, CSE, and the RCMP. We've heard from oversight committees like SIRC, and from the commissioners for information and privacy. We are now embarking on a second and very important phase of our review by hearing from civil society groups, individuals, and domestic and international experts on the impact of this anti-terrorism legislation. This is critically important for us and a critically important phase in our review of this

legislation. I want to thank you all again for making yourselves available for these special meetings.

The hearings will be conducted today and tomorrow, as I said, and I believe that will allow for a timely and comprehensive report to Parliament, which we expect to be available by early December.

Our first panels today will discuss the impact of the Anti-terrorism Act on communities across Canada. We will then break for lunch before returning this afternoon to discuss the impact of the act on charitable organizations and section 4 of the Security of Information Act. Tomorrow we will follow the same schedule and format, with discussions on security certificates as well as rights and freedoms.

I would now like to welcome our first panel. I understand we have today the Canadian Arab Federation, the Canadian Council on American-Islamic Relations, the Canadian Islamic Congress, and the Canadian Muslim Lawyers Association. I believe the four groups have decided to open with one opening statement. Is that correct?

•(0915)

Mr. Ziyaad Mia (Canadian Muslim Lawyers Association): Our three organizations will have a joint statement.

The Chair: Okay. Please proceed.

Thank you very much, and welcome.

Mr. Ziyaad Mia: Thank you, Mr. Chair.

Good morning, committee members and colleagues. It certainly is a pleasure to be here today to provide our input and ideas on this crucially important matter for all Canadians, which is the review of the Anti-terrorism Act and the security certificate provisions of the Immigration and Refugee Protection Act.

My name is Ziyaad Mia, and I am a member of the Muslim Lawyers Association. With me today are Mr. Riad Saloojee, the executive director of the Canadian Council on American-Islamic Relations, and Mr. Omar Alghabra, president of the Canadian Arab Federation.

As you've mentioned, Mr. Chair, our organizations have pooled our time and we're going to be providing you with a joint opening statement of approximately 12 minutes. So hopefully we'll save the committee a few extra minutes for questions.

You also have before you, I believe, a one-page summary of our key recommendations and guiding principles for national security legislation and policy. I believe you also have our written submissions. There is one submission from the CAF and one from CAIR, a joint submission, and one from the Muslim Lawyers Association. It's not to suggest that there's any inconsistency; it's just that we've covered off legal issues and they've covered off community issues, but we're consistent in endorsing each other's recommendations and concerns.

We appeared before parliamentary committees reviewing Bill C-36, which is now the Anti-Terrorism Act, about four years ago. Our concern then as community members was that the Anti-terrorism Act was the wrong response to the events of September 11, 2001. I'll tell you why it's wrong. It's wrong because it trades fundamental Canadian values, such as the rule of law, respect for human dignity, and fairness, to gain a false sense of security. It's wrong because it's motivated and conceived out of fear.

History has taught us that fear is not the basis for good public policy-making, and our history in Canada speaks to this with painful reminders. You have the example of the Ukrainian Canadians in World War I, Japanese Canadians in World War II, and Quebeckers during the October Crisis. Each time, we reacted out of fear, and the human consequences were devastating. Inevitably it was followed by regret and "We'll never do it again".

Unfortunately, since September 11, 2001, public policy discourse in this country has once again been infected by a culture of fear, and what does that fear mean? How does it translate to our communities? As we feared four years ago, unfortunately the fear has taken root and has had a number of adverse consequences. A palpable chill has descended on Muslim and Arab communities across this country as they've come under the intense scrutiny of security agencies.

This chill has taken many forms, but I'll give you some day-to-day examples. It is manifested in a retreat from community and religious life, a decline in charitable giving and participation, a reluctance to travel, and a change in day-to-day lives and livelihoods. And why did people make these changes in their lives? Because they're scared, because they don't want to unwittingly fall into the web of national security investigations.

Many Muslim and Arab Canadians fled authoritarian regimes—many of you know that—and came to this country for a better life, to be free of fear and to be governed by the rule of law. Today, with the prospect of shadowy investigations, secret evidence, secret trials, and now the prospect of torture, sadly, their nightmares are returning. From the relatively small inconveniences—and I don't belittle what's happened to people—of life to the risk of being sent abroad to face torture, human consequences are steadily mounting, and it's been devastating for families and our communities.

To illustrate the fear and the chill in our communities, let me give you a snapshot of what's happening on the ground in Canada's Muslim and Arab communities. CAIR Canada has prepared an informal survey of our community called *A Presumption of Guilt*. It was released this past spring. They looked at approximately 500 respondents in that survey and asked them about their national security visitations. Fully 8% of those 500 people had interactions with national security agencies and police, and if you want to

extrapolate that out from the Muslim community as it stands in this country today, at about 750,000 people, that's 50,000 visits.

Let me talk to you a bit about what the survey found in terms of trends. There were eight trends identified. I believe you may have access to that survey, and I'd ask you to read it in more detail, but I'll just give you a flavour of what's in there—the kinds of tactics and operational measures that are used by our security agencies with Canadians and permanent residents and refugees.

● (0920)

People are discouraged from seeking legal advice or having third parties present during interviews. Aggressive and threatening behaviour is used. The powers of the Anti-terrorism Act are misrepresented and used as a soft leverage tool: if you don't speak now, you know we have the Anti-terrorism Act. There are visits to workplaces; that can be embarrassing, and your job can be at risk, I'm sure, if national security comes knocking at your workplace. Inappropriate questions about religious beliefs, practice, and political views are asked of interviewees. Some agents have misrepresented themselves or given inappropriate identification when talking to people, and attempts have been made to recruit informants in our communities through threats and intimidation. Finally, we have even seen in one instance where a minor was approached and was told not to tell his parents that the national security agency had talked to him.

Let me turn to our written submissions. You have them before you, and I'll encourage you, please, to review them. There is a lot more detail in there than in the one-page document or in this opening.

Essentially, the structure of both of our submissions is broken into two parts: one, fundamental flaws in the national security regime in this country; and two, our concrete and positive recommendations for reforming that regime.

Let me take you through the flaws. These flaws don't make us any safer. In fact, we're made less safe because valuable resources are wasted chasing shadows. We want to highlight three major flaws in the national security law and policy as it stands.

Number one is the expansion of secrecy in legal processes. This is quite troubling. It offends fairness, the rule of law, and the adversarial process. It is plainly antithetical to open and accountable government, and ultimately it undermines the search for truth, which is what law is all about.

Number two, it erodes the role of judges. The national security architecture in the Anti-terrorism Act and in the Immigration and Refugee Protection Act robs judges of their traditional roles and co-opts them as tools of the state. This runs counter to the heart of our constitutional and common law traditions, where judges are a check against executive power. Here they become an appendage to executive power. I'm sure all of you have now heard that one Federal Court judge described his role in the security certificate process as being simply a fig leaf covering up an unjust system.

Last, in terms of flaws, in a general sense—I don't mean these to be exclusive in any way, but these are the major flaws—there is a prevalence of profiling and discrimination against Muslims and Arabs in this country when it comes to national security. Despite the blanket, knee-jerk denials by government officials, there is compelling witness in our communities that there's a disturbing pattern of profiling and discrimination emerging. We believe this phenomenon stems from the national security regime's culture of fear, and the flawed legislation simply compounds these very real problems.

Let me walk you through our recommendations for reform. I'll briefly canvass those, but let me start by saying that our recommendations are aimed at being constructive. They allow us to protect legitimate national security interests and preserve fidelity to the rule of law and accountable government.

I believe you have the one-page sheet, so I'm just going to walk through some of these recommendations, which are a summary. There are eight of them.

Number one is a better definition of terrorism. Jettison the motive requirement; it is simply useless, for two reasons. First, it is inefficient in securing prosecutions for terrorism. Any lawyer will tell you that if you add the motive it makes it more difficult, and we haven't had that in our criminal law ever. This is something new and unprecedented. Second, it leads to the inappropriate and disrespectful questions that we've heard of to build cases, and it feeds profiles and stereotypes of Muslims and Arabs.

Number two is profiling. You heard me speak about it a minute ago. Despite the denials, the facts speak for themselves. We encourage you to ask the government to work with Muslim and Arab Canadians in a constructive and meaningful way to deal with this in a frank manner and put it to bed.

Number three is to build trust with our communities. Muslims and Arabs are proud Canadians, and we will accept nothing less than being treated as full citizens of this country. Important decisions about our communities are made and we're left out in the cold. A successful strategy for a truly secure Canada must involve Muslim and Arab Canadians. Anything less is doomed to fail. It's time for us to take our seat at the table.

• (0925)

Number four is intelligent intelligence. Let's build intelligence. You heard very often after 9/11 and even, I hasten to say, after the hurricane that it was an intelligence failure, or a logistics failure, or the smarts weren't there, or the resources. If we have systems that are totally excluded from the Muslim and Arab communities, and then we want to talk about the global war on terror, which obviously—it's an open secret—involves Islam as the prime threat, or Islamist terror, if you will, and you don't include Muslim-Arab Canadians in that, what kind of intelligence do you get? Faulty intelligence. This leads to failure time and again. From Arar all the way to Project Thread, you've seen the mistakes of faulty intelligence. So bring Muslim and Arab Canadians into the picture, involve us, because we want to build a secure Canada.

Number five is no more secrecy. Secret evidence and secret trials are the hallmarks of dictatorships, not democracies. We urge you to

shine the light on all secret proceedings and processes, especially the security certificates. This is leading us quickly onto a dark and slippery slope: first, secret evidence; second, secret trials; and then, indefinite detention. Now we're on the verge of countenancing torture, which is plainly and simply illegal and immoral.

Number six is to prevent future abuses. The ordeals of Maher Arar, Ahmad El Maati, Abdullah Almalki, and Muayyed Nureddin, and now you know of Bhupinder Liddar, raise troubling questions about the existence of a pattern of lawlessness amongst our national security agencies and the likelihood that it infects the entire national security enterprise. We urge a full investigation of all these cases in order that this pattern is not replicated elsewhere in the national security regime.

Number seven is to build better oversight and accountability. Everybody's talked about it, and I know Mr. O'Connor is looking at it in one context. In a democracy we understand the need for national security. There are threats to any society. It's nothing new. I know that some are out there saying that we're in some new world, but we're not. The world has always been like this. There are always threats out there, and we need to manage them. We may need, as a state, national security enterprises, but in a democracy, the counterweight to that is oversight and accountability. Where you have a vacuum you have an authoritarian state. Mr. Saloojee and I are originally from South Africa. South Africa had an imbalance and a vacuum. You had a great security system but no oversight and justice. Mr. Alghabra comes from Syria, and I need not go on about...because I'm sure there are reams of Human Rights Watch documents about what happened there.

We're talking to you as practical people who came here to find this. As a South African, I find it absurd that we're having secret trials when in the original country of my birth the rule of law prevails. This national security convergence makes sense, but we also need a convergence of oversight. It needs to be robust, unified, and effective. It can only make us safer. It can't make us any less safe, so I don't know why we don't implement it.

Lastly, we want a real sunset clause, not the window dressing. December 31, 2006, is about five years for the anti-terrorism legislation. This is extraordinary legislation dressed up as ordinary law. It should end. This is our last kick at the can, this committee and the Senate committee, to review this. I know the government will tell you that we'll look at the preventative arrest and the investigative hearings. Those are two provisions, and they're not sunsetted, they're just renewed on a motion. We can't have permanent emergency legislation in this country. We urge you, if the government needs extraordinary laws again on January 1, 2007, reintroduce a bill, and let's have full debate and frank discussion of our security requirements.

In conclusion, Mr. Chairman and committee members, we just want to tell you that we're here as Canadians. As you know, many Muslims and Arabs came to Canada because of its great strength as a beacon of justice and compassion. Today, unfortunately, many of us feel that *that* Canada is under assault.

Rest assured that we are fully invested in the project of building a safe and secure Canada. The recommendations we've made to you today, please take them in good faith. We want to be partners in the enterprise of nation-building. We believe our recommendations can only make the system better. It can be more effective, more efficient, and more just. At the end of the day, this can only make this great country and our people more safe and secure.

Thank you very much. We look forward to your questions.

• (0930)

The Chair: Thank you.

Mr. Joseph, I understand you have a separate, short opening statement and then will be available to colleagues for questions.

Mr. Faisal Joseph (Legal Counsel, Canadian Islamic Congress): Thank you.

First of all, I want to thank the committee for the opportunity to speak on behalf of the Canadian Islamic Congress. My name is Faisal Joseph, and I am their national legal counsel. I also have a few other hats that may be of interest to some members of the committee; that is, I am also the former president of the Islamic Centre of Southwestern Ontario, and legal counsel for the Association of London Muslims.

This presentation is not an attempt to legally analyze the legitimacy, constitutionality, or moral authority for the present Canadian anti-terrorism legislation. Those efforts have been made by me and others to prime ministers, parliamentarians, and several committees of the House of Commons, with—in my view—little effect. Instead, since unlike my colleagues born outside of Canada, I was born in that hotbed of terrorism, Truro, Nova Scotia, I want as a Muslim to give you a little human perspective on the effect the last four years have had on this country's 700,000-plus law-abiding and taxpaying community.

I think it's important that we start with the Canadian Bar Association's initial assessment and analysis of Bill C-36, as it then was. I think it's important, because when a panel such as this gets together and we see editorials in the paper that they're crying wolf and we feel sorry, and what's the real concern, I'm always hesitant about it when it's us making the argument. So I want to start with the

Canadian Bar Association's view. At that time they called the anti-terrorism legislation unprecedented, unreasonable, and unnecessary. That's from a group of lawyers over 30,000 strong in this country that took that position unitedly. The Muslim community years later still feels that description is appropriate.

In addition to the hats I've talked to you about, I've also been a federal and provincial crown attorney. Along with other Canadians, I was promised by our former prime minister that our fears of racial and religious profiling, civil rights abuses, and intimidation by law enforcement and immigration officers would not happen. We were assured of that. That promise, sadly, was broken.

Throughout the last two years I have received weekly calls throughout the country from Muslims from over 50 different cultures who have felt mistreated, intimidated, threatened, or abused by customs and immigration officials or law enforcement agencies, including the RCMP and CSIS. Secret hearings regarding security certificates, preventative arrest, changes in the rules of evidence under the Canada Evidence Act, including hearsay evidence third and fourth down the line into criminal matters, was absolutely unthinkable prior to 9/11. There now exists, whether anyone will acknowledge it or not, a climate of fear and ignorance curtailing or eliminating previous civil rights that are presently thought of as necessary or justified in a free and democratic society. This is notwithstanding that the erosion of those rights undermines the very democracy that we as a society are trying to protect from the terrorists.

Many Muslims in Canada and outside of Canada look at what's happened in Afghanistan and Iraq and wonder who the aggressor is. The United States government demands a strong rule of law, which is fine with us, yet continues to undermine it by torture, breaches of the Geneva Convention, and illegal pre-emptive strikes against foreign countries. In June 2004 the United States Supreme Court held six to three that Guantanamo Bay prisoners—so-called “enemy combatants or not”—were entitled to no less than American citizens when it comes to due process to challenge the alleged evidence against them. They were also entitled to specific legal rights that were denied to them by the President of the United States.

Yesterday and today I pick up the *Globe and Mail* and I see an article with respect to the ambassador of the United States, Mr. Wilkins, and it's self-evident what his views are. He tells us very clearly that a Maher Arar—and there could be many more in future.... There's no hesitation that they will do whatever is necessary to protect their country, no matter what it takes with respect to any human rights abuses.

In England, Britain's High Court, by an overwhelming majority in the House of Lords, ruled that the English government cannot detain foreign suspects indefinitely without bringing them to trial. The court stressed both Britain's clear and present violation of the rule of law as well as the disproportionality of the measures they called “Draconian” and that “cannot strictly be required by the exigencies of the situation”.

•(0935)

That's the U.S. and England; now let's talk about Canada.

In Canada, on the other hand, dozens of Muslims have been detained under the cover of immigration or terrorist investigations for months at a time. In fact, five well-known Muslims have been incarcerated collectively for over 15 years without a formal charge and without the transparency of a trial. This is unheard of, unthought of, in my 20 years of practising law. If deported, these men face the real risk of being what we call in the Muslim community "Arared". That's the term that's used in the Muslim community now, which refers to the brutal torture of a well-known Canadian. Evidence that clearly indicated his innocence has been blocked for release to the public by the Canadian government at the federal inquiry, notwithstanding the judge's order after he reviewed thousands of documents that show Arar's innocence.

The issue post-9/11 is striking a proper balance between security and civil rights. I personally can tell this committee that I have been appalled and shocked at the questions put to Canadian Muslims as part of national security investigations. For example: How many times do you pray? Do you consider yourself to be very religious? What do you think of George Bush and his policies? Not only are these questions inappropriate, but what's the result of a Muslim truthfully answering these questions? Will the detained person be deported, charged, or threats made to his family regarding their immigration status?

In Canada, the security certificate process was upheld by the Federal Court of Appeal and will no doubt make its way to the Supreme Court of Canada. Last year the Honourable Chief Justice of the Ontario Court of Appeal, Roy McMurtry, attended the Islamic Centre of Southwestern Ontario for an historic opening. In his keynote address he indicated that the Americans, as some say, may prefer their security over their liberty. Have we gone the same route?

My experience as a trial lawyer and in numerous accounts by Canadian Muslims post-9/11 has not been pleasant. It has not been uncommon for security and police agents to give false pretenses to Muslims as to why they are being questioned. Muslims are strongly—I repeat, strongly—dissuaded from speaking to a lawyer and are even prevented from continuing their university education during an "immigration investigation" regarding potential irregularities. There have been numerous accounts from Muslims in this country that members of their family have been threatened with deportation if certain information is not provided. In fact, we even see that the youth on our university campuses are actively being recruited by CSIS in very interesting ways to gather intelligence.

It is amazing how many employers or future employers lose interest in an employee whose contract is coming up for renewal after a visit from our intelligence services. The unsubstantiated allegations of being a terrorist or knowing someone who might be destroys a person's life forever. Law enforcement and security forces know little of our religion and our belief system. For the most part, what they know is what the media continues to perpetuate as what we call myth conceptions.

The Garvie report dealing with the role of the RCMP post-9/11 indicated that the RCMP did not even have the capacity or ability to properly conduct post-9/11 security investigations.

The lack of knowledge of the Islamic religion from law enforcement has to change. Perhaps through their own innate, unintentional bias, results are happening that are shocking. Project Thread is an excellent example of what can go wrong and how innocent men were detained in Toronto under immigration and terrorism-related suspicions. They were first said, as you will remember—and they were blasted all over the front pages of the paper—to be national security risks. They were torn from their families for months with no charges or trial. Subsequently, it wasn't very well reported that the joint RCMP-CRC investigation concluded that there was no evidence that Canada's national security was at risk.

Today we have security certificates, preventative arrests, and no-fly lists. What will be next? If this subcommittee truly wants to know the impact of the Anti-terrorism Act on communities, I encourage you all to ask the following questions—and I encourage you to take a look at the June 9 transcript of the Maher Arar inquiry. I know this isn't the inquiry, but I think it's important and it will be beneficial to you.

•(0940)

The June 9, 2005, transcript, which I've brought a copy of and perhaps will give to the clerk later, has three experts specifically on the issue of the impact of this legislation on the Muslim community in Canada. One of the experts is Muslim, two of them are not, but their expertise is beyond reproach. I would highly encourage you to take a look at that. It was very helpful to Justice O'Connor in the information that came out. There were seven questions prepared to be answered at that session, and those questions were answered. I think you will find the answers to those questions very disturbing and something we all need to reflect on.

In conclusion, I just want to say that we are very pleased that there is a parliamentary review of this applicable anti-terrorism legislation. One can only hope that the above-mentioned concerns and injustices will be taken into account when this committee reports back to the government. The irony that exists is that many Canadian Muslims and non-Muslims are now more convinced than ever that some of the fear, legislation, and mistreatment of Muslims in this country has actually increased national security risks rather than decreased them.

I dovetail that with what my colleague said with respect to intelligent intelligence. There has to be a relationship of trust between the Muslim community and law enforcement. Without that, they will never be able to get intelligent intelligence. The irony that exists is that we all remember the black and white view that was presented by President Bush when he said you are either with us or against us. Muslims in this country want to know, when it comes to civil liberties, are you, the Canadian lawmakers, with us or against us?

Thank you.

The Chair: Thank you, Mr. Joseph, and all colleagues who are presenting today.

I guess we'll start with you, Mr. Sorenson, with an opening round of questions, please.

Mr. Kevin Sorenson (Crowfoot, CPC): Thank you, Mr. Chairman.

I want to thank all of you for coming here today, for your testimony, and for the briefing notes we've received. As we go through the exercise of reviewing this terrorist legislation, we're hearing from all different groups. We certainly appreciate hearing from those who believe that primarily—as I think you've all stated—they are targeted as perhaps potential national security threats.

Our responsibility here in this committee is basically national security. It's not just to review the legislation and the act; it is to make sure that the act helps prevent such terrorist attacks as we've seen in the past, and that human rights are not thrown to the sidelines in order to accomplish that goal. So it is a balancing act. That's why it's so important to hear from you folks, and we're glad you're here.

Sometimes politicians have a tendency to blame the media for things. I know that when we host certain political activities we may blame the media if they aren't there. We blame the media if they give us a poor story. We blame the media for different things. I'm wondering, do you believe the media has a certain role in the Muslim people being unfairly targeted?

I'll tell you what, the morning after September 11 they showed the devastation in New York and Washington. They showed the Pentagon, and they showed the acts. They let Canadians and the world know how many people were killed, but they also showed some people in other countries cheering the fact that America had been attacked. Then the media pointed out, perhaps unfairly or fairly, that these were militant fundamentalist Muslims.

You then went into your testimony and said that everything we did was motivated out of fear. But the fact is that on September 12 we weren't sure if we were under attack, and we weren't sure if there was more coming, but the media—and I'm not blaming the media—made it very clear who did it. We saw pictures on the front of our national papers—19 individual pictures—and under each individual picture it was very clear that every one was a militant fundamentalist Muslim or Islamist. Whether it was motivated out of fear or motivated out of fact, certainly that's where we were left, and we responded. And there were certain responses that undoubtedly were inappropriate.

I say this because we have had the RCMP, CSIS, SIRC, and the Commission for Public Complaints Against the RCMP here, and all of them talked about the resourcing levels and how they went about their daily activities, whether it was national security or other activities. When I look at it from your perspective, I really feel sorry for any group that is being unfairly targeted, but when I look at it from the perspective of the person who is there investigating, I wonder how you prevent this type of profiling when everyone tells us that it's militant fundamentalist Muslims who are doing it. I mean, you don't send your anti-terrorism squads to the Amish or the Lutheran ladies or anything like that; you tend to go where you feel the risk is. We have to make sure that certain guidelines and conditions are met before they unfairly go after that group, but how do you do that?

● (0945)

For example, I have people coming to me—young males driving expensive cars—who feel they are being unfairly stopped by the RCMP or by the city police. They say they're being targeted because they're driving expensive cars and they're young males. I don't know if people think they're going to automatically break the law or what they're doing, but they stop them unfairly. They believe they're targeted. How do you prevent it?

You mention in your brief that as a result of many of these incidents, Canadian security officials indulge in racial profiling and act outside the limits of international law. I wonder if you could tell us a little bit about the specific international law they're working outside of.

I have one other question. Regardless of the many individuals who you say experience anti-Muslim incidents, not one has been reported to the public complaints commission. Could you comment on that, please?

● (0950)

Mr. Ziyaad Mia: On the international law question, whose brief are you referring to?

Mr. Kevin Sorenson: That was in the CAIR-CAN brief.

Mr. Ziyaad Mia: I'll leave that for Mr. Saloojee.

I know we're short on time, so I'll try to keep it tight and respond to as many things as I can.

You talked about the media, and I don't want to be slagging the media or praising the media, because they play different roles. I think we've seen good and bad reports on anything in the media. As politicians, I'm sure you're happy some days—and I'm sure Mr. Mulroney can tell you he's not happy with the media today.

Certainly we feel we're being targeted, and we don't want to get into a debate about that. The crux of your point was that Islamist terror—let's just use that phrase—is the threat. That's what we saw; that's what this is all about. I'll address that, but I'd say we should step back one level first and say that there's a vast array of geopolitics at play here to say that this is, as Mr. Cotler says, the existential threat that we all face. The world is a very dangerous place; it always has been. We've always faced numerous threats. Our democracy has stood strong during the Cold War and at other times.

I don't know if it's the media's fault or if it's George Bush's fault or whose fault it is, but there's this fixation on Muslims as the bad guys in the world. Fine. If that's what we're going to do, that's the policy framework. For all intents and purposes, I'm ready to accept that that's the reality we live in. I don't think it's correct that you say there are Palestinian terrorists and Chechen terrorists and Afghani terrorists but you exclude state terror by Russia in Chechnya, which Human Rights Watch calls borderline genocide, or the collective punishment in the West Bank and Gaza by Israeli defence forces. The ANC committed some acts of terrorism and political violence in South Africa, and some of them were not. The South African defence forces and the bureau of state security conducted a whole lot more acts of state terror—just to put that in context.

How do we go about it? If your target is Islamist terror, the Muslim terrorists, you still need intelligent intelligence. You don't just go holus-bolus and talk to him and talk to me. I call that lazy policing. If you know that the person you're looking for who is going to blow up a plane or something is a Muslim terrorist, you don't just look at every Muslim. I think that's lazy. It's a waste of money, and I think as parliamentarians we need to be tight on our budgets here, because we need money to be spent on health care and cleaning up the environment and building this country for Canadians, not on wasted resources on useless investigations.

What we need to do is—

Mr. Kevin Sorenson: No, but we do expect government to spend time on national security. If we know it's militant Islamists, you tell us where to start. If we have an imam who is standing before his congregation inciting some type of act, like we see broadcast on television, or where someone is being charged with that charge, how can they not respond?

Mr. Ziyaad Mia: Through you, Mr. Chair. I'll take that issue of someone's speech separately because I think we can parse that down a bit. What you have here is, do you have a suspect? It's a Muslim suspect, but the police don't just look for any black male. You use your evidence, you gather evidence, you look at your intelligence, and you look for the right person. You don't just look at every black person.

The Chair: I'm going to jump in here. Mr. Sorenson's time is quickly evaporating, and I do want to get some really short interventions to reply to Mr. Sorenson and then move to my colleague Mr. Ménard, please.

Mr. Riad Saloojee (Executive Director, Canadian Council on American-Islamic Relations): If the assertion is that we should racially profile, then I would say no, we shouldn't. We should look at behaviour, we shouldn't look at someone's faith or ethnicity. The reality is that there have been extensive studies on racial profiling, especially in the United States but also in Canada. The studies have concluded that when you racially profile, the hit rates are lower than when you don't profile. So there isn't any definitive evidence that racial profiling works.

What we're calling for is a look at behaviour. When the police, for example, are trying to track suspects, serial killers and the like, they create a profile based on behaviour. They don't create a profile based on faith and ethnicity. The problem with profiling is that if you do it, you will alienate communities, you will create cynicism, and you

will break down those networks of trust that are so essential to doing good detective work.

In the United States, when former U.S. Attorney General John Ashcroft instituted his “voluntary interrogations” of Arab males, many police chiefs said no way; we've built up these relations of trust with the Arab and Muslim communities, and if we're seen to be arbitrary, we are going to be seen as the other side, as enemies, which would make intelligent intelligence-gathering that much more difficult.

With reference, very quickly, to international law, Human Rights Watch, Amnesty International, and many other credible human rights organizations have been scathingly critical about Canada's policies. They've been very critical, for example, about security certificates. I can remember that the UN committee on arbitrary detentions was aghast at the fact that the security certificate detainees, who cumulatively have been kept without charge for something like 15 years, have been treated worse than convicted killer Karla Homolka was. These sorts of policies have raised international concern precisely because fundamental human rights have been violated.

• (0955)

The Chair: Very quickly, two other last points, Mr. Alghabra.

Mr. Omar Alghabra (President, Canadian Arab Federation): Thank you, Chair.

In response to the question about the media as the cause, I think what we're trying to say here is that regardless of what the reasons are, regardless of the causes of fear, we need a system that is foolproof, that protects from any errors or mistakes being committed that could devastate a human life. Common law is an evolution over centuries of trials and experiences that ends up setting up a system that protects humans and enables law enforcement agents to protect society. They become laws and principles that are invariable, that enable our law agencies to do their job and protect human life. That's what we're asking for. We're asking for a foolproof mechanism to protect against....

We're not necessarily accusing the RCMP or CSIS of being agencies infected with racial profiling, but there are errors, systemic errors, happening. In order for us to prevent individual and systemic mistakes, we need foolproof mechanisms.

With regard to the public complaints commission, the reality is that individuals are afraid to go and voice their complaints, because they see what happens on a daily basis. They saw what happened to Arar, they saw what happened to Almalki, and they saw what happened to Mr. Bhupinder Liddar. Our community members are new immigrants who have come from countries and societies where they know what could happen if somebody spoke out against the executive or the government. And they're seeing it happen here on a daily basis.

Thank you.

The Chair: Thank you.

Very briefly, Mr. Joseph, because we let you go on a little bit in your statement.

Mr. Faisal Joseph: I appreciate that, but I want to answer the question of the member directly.

There were two issues. There was a good question about the profiling. The answer is that you criminally profile, you don't racially profile. The fact of people in this country coming from Afghanistan, Iraq, Lebanon, or Egypt is not implicit in criminal behaviour. If somebody is getting on a plane, has paid cash, is shaking, and it's a one-way ticket, let me assure the member that Muslims want you to check that person out, whether he's Muslim or not. That's number one: it's criminal profiling, not racial profiling.

In fact, in our view that should be in the legislation. It is, in the United States, in certain states. It should outlaw racial profiling, and there should be consequences to racial profiling, because we're told it doesn't happen.

The issue on that is that it's hard to find a needle in a haystack, so some people in the press, in editorials, are saying, let's burn the whole haystack. Well, we know which community is the haystack.

Number two, with respect to Shirley Heafey, is a good question. I can see somebody saying people are afraid to report. I want to give you a concrete answer. In London, Ontario, we invited Shirley Heafey to come down. We saw what she had said in the paper. She said if you have a problem, let me know.

She came to London, Ontario. A thousand Muslims were at the mosque. She asked the question how many people had been contacted by the RCMP and had a complaint about the behaviour with respect to investigation by either CSIS or the RCMP, and 50 hands went up.

Let me tell you how we dealt with it. We, and I as a leader in the community, weren't interested in launching 50 complaints to go through two years of litigating the process and going through it. What we did was, through Shirley Heafey, meet with the commander of O Division, Freeman Sheppard, and we resolved those issues.

But there's no report of it. I'm telling you there were legitimate complaints that we dealt with that didn't go through the formal process, because we wanted them taken care of.

Those are the answers to those two questions.

•(1000)

The Chair: Thank you very much.

[*Translation*]

Welcome, Mr. Ménard. You have seven minutes.

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Your presentations were among those I was awaiting with some anticipation. I do have your text to read. We have very little time, and we may only have time enough to get acquainted.

Firstly, I want to assure you that I understood just about everything you said to us perfectly. Your representations on the act and its futility are indeed shared by a number of Canadians and Quebecers who will be coming to testify before us.

However, you have a particular expertise. I simply want to focus on two important topics. For the rest, your opinions mirror many others that have been expressed. I perfectly understand your wish to cooperate with us to continue to make Canada and Quebec, the north of this continent, a country where the rule of law will continue to prevail and where we will continue to base our actions on the

common law which, as you said, is informed by wisdom accumulated over the course of years.

However, my worst fears seem to have been realized when it comes to the way in which investigations have been conducted. My fears not only concern the injustices that have and may occur, but also centre on the inefficiency of the investigations and consequently on the deplorable consequence they may have of increasing the risk of terrorist acts occurring in Canada.

I think you summarized this well when you said that we need intelligent intelligence. In French, we say "renseignements", information. In other words, we have to gather intelligent information.

I can't say I'm too surprised. I am not saying that this is due to police stupidity; I understand how difficult it is to organize a police force and to face a new situation. I saw the same incompetence in Quebec some 30 years ago, when in the face of the FLQ threat, police officers, having been given the power to do so, were systematically arresting anyone who had a Che Guevara poster. They seemed to have forgotten that Che Guevara was a hero in the struggle against dictatorship, which was the first key to his appeal.

However, how do we go about laying the groundwork to facilitate this collection of intelligent information? We take these young people, we train them as police officers, we give them discipline and we teach them interrogation methods on paper.

As you can see, I do not find the issues very intelligent either, but they may serve to initiate dialogue.

I do not know much about religions, but I know a few things about some of them. I at least know that Islam, that Muslims, recognize Moses and Jesus as great prophets and believe that the teachings of Jesus, even if he was not the son of God, were nevertheless... I know that like Catholicism and Judaism, Islam is a religion that preaches love, forgiveness, compassion for one's neighbour, and that it cannot conceive of an infinitely just God who would look with favour upon the murder of innocent people, mothers, children, in order to further political objectives. We do not hear Muslims saying that, the media do not report it. But I know that Muslims are saying that.

You can help us find the answers to two questions. If you cannot do so here, perhaps you could send your thoughts along later. What would intelligent police work look like? Understand that in the face of this terrorist menace, police officers are not conducting investigations in Lac-Saint-Jean, Flin Flon or other similar places, even though it is possible that people in these locales could be seduced at some point by the Islamic terrorist movement. With 30 million inhabitants to choose from, police forces will necessarily focus their research on those groups that are more likely to harbour terrorist elements. However, you are the ones who are most familiar with these groups.

Can you tell us how we can create conditions conducive to intelligent cooperation on the part of your community with investigators ?

Fighting terrorism is not the same as fighting other types of crime. As people here know, I was Minister of Public Security in Quebec and led the fight against biker gangs. We obtained results after three years, without having to bring in an anti-gang law, in fact, simply by enforcing existing laws. However, in this case, we cannot use the same methods.

How can we collect information in an intelligent way? How can you contribute?

• (1005)

[English]

Mr. Riad Saloojee: First, thank you very much for the very generous and sensitive tone of your comments. I will speak to a couple of them.

First, the history of Muslims and Arabs in Canada has been a good history. It has been a history of almost seamless integration. We've been here since the 1800s, and it has not been a clash of civilizations. The problems we're facing, these specific problems, essentially are the child of 9/11. So it doesn't always have to be this way.

Secondly, speaking as a Canadian Muslim, the Koran speaks very clearly about the duties of Muslims to the place where they live and about the value of justice. You spoke earlier about God being just. Well, the Koran says very explicitly that all who believe should stand for justice, even if it's against yourself, your family, or your community. The idea is that Canadian Muslims of course have a civic duty to defend and make sure Canada is safe and secure, but they also have a religious duty, which is a divine command, that justice is a universal constant and it must transcend your relationships with fellow Muslims, your family, or even yourself.

I think the essential idea would be to treat Canadian Muslims as equal partners in this process and not to treat them as people who are on the opposite side, or persons of interests or suspects. There has to be a genuine attempt to engage Canadian Muslims and Arabs and treat them as partners in the project to make Canada safe and secure. That's been, I think, one of the challenges post-9/11. We have not seen a genuine attempt to bring Canadian Muslims and Arabs into the project of making Canada safer.

Some of the things we've recommended would be, for example, to diversify the security agencies and have Muslims there as policy-makers and staff to engage in meaningful input with the community. Don't simply go to the community when there's a problem, but really solicit their views sincerely and in a meaningful way, educate our security agencies about Muslims, about their heritage in Canada, about their practices to try to foster this big-tent approach to security and not treat them as persons of interest or suspects. That's been the general feeling, I think, thus far.

[Translation]

Mr. Serge Ménard: These are very valid long-term projects. However, the threat is imminent: terrorists acts have occurred. Not only in the United States, but also in Spain and even in Bali.

In the immediate future, how can police officers go about collecting information in an intelligent fashion, so as to be able to generate cooperation from people who could in one, two or six months provide them with significant information on terrorists projects, if there are any brewing here?

[English]

Mr. Omar Alghabra: Thank you, Mr. Ménard, for your question.

I think you're right, there have to be short-term, medium-term, and long-term plans. In the short term there are very real opportunities to make a significant impact. First is the work of this committee. When the community realizes that the government, Parliament, and security agencies are taking these issues very seriously and they see real results—for example, they see real changes implemented in the act and they see real efforts in outreach to communities where trust is immediately established, and perhaps it's not going to be complete in the short term, but results are seen on the ground where their legitimate concerns are addressed immediately—that will allow for faith and breathing room for the Muslim and Arab communities to realize that now the government is taking them seriously, Parliament is taking these complaints seriously, and there is room for them to step forward and offer their contributions.

Right now anybody who steps forward with any kind of testimony is viewed with suspicion: How come you have this information? Who are you associating with? If you have a cup of coffee with a person of interest, all of a sudden that person is on a file somewhere and perhaps is investigated when he or she travels to Syria or the Middle East or any other country. It is a dual process here. There is a dual responsibility, but the onus, we believe, is on the executive and the security agencies to step forward in establishing some room.

As community organizations, we have been working very hard within our community. Just a couple of months ago, 120 imams signed a declaration—that is a step forward, which has never been done before—to encourage our community members to step forward and offer their contributions. As well, when an individual misspeaks, the communities have stepped forward and made a declaration against that.

Thank you.

• (1010)

[Translation]

Mr. Serge Ménard: Thank you. I think I understand what you are saying: if we can manage to make the law more intelligent, that would send a positive message, which would lead to cooperation. I think one of the negative aspects of the act is that, indeed, certain groups do feel targeted. And they are precisely the people we need to build an effective data base on these issues.

We are familiar with the well-known cases you referred to, that of Maher Arar and the four other individuals who are still in jail, though one of them has been granted bail.

Have you compiled information on the number of complaints lodged on the way in which investigations are conducted, or from people who feel they have suffered from the enforcement of these laws? How many do you believe there are? Have these people complained? If they have not, why do they not complain to the body which oversees the practices of the Canadian Security Intelligence Service and the RCMP? You had begun to reply, but I would like to get a better grasp of the reasons why people do not complain to the organizations we have created to receive such complaints.

[English]

The Chair: Could we just have a very short answer to that? I want to respect the time here as well.

Mr. Faisal Joseph: I'm giving short answers and I will continue to, and I appreciate the UNB courtesy.

The Chair: I know you do.

Mr. Faisal Joseph: First of all, the complaint system is not a good system. In our view, there should be changes made to the complaint system because there should be a mechanism where you can have third-party complaints. If a person has a complaint with the RCMP, or CSIS, and there's an active file, people in our community aren't too excited about complaining about people who may have the power or authority to do things to them or to affect immigration applications. One of the things that should be done is there should be a process where you have third-party complaints.

Secondly, in the example I gave you in London, Ontario, there were over 50 people. We resolved many of those complaints. There were two or three we didn't resolve that are still ongoing, but those people, I'm telling you, honourable member, have no interest in putting that before any sort of a tribunal, because they are fearful, rightly or wrongly. It's not a matter of whether they're right or wrong; the perception is the reality. When they're reading what they're reading in the paper, and we know about the haystack, and we know about the cases, there are legitimate concerns these people have, some of whom were born in Canada and some of whom are Canadian citizens. In fairness, you have to appreciate this.

With regard to your question about the intelligence, it has to come from a better relationship with law enforcement and intelligence. That's why I said in my opening statement that it is increasing national security risk, not decreasing it. There may be information people have that they're uncomfortable coming to because of the implications of it. I want to assure this committee, and any member of this panel, and any other Muslim in this country, that if anybody actually thinks that if I, as a father of three, had knowledge that some sort of terrorist act was going to take place in my community I wouldn't report it to the authorities immediately....

There seems to be this shadow out there that we're all in cahoots. We are Canadian. We have more of an interest in stamping out terrorism than non-Muslims because we're the victims of the hate crime, the media, and the backlash.

• (1015)

The Chair: Thank you, colleagues.

Mr. Comartin, please.

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

Thank you all for being here today.

I want to pursue Mr. Ménard's point and the points that have been raised around consultation and direct involvement by the Muslim community in Canada with our intelligence services.

We've heard evidence from the Deputy Prime Minister, the head of the RCMP, and from the head of CSIS that at least in the last year there have been attempts on their part to do outreach. I have a double-barrelled question. One, are you aware of that outreach? Do you have any comments on whether you've seen a change in pattern by those services, and is it beginning to have any impact on the community?

Perhaps to Mr. Saloojee specifically, your association made a particular initiative directly to the Prime Minister in the spring or summer of this year on the same type of thing. Is it permeating into the community, or does it have any impact?

Mr. Riad Saloojee: Regarding the first point, there's been a general acknowledgement of the government, the RCMP, and CSIS that outreach post 9/11 was not adequate and was not substantial. There have now been some efforts to begin an outreach program. There have been a number of initiatives taken, and we applaud those initiatives. In all fairness, I think it's too early to tell whether there are going to be significant benefits or gains from those initiatives. In general, we would argue that any initiative needs to recognize that Canadian Muslims are partners in the process. We have kids. We have children. We have families. Terrorists will not distinguish between you and me. Terrorism is indiscriminate.

The challenge is to create outreach programs—and we mentioned it in our report—to diversify the security agencies and to seriously diversify those who are on the front lines and those who are also making policy. Number two is meaningful input, not simply tokenistic measures of soliciting opinions and not acting upon them. Number three is a cultural literacy program, or some sort of entrenched comprehensive program whereby our security agencies are educated about Canadian Muslims and Arabs.

Mr. Joe Comartin: What I'm really getting at is that we're being told there's been a shift by government, from the government or the administration side. What I'm asking you is, in fact, are you seeing that this is being put into place on the front line?

Mr. Riad Saloojee: We're seeing the beginning of some initiatives. It's too early to tell whether they are going to bear any fruit. We would certainly like to see a lot more in the nature of the three issues of diversification, meaningful input, and education. There have not been concrete proposals tabled on any of those three issues to indicate there is a viable outreach program at the present time. We're seeing the initiatives being brought forward, and there is some discussion on them, but I would argue that we have yet to see comprehensive, concrete, and genuine action on these programs.

Mr. Faisal Joseph: I personally find that any time I'm contacted as a leader in the community, I can usually adjust my schedule, with contacts from CSIS, the RCMP, or other law enforcement, a week before September 11 and a week after September 11. That's not a joke.

I think they are genuinely making those attempts, but it has to be more than just a question of how things are in the community. To get back to the relationship of trust, we don't want to only see them a week before and a week after September 11. We want to see them as active members in our community and at our functions so that a relationship of trust is being built, not suspicion.

• (1020)

Mr. Joe Comartin: I'm conscious of the time, but the reports on Bali and 9/11 and the report out of England on the whole fiasco around weapons of mass destruction all made specific recommendations that members of the Muslim community be on staff and be part of the intelligence services. Are you seeing any activity in that regard within our intelligence services in Canada?

Mr. Ziyaad Mia: Speaking for myself, I haven't seen much of that. I'd echo what my colleagues have said and what Mr. Saloojee has said on consultation, because that's a start. If the consultation isn't reflective, from my interaction with the agencies and my knowledge of them, which is not very detailed, I'd hazard a guess that they're not diverse. I don't think the general bureaucracy is very diverse. I'd say that it's reflective of the general pattern in government employment.

I'll be a bit frank, because we're here to get answers. I've become a little fatigued by consultation. There's a lot of consultation going on, and some people can see it as a positive or not. I think any attempt to work with each other is good. As Monsieur Ménard said, we need to build the trust, and trust is a two-way street. The community certainly needs to do its part and the government needs to do its part. But frankly, and speaking personally, I've seen perfunctory consultation in some cases and I've seen paternalistic consultation.

I was at a meeting in August where security agencies asked to meet with community members to have a frank chat, without politicians. I went there on a beautiful Saturday afternoon, thinking that we would have a frank discussion on issues of racial profiling, abuses, and mistakes, and that it would be discussed, acknowledged, and dealt with. All we got were pat answers, and frankly, we were talked down to, condescended to, and lectured. One of the security agency members lectured us on what terrorism was. The first three slides were on the World Trade Centre being hit, the trains in Madrid, and the Bali bombings. He told us this is terrorism. The terrorist events that are used to lecture our community are selective.

I believe Mr. Saloojee and Monsieur Ménard brought up this question. How many times do Muslims have to say that terrorism is not part of Islam? God is infinitely just. We must stand for justice. How can you use unjust means to move a just cause forward? Enough of that, I think.

This leads back to what we're talking about on the definition. When you start adding religious motivation as a factor, you have to start looking at that. It kind of says that Islam is a proxy for criminality, your faith is a proxy for criminality, instead of behaviour. If you're preparing Semtex in your basement and you're going to the Toronto subway, I want you arrested ASAP. If you're going to the Mosque and speaking out about the war in Iraq in a very outrageous way and not advocating anything that is crazy, you may not be very popular, but that should not lead you into the security web. That's what we're finding, along with the fear.

To build real trust, I think we need to go back to being meaningful. If you want to have a frank chat, let's have a frank chat. There are mistakes on both sides, the community side and the government side, but the government obviously has a large national security enterprise that it controls. We want to be part of the system. We want to be part of this country. Trust is not just found; it's earned.

We're very close to an election. I'm sure the consultations will come fast and heavy, but enough talk, let's see some action. Before an election, I'd like to see something concrete on paper.

Mr. Omar Alghabra: I just have a brief comment, if I may. I'm going to try to be consistent. As for what we're asking for, we need a system that measures outreach and performance instead of leaving it as a discretionary and soft term. I know I'm seeing a lot of initiatives taken and we're at the early stages, but we have not seen any concrete action yet.

Having said all of that, I think those are excellent initiatives that we need to work with, but the best way to measure the success of them is to define parameters that are measurable, with safeguards and checks and balances. We need to operationalize those measurements and programs instead of just leaving them at a discretionary level.

• (1025)

Mr. Joe Comartin: I know Mr. Joseph might say something, and I would ask him in that regard. He made reference to some of the legislation in the U.S. at specific state levels that has made racial profiling illegal. I wonder if he could forward to the committee the names of some of the states he's aware of that have used that so we could perhaps pursue that.

Mr. Faisal Joseph: We can do that. In addition, they're actually keeping records so they have some statistics, which are always a problem.

To go to your direct question about whether law enforcement is taking people into the community, I guess the answer to that is they may be trying—and I don't know how sincere that is, but I'm going to give them the benefit of the doubt—but they need us. I've spoken to friends of mine in those forces, and they can't translate documents from Arabic to English. They don't have enough resources or people to do it.

In our community, only 17% of the population of Muslims are Arab; most of them come from different backgrounds and speak four or five different languages. So we would be of great benefit, with engineering and computer skills and all of the rest of the things.

Personally, based on what I've seen in the last week with trying to get security clearance for a well-known member of the House in an appointment, I know the backlash that came out in the community from that: "Faisal, you keep telling us we should be involved in law enforcement, but we're not even going to get clearance to be able to do it, or it's going to take two years to get the proper security". So if that's the perception, whether it's appropriate or not, it's going to be a real problem for law enforcement to utilize the resources of our community to help stamp out terrorism.

The Chair: Thank you, Mr. Comartin.

Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you, Mr. Chairman.

I want to say that your evidence here today is very useful, and I don't for a moment second-guess or reject any of it. The impacts on the Islamic community in Canada are there, and you've articulated them reasonably well today. I do want to address two or three things, though, just for clarity.

The first has to do with the perception you've articulated today that somehow the Islamic community is a source of terrorism, and that Bill C-36 and the government's response in Canada brought focus to that and allowed people to infer that. You've read most of the legislation, if not all of it, and I've read it all. I was quite involved in the initial legislative initiative. Nowhere, of course, in the legislation is Islam mentioned. Nowhere is 9/11 mentioned in the legislation. People are simply making inferences.

Wouldn't you agree that in terms of public perceptions here, the real initial fault is that of the terrorists themselves, who have in their own rhetoric, broadcast on all of our networks, written in papers—our friends in Al Jazeera—implicated Islam in the terrorist threat? They have said that Islam is connected to that. No one else is saying it. The bad guys are saying it, and that's where it all began.

The Government of Canada didn't endorse any of that in its legislation, but that's what gave rise to the perception, and it has been repeated and repeated. Even your appearance here today, totally well-intentioned but articulating a sense of victimization within the Islamic community in Canada, reinforces that false inference that might have been made a long time ago.

Am I correct in looking at it that way, or do you want to reorient me?

Mr. Ziyaad Mia: Thank you for the question.

I think I may have mentioned this in response to an earlier question from Mr. Sorenson: if there is an elephant in the room....

I've read the legislation; you've all read it many times over. Of course it doesn't say that. Of course it doesn't advocate racial profiling. We're too smart to do that: "The Jim Crow laws are back." Nobody would be dumb enough to do things like that.

I'm not saying the government even intended to do it. I take Minister McLellan at her word and Minister Cotler at his word that they don't intend to racially profile. I totally agree with him, and I take it that he is sincere—I've talked to him—that he abhors racial profiling and racism. But the facts cannot be denied. When the rubber hits the road on this thing, we are telling you it is happening—unless people are lying to me.

I don't practise criminal law; I practised food and drug regulatory law and energy law when I used to practise. People would come up to me at mosques asking me for advice; they'd give me lists of things. A guy approached me at the mosque last Friday with all these things, and I said, "Here, go to this person". So unless there is this vast conspiracy to make up stories and lie....

I've had some engagement with police services on racial profiling and complaints, and the usual reaction on complaints from police services is, "Oh, they're going to use these frivolous complaints to persecute us". I find it a bit ridiculous sometimes when you say that the massive power of the state and the police service is going to be threatened by one individual or that an individual wouldn't feel threatened by the state bureaucracy.

So on the point of Islam, I totally agree that the terrorists have their role to play in it; I'm not disagreeing with that. But I'm here as a Canadian, not as a terrorist, and I'm here to talk about the anti-terrorism legislation and its effect on our community, not what Osama bin Laden's effect has been. I totally disagree with people associating Islam with terrorism—it drives me crazy—but I can't do anything about that.

The zeitgeist of geopolitics today is that we're in this war on terror, and Mr. Cotler said it is an existential threat that the whole world is facing. If that's the lingo we're in, that we're in this war on terror, this clash of civilizations—it's unspoken, but it's there—let's just talk about it frankly. And if that's feeding in with the motive requirement, and the documents CSIS and the RCMP read and the information they get from their partner security agencies all feed into a particular status quo world view and mindset of foreign policy and geopolitics, and if today that says Islam is the threat, then that's who gets looked at.

I know that in the testimony, you have had Minister McLellan and her staff here before you. I found it quite outrageous that they were dismissing the fact that five Muslim and Arab men are being held on indefinite detention security certificates and secret evidence in this country. They dismissed that as insignificant, because it was only about 1.5 people per so many thousand. I tell you that one is too many on that kind of thing.

If we extrapolate his example further, of those thousands of people who came into this country, how come the security certificate detainee profile today does not reflect the profile of people coming into this country? Why are they all Muslim and Arab men? It's because that is the unwritten enemy.

I'm just trying to be frank. I'm not arguing with you or being aggressive; I'm just trying to say we all know this is the zeitgeist of politics in the world today, and that's the war we're engaged in. So to actually get to the bottom of the effects on our communities, which is what we're talking about today, we're frankly bringing you the problems and saying, look, this is happening, unless we're all dreaming or taking something funny.

• (1030)

Mr. Faisal Joseph: I'm sorry, I just want—

Mr. Derek Lee: I would just add one thing here, because we've walked over into the racial profiling issue. I've had an opportunity over the years to actually look at the methodology and the way CSIS does its work and I can agree with you, and CSIS will agree with you, that racial profiling is a useless tool. They don't use it. They don't use it. I can't speak for the Mounties, because up to 9/11 the Mounties didn't do much security work. They're doing a lot more now, and that's another issue. But CSIS does not use it.

So when you suggest that CSIS does use racial profiling, I have to say I don't see it. CSIS doesn't see it. You get denials, and the denials are accurate. It ain't there. But that's not to say that a police officer on the ground, a border services official, an airline employee, or somebody else in the general system wouldn't use race as a denominator for collaring or questioning on some basis.

I agree that's out there, and that is the wrong thing. I agree it's there, but trying to tackle that, trying to get your hands on it and wrestle it to the ground when you're just dealing with individuals' brains—not systemic, planned racial profiling, but just a decision of a human being who has a job to do, who uses their brain to make a judgment that is wrong, or wrongly based.... That's the problem. Would you agree with that?

Mr. Faisal Joseph: I agree to an extent, but first of all, with the greatest of respect, I'm not going to get into an argument about CSIS' credibility in light of the last week and misleading and giving false information. What I will tell you is that it's the reaction that's important in the legislation. Before 9/11, we all remember, the biggest terrorist act in the United States wasn't by a Muslim, or a professed Muslim; it was by Timothy McVeigh. They weren't looking for 40-year-old militiamen from Michigan who had these crazy, fundamental, extremist views—

• (1035)

Mr. Derek Lee: They are now.

Mr. Faisal Joseph: They may be, but my point is that wasn't the reaction to hundreds of deaths. We know that when people professing to use the Bible were killing abortion doctors as snipers, and using the Bible, the response wasn't what it is now. All I'm saying is those things are there. We have to temper our response.

With respect to what you're saying with respect to CSIS, you may know more than we do. We only know what we read in the paper. What we read in the paper and what we see on the SIRC review committee is not enlightening or helpful. So whether it's done intentionally or not, it's being done. We've heard the evidence. They're sitting outside of our mosques and centres. We all have personal knowledge. We've gone through it.

I don't have a turban. I don't have an accent. I was born in Truro, Nova Scotia, and it's happened to me, as a former crown attorney. It only happens...it's not when they see "Mr. Joseph" when I get on a plane. It is if they see "Faisal", or if they see Arabic in my briefcase.

Again, I have no problem with criminal profiling. Do the criminal profiling. That works. It's the racial, religious, and ethnic profiling that doesn't, and it seems to be gaining acceptance. Whether it's systematic or individual, it should be outlawed.

Mr. Riad Saloojee: I would draw attention to Mr. Liddar's case. Of course, it was well publicized. The SIRC report on this indicated that he was denied his clearance on the basis that, partly, he had supported "Arab causes". Very interestingly, in the report the reporter mentions the perennial issue and the perennial problem where complainants say that their interviews have been misrepresented or that notes have been destroyed.

Something that we are trying to impress on you and would try to impress on all our fellow Canadians is that we are not dreaming. The impact on our communities is not stemming from a collective imagination. There has been a litany of cases post-9/11, all of which are on the public record and are well documented: Liban Hussein, Mohamed Attiah, Ahmed Sheab, the Pakistanis caught in operation Project Thread. There has been a litany of cases of Canadian Arabs and Muslims who have been stigmatized as terrorists and then vindicated, and their lives have been destroyed. We are talking about facts on the ground that are very serious, and of course, the Arar case encapsulates a lot of our concerns post 9/11. And now there are also the cases of the other Canadians who were tortured abroad, Mr. Almalki, Mr. Nureddin, and Mr. El Maati, who are alleging that they were tortured in the same prison in Syria, and were part of the same investigation. They have all alleged that they were asked by their Syrian captors and interrogators questions that could have only originated from Canada.

These are very real concerns that must be addressed.

The Chair: Colleagues, we're going to run a little bit late because we were late starting, but we have a series of panels all day. I'm in your hands.

Kevin, did you say you had a short intervention?

Mr. Kevin Sorenson: A really quick one.

You say in your list of recommendations for reform that we need to recruit more qualified Muslim and Arab judges, security-cleared counsels, policy-makers, decision-makers, and intelligence staff. Again, I wonder if this isn't even feeding fuel to the fire as far as saying, you know, you're racially profiling, but you need to take more of our race and put them into these security areas.

We've had CSIS come here and say they cannot find enough young...or I don't know if they say "young", but they want someone who can have a long tenure with CSIS, and they need them because of their linguistic abilities. I mean, you're absolutely right, many of these Muslims speak three or four languages, and CSIS is passionately saying that they want someone who speaks Arabic to go and work there.

On the one hand, you say we need more of it, and CSIS says we want more but we can't seem to get them. So I hope the ones we hire...

By admitting that we want to get these linguistic people who can speak Arabic into CSIS, aren't we almost saying that this is where the risk is? Isn't it like a type of profiling, where we might be able to get young Muslim men and women into CSIS because...? You almost have to admit that is the risk, and that's why we need the Arabic-speaking Canadians to be there.

The other thing—and I'm looking for it in the briefing here—is that the government did set up a cross-cultural round table. I don't know the status of that commission, although Mr. Lee might know. Is that commission meeting? Do you have adequate representation on those round tables to bring some of these concerns forward?

• (1040)

Mr. Ziyaad Mia: On the first point, Mr. Sorenson, on developing intelligent intelligence, I would agree with you. I wish I lived in another little secret world, in the ideal little utopia I have in my head about what the world should be, but unfortunately it's not like that. Every day, as a Canadian, I'm truly inspired by the values of this country that we want to build a better world. That's why many of us came here. But we don't live in that world.

As I just responded to Mr. Lee's question, it's the zeitgeist. I don't agree that Islamic terrorism is this existential threat to the world. It's one of numerous threats. We face global warming threats, and the genocide in Rwanda was an atrocity that we haven't even dealt with yet in terms of how to prevent things like that from happening. There's famine. There's a plethora of dangers in the world. But this one....

Let's just face facts: we live next to the United States, the only and most powerful empire in the world. They've decided that this is the fight they want to fight, and this is what motivates them. You can be cynical and say that they just need this as leverage because the Soviet Union is gone and this is their new foil or whatever it is, but the fact is that we're now in this engagement with people who commit terrorism in the name of Islam. That's why, if we're going to be in that situation, the reality is that we have to diversify.

Taking this further, just building a better country, we need to bring Muslims and Arabs into the broader life of this country. We have a lot to contribute. On this issue certainly we have a lot to contribute, because we're implicated directly, but we have a lot to contribute on other matters as well. So that's why we're recommending that.

On your second point, about the round table, when it was announced we were pleasantly surprised. Here was an outreach opportunity; we would be engaged.

I mean no disrespect to anyone on that round table, but I know many people who.... I'm from the Toronto area, and the GTA has the largest Muslim population; probably half of the Muslims in this country live in the GTA. The glaring absence of certain people with qualifications who had applied.... And it's not sour grapes because I didn't get it; I didn't apply, so it's not that. It's the sense that, again, if you're going to engage Islamic terrorism, and if Sunni extremism is the threat of the day—I don't think it ought to be, but it is, in terms of policy—the broad swath of the Sunni Muslim community in this country is not significantly represented there.

Mr. Kevin Sorenson: Are you saying that commission has been set up as simply...and now it's been politicized because we haven't put the proper people in?

Mr. Ziyaad Mia: Mr. Sorenson, I wouldn't pass judgment on how that.... I don't know what happens behind closed doors in these selection meetings and why people are selected. All I can say is, if it's an oversight or a mistake, we're ready to sit down with the government and reconstitute or enlarge or make it a more fulsome and robust and meaningful body that we can all have as a forum to build this trust we're talking about.

The Chair: I want to see whether Mr. Ménard or Mr. Comartin has a short intervention, because Mr. Maloney has. I've been trying to balance everybody's time.

I gave you more time than the Liberals on the panel, but....

Mr. Joe Comartin: I have many interventions, but they're not short.

The Chair: Mr. Ménard, do you have anything?

Mr. Maloney. Then we'll....

Mr. John Maloney (Welland, Lib.): I have perhaps a couple of short interventions. Mr. Joseph mentioned this mosque of 1,000 people, 50 of whom put up their hands. Most of those were cleared, except for perhaps three that are still ongoing. Were these strong complaints? Were they valid complaints? Were they just small, little items, or were they serious? And how quickly—because you or someone was able to dispose of them very quickly.... Is this a larger problem out there or a lesser problem than we really think?

• (1045)

Mr. Faisal Joseph: I think it is larger, and I'll give you just two examples without using names. This was taken to the commander for O Division in London. One example was a gentleman who was wanted.... It was an organization, NSIS, that I had never heard of at that time—not CSIS, but the National Security Intelligence Service, which was sort of a branch. When they wanted to speak to this man, they were quite aggressive in speaking to him. They actually said they could use the provisions of the anti-terrorism legislation if he didn't want to cooperate. They told him he didn't need to have a lawyer. I personally called the officers involved with it—I was in Toronto—and I was told, we're not going to wait for you; we don't have to wait for you. I said I'd like to be there; we'd like to go through the process.

The facts were—and this is a perfect example, and I'm glad you asked me—that this gentleman had married a non-Muslim in New Brunswick. What ended up happening was, they wanted to know, when he was in Syria—because he had dual citizenship.... They only had one question for him, Mr. Maloney. We waited two days to get the question. It was in my office. The question was the following: “Have you ever been a bodyguard for Yasser Arafat?”

When I heard the question, my jaw dropped, and I said to the officers, “Do you understand the implications of the question you just asked?” Both of them looked at each other quite naively and said, “That's the question we have.” So somehow it's a terrorist investigation. This man was supposed to be a bodyguard for, apparently, a head of state.

It wasn't the case. What the facts were, and what I told the officers was, “I'm going to tell you what your intelligence was and I'm going to tell you where you get your intelligence.” I told them, “You got an anonymous call after 9/11 from somebody who identified this man as a bodyguard for Yasser Arafat.”

They couldn't understand how I would know New Brunswick. The man went through a divorce. The woman had lost custody of the children to him. After 9/11 she called law enforcement and said this man is involved in being a bodyguard for Yasser Arafat. There was no screening done; they just immediately went out to talk to him, needed to speak to him. What ended up happening was, he wasn't a bodyguard to Yasser Arafat—not that there was anything wrong with that. What he was was the champion for Syria for boxing and for some wrestling, and he had, as part of the military in Syria, been conscripted to go into the army. He was a bodyguard for the son of the President of Syria. That was what actually happened. That was the reason for an investigation to go further with security.

The other chap was somebody who was a resident in the University of Western Ontario medical school. They wanted to talk to him about a relative of his he hadn't seen for six years who had sold computers out of the country. That gentleman was approached at school. He was sixth in his class. Cards were left there identifying them as being with the anti-terrorist squad of the RCMP. As a result of that visit—nothing came out of it; they had the meeting, the consultation—he had some difficulty getting a residency, and his nickname in the class was “Osama” after that.

Those were the types of complaints in the big picture. In the more specific picture, people were led to believe they had no options to retain counsel, that they had to cooperate with the authorities, that they had to tell them whatever they knew.

I always find this very interesting. Apparently the only group in the country not allowed to invoke their constitutional charter rights are Muslims. If anybody else.... Norm Inkster at the Maher Arar enquiry said he was appalled that Muslims weren't speaking regularly without counsel on these investigations. The answer was, when we're assured we're not going to have any implications where we're going to be put on a plane and sent to a country to be tortured.... All we want to do is be able to have proper legal advice before we give the answers. We're more than willing to cooperate with the authorities.

The Chair: I'm going to have to jump in. I think Mr. Maloney's intervention was a good question, because it was something I wanted to follow up with.

Be really short, because we have a panel waiting.

Mr. Omar Alghabra: First of all, on the reasons why we're asking for Arabs and Muslims to be within the police force, they're going to identify who the terrorists are, and because a lot of these practices are a result of ignorance of the tradition and culture of Arabs and Muslims, the only way to sensitize the agencies is by diversifying them.

Second, Mr. Lee, we can argue all day about whether these things happen or not, and it could be a philosophical argument, but what we're offering here today are simple, concrete measures. I don't know how they can reduce the safety of our country. In fact, we believe they will enhance the safety of our country, and ignoring our complaints here today will do nothing to alleviate the concerns of our community.

Thank you.

•(1050)

The Chair: Thank you very much.

Mr. Lee.

Mr. Derek Lee: Mr. Mia made a comment about the multicultural round table that was raised by Mr. Sorenson. I just want to say I agree fully with Mr. Mia's very polite comments on it. The round table could have been more targeted to focus on the Sunni Islamic components of the community in the GTA. I agree that it is weak, and I'm advised that these adjustments can be made in due course.

Thank you.

Mr. Ziyaad Mia: You're welcome.

The Chair: Thank you very much.

On behalf of all members of Parliament here I want to thank you gentlemen for being with us today. We found your interventions extremely insightful and helpful. As we move forward through the rest of our deliberations, we'll be taking heed of your cautions and your suggestions for improvements in the legislation. Thank you very much.

We're suspended so we can replace this panel with a new one.

•(1051)

_____ (Pause) _____

•(1104)

The Chair: I call the meeting to order.

Good morning and welcome to B'nai Brith, the Canadian Jewish Congress, and the Muslim Council of Montreal. Thank you for joining us this morning.

Mr. Freiman, I understand that you're going to be making the opening statement.

Mr. Mark Freiman (Honorary Counsel, Ontario Region, Canadian Jewish Congress): Mr. Chair and members of the committee, my name is Mark Freiman, and I am the honorary legal counsel for the Canadian Jewish Congress, Ontario Region. With me today is Mr. Manuel Prutschi, who is the Canadian Jewish Congress national executive vice-president.

On behalf of the Canadian Jewish Congress, I'd like to thank you for giving us the opportunity to testify before you today in support of the brief, which we have submitted in both official languages, on the occasion of the review of the Anti-terrorism Act, or ATA.

When it comes to terrorism, the threat to Canada is neither academic nor speculative. After all, the downing of Air India flight 182 was our 9/11, before there was a 9/11. As Canadian Jews, we often feel that we are twice targeted by terrorism: first, as members of the Canadian family, and second, as belonging to the ethno-religious community that is apparently uniquely "racially profiled" for terrorist violence.

Terrorism has all too frequently made victims of Jews, often in Israel to be sure, but also in other parts of the world, from the Middle East to Europe and to the Americas. The United Kingdom's community security trust has documented 413 terrorist incidents against Jewish communities and individuals outside Israel between 1968 and 2003. The perpetrators have ranged from Marxists to neo-Nazis, but today it is not possible to overlook the overt and murderous anti-Semitism that characterizes what are called Islamist terrorists.

I hasten to note that Islamism does not refer to spiritual Islam, one of the world's great religions, but to a totalitarian religio-political movement whose aim is destroy western civilization as one of its means to achieve its theocratic goals.

We can be thankful that our Jewish community has thus far not been the victim of what is commonly thought of as terrorism, though our community has, as has the wider Canadian family, been shaken by fire bombings of our schools and of our synagogues. Still, domestic security warnings and emerging stories of terrorist threats and plans against Jews and Jewish institutions—and we itemize them in our brief—are a continuing cause for justifiable anxiety.

CJC believes that the government got the balance essentially right in the Anti-terrorism Act, and its corollary legislation and regulations, by providing necessary state powers to protect the safety of Canadians while minimally impairing their basic civil liberties.

There are those we know who claim that these measures go too far and that they infringe on civil liberties in an unacceptable way. Some even call for the entire repeal of the ATA and for an end to measures such as the security certificates in the Immigration and Refugee Protection Act. Indeed, attacking the security certificate regime appears to have become something of the thin edge of a wedge for opposition to Canada's overall anti-terrorism regime. With great respect, we disagree with those views.

In saying that, however, we do not disagree with the importance of civil liberties concerns. We note that the discussion of the ATA and its associated security regime brings into play two parallel sets of fear of harm. On the one hand is the fear of becoming a potential

victim of terrorism, and on the other hand is the fear of becoming a potential victim of the very measures intended to prevent terrorism. We feel that these fears are both legitimate, that they are not mutually exclusive, and that each should be seen as a valid concern touching all Canadians. Of course, the key is to find the right balance to minimize the danger of either of these fears materializing into reality.

●(1105)

It is on this basis that CJC has submitted a brief aimed at that very balance. Our brief is intended to provide constructive recommendations aimed at preserving the counter-terrorism measures necessary to protect safety and security at a time when terrorism is, unfortunately, a fact of life, while at the same time calibrating and fine-tuning the act so that these necessary protections for Canada and its citizens function in a manner that is consistent with civil liberties and is free from discrimination and unnecessary adverse effects.

We highlight the following comments and recommendations from our brief:

First, since much of contemporary terrorism is rooted in a religion-based fanaticism, CJC supports the retention of the term "religious" in the triad of rationales—namely, political, religious, or ideological—that define terrorist activity as listed in the ATA.

Second, CJC supports amendments to the Criminal Code's terrorism provisions—that is, part II.1—and to the State Immunity Act that would allow legal redress to the families of Canadians victimized by terror. We think, for instance, of atrocities such as suicide bombings in Israel, bombings like Air India and the London underground, or hijackings and carnage such as 9/11. The amendments, as I say, would allow families of Canadians victimized by this sort of terror to bring civil suits against organizations and individuals who are complicit in such victimization. We note that this proposal was first brought to you by the Canadian Coalition Against Terror.

Third, governments must provide front-line security personnel and responders with the necessary human and material resources to investigate, incapacitate, and suppress terrorist activity before it strikes.

Next, the CJC welcomes the inclusion in the ATA of an amendment to the Security of Information Act in the form of proposed subsection 20(1) that would protect against "the intimidation or coercion of ethnocultural communities in Canada" for the purpose of terrorist activity. This is important, because Canada is a positive role model for the rest of the world as a diverse, multicultural, and pluralistic society; it is also, unfortunately, especially vulnerable to terrorist infiltration for the very same reason.

As well, we believe the government should invest more resources to allow increased offshore screening of applicants before they enter Canada.

The ATA requires that Parliament review the provisions dealing with recognizance with conditions and with investigative hearings in that legislation. The Canadian Jewish Congress recommends that those measures be renewed for another five years. Considering the gravity of the provisions in the IRPA concerning security certificates, the CJC also recommends that amendment be made to the provisions of that act to provide prospectively for a five-year sunset clause in which parliamentary approval would be required if those provisions were to be renewed.

CJC further endorses a parliamentary review of Canada's anti-terrorism regime five years hence.

CJC recommends the appointment of a parliamentary officer who would provide a comprehensive annual report to Parliament on the operation of the anti-terrorism regime in place in Canada, including all pertinent federal and provincial legislation. This officer would have as a mandate to report as to whether there are counter-terrorism tools in place to deal with the current threat. He or she would further be empowered to require collection of data on the use of profiling as well as to receive and investigate complaints from the public with respect to the operation of counter-terrorism measures.

• (1110)

Next, consideration should be given to the inclusion in the ATA, as part of its preamble, of a declaration that the legislation bears no discriminatory intent against identifiable communities, and that such discrimination is not an acceptable by-product of the implementation of the act.

CJC recommends that an administrative regulation be made to preclude profiling by colour, race, religion, ethnicity, or sexual orientation. This reflects the definitions in Canadian anti-hate legislation, as well as in subsections 318(4) and 319(7) of the Criminal Code. It should be noted that profiling by national origin is in CJC's view a legitimate practice. Just as there are countries that export drugs, there may be countries that export terror, and profiling on that basis is as legitimate in the one instance as it is in the other.

Intelligence, security, and police services personnel should be provided with appropriate educational and training programs to promote enforcement of the Canadian anti-terrorism security regime, with appropriate sensitivity to civil liberties and personal and community sensibilities.

CJC recognizes that there are those who oppose biometric identification as overly intrusive. CJC believes in fact that biometric identification can be more respectful than say photographs when one deals with particular religious practices, such as the wearing of a hijab or a turban, or the wearing of a wig for religious Jewish women, and further believes it is more effective as an identification technique.

The government should produce an educational brochure to explain the ATA and its regime in terms of what it does and what it doesn't do, and answer important questions that people may have. I want to stress that CJC reiterates its recommendation that religious property protection provided for in section 430 of the Criminal Code must be extended to include not only places of worship and cemeteries, but also community schools and other institutions that fulfill administrative, social, cultural, educational, or sports functions

for identifiable groups. The reason for that is the traumatic event in Montreal, where the United Talmud Torahs School was fire-bombed, would not be covered by the present legislation.

Further, CJC points out that communities are vulnerable not only to attacks on their property, but also to threats. The Jewish community particularly has been targeted by threats in recent years. Therefore, to round out the protection of communities in the Criminal Code we believe it is important to amend subsection 264.1 (1), dealing with threats as a criminal offence, to make it a serious and specific offence to utter threats against identifiable groups, in addition to the present protection for threats against individuals.

Finally, the Canadian Jewish Congress continues to believe that terrorism is a real and present danger that necessitates clear, coherent, and adequately funded responses in the ATA and its corollary statutes. It troubles us that there are Canadians who feel they have been victimized by or see themselves as potential innocent victims of the anti-terrorism regime, and we have sought to address some of these concerns. Ultimately, protection of fundamental rights, freedoms, and values that define us as Canadians depends on and is impossible without protection against the ongoing terrorist threat and unity in that endeavour.

Thank you, Mr. Chair. That concludes our opening remarks.

• (1115)

The Chair: Thank you.

Mr. Matas and Mr. Elmenyawi, are either of you making opening remarks?

Imam Salam Elmenyawi (Chairman, Muslim Council of Montreal): I am.

Mr. David Matas (Lead Counsel, B'nai Brith Canada): And I too, yes.

The Chair: Please go ahead.

Imam Elmenyawi: Good morning. On behalf of myself and the Muslim Council of Montreal, I would like to thank the honourable chair, vice-chair, and members of the committee for providing us with the opportunity to present our concerns.

I am here because I love my country, Canada, and I love its people. I have very serious concerns about the security certificate and the Anti-terrorism Act, two sides of the same coin. I am not here to criticize these acts article by article; lawyers, bar associations, civil liberty associations, and human rights organizations have done that, and they will correctly continue to criticize these laws until proper corrections are made. We already know that these laws are an encroachment on Canadian rights, freedoms, civil liberties, and fundamental justice. Experts agree that these laws are certainly flawed. The following is a quick summary of some of these flaws.

One is the abdication of the rule of law and fundamental justice, including an officer of government possessing an arbitrary power over the person or the interests of the individual, with secret evidence, foreign evidence, and the lack of proper checks and balances.

Two is the infringement of the Charter of Rights and Freedoms, including: freedom of expression; freedom of association; the right not to be deprived of life, liberty, or security of the person except in accordance with fundamental justice; the right to be secure against unreasonable search and seizure; the right not to be arbitrarily detained or imprisoned; the right to silence; the right to a fair trial; and the right to equal protection under the law. These are fundamental principles of our legal system that could not be limited without a demonstrably justifiable cause in a free and democratic society.

Three, the definition of terrorist activity is wide and too inclusive. The target of this bill must be very precise to avoid disproportionately targeting Muslims or legitimate political dissent.

Four is the lack of consistency in applying the law, most specifically in relation to hate crimes, which should cover all of the media, including print and broadcast media.

Five, the standard of proof is very low. Under the security certificate, what is needed to condemn someone of such a serious accusation is pure suspicion. The consequences of such condemnation would be the total destruction of one's life through detention, deportation, torture, and possibly loss of life. These severe punishments are not the consequences of being found guilty of a crime, just the suspicion of it. The details of the charges would not be known to the accused. The judge receives the evidence *ex parte*. The defence counsel would not know anything about it. With no cross-examination of witnesses, most evidence is obtained under torture. Under this law, we are giving tyrants, despots, and the like a long hand to reach out, through foreign and secret evidence, and get Canada to do their dirty work.

The question is not whether these flaws exist; most of us agree that they do exist. If we're trying to find the balance between collective security and individual liberties, I personally believe we're going about it the wrong way. Let us focus on the purpose and objectives behind giving law enforcement these tools. We adopted these laws to stop a security threat before it happened, which would need good and intelligent policing, but what we in fact did was create the biggest threat to our national security. Yes, I do believe these laws are the biggest threat to our national security. If not fixed, in the long term it will affect social cohesion and tear the fabric of our society at the seams.

The above flaws wipe out the appearance of justice and establish the possibility of abuse and harassment by law enforcement. The best policing is self-policing. Muslims have the highest interest to protect Canada against terrorism, but under these laws, Muslims will not call on CSIS or the RCMP when they have unsubstantiated suspicions about someone. To substantiate the veracity of a complaint should normally be left to the police enforcement agency, but with the circumstances created by these laws, no one would want to subject any human being to such an experience or paranoia. Consequently, we all lose.

● (1120)

This issue is a bit more complicated than I am describing here. Due to the disproportionate targeting of Muslims using these laws, an appearance of institutionalizing discrimination is apparent to Muslims.

While I do appreciate the great work CSIS and the RCMP are doing to secure our nation, and many of them are very hard-working officers, they have, however, created a mindset and a culture of looking at Muslims as the enemy through false and wrong profiling, lack of training and Islamic education, and repeated questionable reports making false accusations against local Muslim youth and mosques under the wrong use of Islamic labels such as jihadist, Islamist, Islamic terrorism, etc.

In addition to the above laws, they have created the appearance of fighting Islam and Muslims, not terrorism. This culture has created a situation where a very large number of innocent people have become a target of these bills. This is a very wide net indeed that wastes our resources and will end up threatening our security.

Whatever you do or recommend, you must consider the following. One, the Muslim community and its faith, Islam, should never be a target, should never appear to be a target. Two, the appearance of justice must be paramount and fundamental justice must be respected. Three, security officers and prosecutors must receive sensitivity training or Islamic education. You can ask me why, later on. It's very important. Four, hiring at CSIS and RCMP from the Muslim community should not be limited to low, badly perceived jobs of informers, but they should be encouraged to hold jobs at all levels of both institutions, such as lawyers, analysts, agents, etc. Five, proper and serious consultation with the Muslim community must be arranged, not just a fig leaf, as we have been seeing from many government branches, and more specifically the Minister of Justice. Six, safeguards must be established to avoid defaming religions in general, and Islam in particular.

As Canadians, we should have zero tolerance for hate, racism, and discrimination. Furthermore, we must empower ethnic organizations with laws, finances, and education to protect their culture and practices from being the target of people with political agendas or hate speech.

In addition, if we wish to join the international efforts to curb terrorism, we must go to the roots of the problem of terrorism and exert efforts there. It is clear that we cannot stop terrorism with tanks or unfair laws. Furthermore, due to the fact that paying of alms is an article of faith and one of the five Islamic pillars, Muslims will have to be engaged in charity, not only because they wish to do so but also because it is the requirement of their religion.

Keep in mind that while Muslims make up 27% of world population, 80% of refugees are Muslims, who are expecting the better-off Canadian Muslims who are enjoying a good life in Canada to be able to reach out and help them from want and poverty. This would cause Muslims to be more exposed than any to the draconian effects of this law.

There is no perfect justice system in the world. Our Canadian justice system is one of the best. Under this system, and with built-in checks and balances, we have still made mistakes. We have jailed and devastated the lives of innocent people. To continue the application of these bills would be totally unfair to Canadians, remembering that when there is no justice for some of the people, there will be no justice for all of the people—or, as stated by Martin Luther King, injustice anywhere is a threat to justice everywhere.

We say the accused is innocent until proven guilty, but here not only is the accused guilty until proven innocent, but the accused is going to need more than just a lawyer to defend against and rebut the witch hunt and secret evidence that will be used by foreign state resources. The accused is going to need unlimited resources, which may not be available, and if available, most probably will not work. This, again, is an indefensible situation.

If you do not modify or abrogate these bills to conform with the Charter of Rights and Freedoms, fundamental justice and due process, you will be telling the Muslim community at large and a multitude of other Canadians of different cultural backgrounds that they are dispensable, that you are willing to sacrifice them at the first excuse you find, and that democracy is not necessarily for all.

• (1125)

Honourable chair and honourable members of the committee, it has been said that if we do not maintain justice, justice will not maintain us. Justice should not only be done, but should manifestly and undoubtedly be seen to be done.

At the end, I humbly ask the blessing of God. May He protect each and every one of us. May He guide you to an honourable way that is fair and just.

The Chair: Thank you very much.

Mr. Matas, please.

• (1130)

Mr. David Matas: Thank you very much for inviting all of us.

I'll be brief. We have a written submission, which we will be filing later, that goes into a great deal of detail. I just, through these remarks, want to highlight some of what we have in our written brief.

Before September 11, the largest terrorist act anywhere in the world—the one with the largest number of deaths—was planned, organized, and executed right here in Canada: the Air India disaster. There's never been a commission of inquiry into that disaster. We have not digested the lessons to be learned. A mass terrorist attack could again be organized in Canada.

Canada, in our view, is woefully unprepared. All the warning signs are in place. Terrorists are being recruited in Canada for action abroad.

Stewart Bell has just written a book that tells the story in detail of one of these home-grown terrorists. There's one person on trial right now in Canada, an Ottawa, Canadian-born man, Mohammed Momin Khawaja, arrested in March 2004 and charged with participating in a plot to bomb London, England.

Incitement to terrorism proliferates in Canada without hindrance. A religious cleric, for instance, on the west coast has spewed venom against the Jewish community about which nothing has been done. Plots with terrorist acts to be committed in Canada have been identified. For instance, Ahmed Ressam, an illegal Canadian resident convicted for attempting in 2000 to blow up the Los Angeles airport, told investigators of a report to blow up a fuel truck in a Jewish Montreal neighbourhood.

The Jewish community and its institutions are prime targets for terrorists' schemes and terrorists' incitement. The Jewish community is under threat, and we, as citizens of Canada, do not feel the Government of Canada is doing enough to defend us. The Anti-terrorism Act was a step forward, but in our view it was far too timid a step. The legislation needs to be enhanced in a myriad of ways to be effective. As I say, in our brief we list them, going into dozens of ways, but here I want to suggest only three, given the time at our disposal.

Canada needs legislation to prohibit incitement to terrorism. The United Nations Security Council, just a couple of days ago, called on all states to prohibit by law incitement of terrorist acts, prevent such conduct, and deny safe haven to anyone guilty of such conduct. Both England and Holland have introduced such legislation. Dutch justice minister Donner announced in July 2005 that his government would introduce legislation to make it possible to prosecute individuals who glorify, extenuate, trivialize, or deny war crimes, genocide, or terrorist acts. The Prime Minister of the United Kingdom, Tony Blair, in August—just a month ago—said his government would introduce legislation into Parliament that would include the offence of condoning or glorifying terrorism.

We don't have such legislation in Canada and we need it. There is, of course, the law of incitement to hatred, but it's a different offence, and of course it requires the consent of the Attorney General of the province. What we're dealing with is an issue of international dimension and not just of a provincial dimension.

Secondly, of the three I want to raise here, there needs to be an expansion to the offence of mischief to religious property. Right now what the offence says is the property has to be used primarily for religious purposes. We have seen in Canada, in Montreal, the firebombing of the United Talmud Torah's elementary school library in Montreal in 2004. In our view it was a terrorist act. It could or should have been prosecuted under anti-terrorism legislation, but it wasn't. There was a prosecution for arson only.

In our view, that library was a religious property, but it seems the prosecutor did not share our view that the library or the school was an institution that was used primarily for religious purposes or for religious worship. What there needs to be is an amendment that would provide for the offence of mischief to religious property to cover the institutions of religious organizations, whether they be schools or libraries or community centres, so that there is not this artificial division between some religious institutions that can be attacked without reference to the anti-terrorism legislation and some that can.

Of course, the perpetrator was prosecuted, he did plead guilty, and he was convicted. But we lose sight of the dimension of the offence, the reality of the offence, and the risk that we face, if we pretend these are not terrorist acts.

•(1135)

Third and finally, our organization and I suggest that there needs to be an exception to the State Immunity Act. Right now, foreign states cannot be sued civilly in Canadian courts for damages, but there needs to be an express exception for state sponsorship of terrorism, allowing for lawsuits against states the government designates as sponsors of terrorism. The United States has such a provision in its law.

An end to financial immunity for terrorists should mean an end to the financial immunity of states that sponsor terrorism. We have freezing of funds legislation, and in theory we are opposed to the funding of terrorism, but we don't carry that theory through consistently when it comes to state-funded terrorism. Otherwise, if we don't have this legislation, the attempt to end the financing of terrorism ends at the doors of state coffers.

I note that the Conservative Party has proposed such an amendment to the State Immunity Act in the Senate through Senator David Tkachuk in a private member's bill. I also note that the Bloc Québécois foreign affairs critic, Francine Lalonde, has expressed her intent to introduce in the House of Commons a more sweeping bill that would encompass an exception for violations of all pre-emptory human rights norms of international law. So we're part way there.

We invite the government and the NDP to join the Bloc and the Conservatives so we can have an all-party bill that would allow for this particular exception to be part of our law. Why shouldn't someone like Zahra Kazemi's son or the other victims of terrorism and torture in Canada be able to have a remedy against their perpetrators?

In conclusion, legislation, in both its form and its operation, must respect human rights punctiliously, and in that we join common cause with our friends you heard from earlier and my friend on the right from whom you heard just now. But we must not forget that terrorism is itself a great violation of human rights. When the state does nothing to defend its citizenry against terrorism, the state is violating the human rights of its citizens.

The Chair: Thank you very much, all three gentlemen, for your presentations.

We'll start with Mr. Sorenson.

Mr. Kevin Sorenson: I do want to underscore the thanks our chairman gave. We are so thankful that you were able to come here.

I specifically want to thank you for reminding us again of the Air India disaster. I think that far too often as we sit at this committee we look only at the terrorist attack of September 11. We know that this legislation basically came out of that attack, but certainly the fact is that terrorism has been here in a major way since before September 11. You remind us of that, and also of Canada not being prepared to adequately fight terrorism. We haven't been attacked specifically since the Air India one, but Canada is well recognized as being a recruitment centre and a fundraising nation for terrorism abroad. So thank you for reminding us of that.

I'm reminded of a former commissioner of the RCMP—and maybe you would comment on this. Norman Inkster said shortly after September 11 that his greatest fear was that Canada would

initially have a knee-jerk reaction to September 11, in what we thought then was a new thrust of terrorism, with some type of legislation, and then a number of years later complacency would again set in. As we go through this and hear testimony now in regard to the anti-terrorism legislation, do you believe that complacency is setting in?

I noticed in the Canadian Jewish Congress brief—and I don't have a lot of questions but more comments—that you support the government adding more names to the terrorism entity list. We know that the United Nations, the United States, and I think Great Britain have close to 200 entities on their lists. We had at last count I think 37, maybe 42, on our terrorist list. Are you suggesting we lower the standard of what a terrorist entity is? How would we then see more names being put on that list? Maybe that's one of the questions you could follow up on.

Also, can you expand a little bit on what Canada's role could be to screen applicants before they enter Canada? How do you see Canada enhancing security here in this country by putting resources abroad? Different political parties and different people within political parties have different ideas as to how you could see more interdiction abroad. There is the advice of the Auditor General in regard to gathering and sharing information, watch lists, passports, and airport screening. Do you have any comments on those?

•(1140)

Mr. David Matas: I suspect we'll all have comments, but I'm going to start off.

First of all, on whether it's complacency, I would say that it's in fact an even more acute problem than complacency, because what we have is a lot of opposition to the law and its operation. Some of it I would say is justified, because there are some civil liberties concerns, but mostly what we hear are those civil liberties concerns rather than the concerns about enhancing the struggle against terrorism.

The position I'm taking and Mark Freiman is taking, that we're not doing enough, is a minority position, very little heard. And as you say, we tend to forget. For Air India it's just like it didn't happen. It gets lost, it gets compartmentalized, and it's something else somewhere else. We have our heads in the sand about the reality of the threat of terrorism and the need to defend against it.

I accept many of these comments from civil libertarians about the operations of the act as legitimate, but I think we have to contextualize them. They make sense only in the context where we are conducting an effective fight against terrorism. We can't just use civil liberties concerns to immobilize the fight against terrorism, because then, as I say, we are violating the human rights of the victims and potential victims.

In terms of an entity list, let me say that we don't have one list, we have two lists—and this is part of the brief, which we'll send to you subsequently. We have the freezing of funds list as well as the criminal list. The freezing of funds list is in the hundreds. It's as large as the British and the UN and the American, with a few notable exceptions, which is some cause for concern.

One of the recommendations we make is unifying the list. There is no logical reason to have two lists. If you look at the standards, the definition and even the consequences are the same for both lists. When it comes to freezing of funds, for sure, the definition is the same and the consequences are the same. I've heard the government say that one is balance of probabilities and the other is beyond a reasonable doubt because one is civil and one is criminal. But when the consequences are the same—you commit an offence and you go to prison—then this notion that the different standard of proof should be used just doesn't make any sense at all.

This is another problem with our fight against terrorism—it's compartmentalized governmentally. The freezing of funds list is brought to cabinet by the Minister of Foreign Affairs. The criminal list is brought to cabinet by the Minister of Public Safety. And then we have a third minister dealing with a third component, the charities and the deregistration of charities. And there's no indication that there's any coordination. It's not a list. There are some organizations that don't get charitable status. We just don't see any coordination in this fight, and there should be.

Mr. Kevin Sorenson: Is that why, in the recommendations of the Canadian Jewish Congress, they've asked for one individual over the file of terrorism? I don't know if it's a parliamentarian; I think they do mention the parliamentary committee. Would that be part of your recommendation as well?

Mr. David Matas: I'll let Mark answer that, but we are certainly in favour of a unified list.

The third question you raised was about screening. Obviously, anything we can do to enhance screening, the better. But the point I would make here is that I'm an immigration refugee lawyer, as some of you may know, and one of the frustrations I have with this system is that right now it's very visa office heavy. Too much depends upon what happens at the initial point of entry. If you get through, if you lie your way in, particularly if you lie your way through to citizenship, you're almost home free. And the system, I would say, needs to be improved at the visa post, but even more, it needs to be improved internally, so that once people get citizenship and they're terrorists their citizenship can be revoked. That's another of our recommendations.

Once they're here and they're citizens, and they can't be sent back because they may be tortured—and if they may be tortured they shouldn't be sent back—they should be prosecutable here even if their act was committed before the legislation was enacted, as long as the act was an offence in international law at the time that it was committed. And we have such terrorists here, people who did commit acts before the legislation was enacted who cannot be sent back and we can't prosecute them either. The war crimes legislation allows for retrospectivity, but not the anti-terrorism legislation.

I would say let's not put all our eggs in the visa office basket. Enhance visa office protection, but have to be able.... When you're dealing with people who are dissimulating, who are lying, or who are producing forged documents, it's putting too much on the visa office. We have to be able to react at any time, not just at the point of entry.

• (1145)

The Chair: I'm trying to share some time here with Dr. Freiman.

Mr. David Matas: Yes, sorry.

Mr. Mark Freiman: Maybe I can just continue.

First of all, I think your point is an extraordinarily apt one. And the analogy.... I'm not an immigration lawyer, but I used to practise some medical malpractice defence, and one of the things one would find in people who need medication was that they'd take the medication, feel better, and then suddenly say, all right, I'm fine now—what do I need this medication for? It gives me a dry mouth. Nobody wants a dry mouth. So they'd throw away the medication, and all the old symptoms—this was especially true in cases of emotional and mental disorders—would come right back out.

We've had a prescription. We've had medicine given to us and it's working. We are doing better in terms of identifying and in terms of dealing with terrorism. So now we're looking at the dry mouth—oh, my goodness. Nobody wants to curtail civil liberties at all, and certainly no one wants to curtail them more than is necessary. We sometimes look at the side effects and say, well, if there's even a chance, we'd better throw out the medicine. And if we throw out the medicine, we know what's going to happen: everything is going to recur.

That's not to say that civil liberties aren't important. They have to be looked at, and they have to be looked at scrupulously. But you don't throw out your medicine because it gives you a dry mouth. Maybe you suck on a candy now and again. You have to find ways to maintain the protection and not pay too much attention to the concept that now that you're fine you don't need the medicine any more.

On the issue of visas and the other things Mr. Matas talked about, I agree, of course. The Canadian Jewish Congress supports the whole idea of prevention, and the idea of prevention is to move the front lines as far back and away from Canada as possible. And the matters you were talking about were all matters, especially screening overseas, that push the front line backward in order to allow us better protection here.

The Chair: Thank you.

Mr. Elmenyawi.

Imam Elmenyawi: Yes, I think the government has a certain complacency towards what happened on September 11, but it's not as you think it is. You think they are complacent by thinking they should have more laws. In fact, I think what is wrong is that they thought the law would fix the problem.

There's a lot of work to be done, but not in the area of the law. The law is a tool. And a tool, for police enforcement, is like a baby in a candy store—you want to have as much as you can get out of those tools whether you're going to use them or not, whether they are useful for you or not, and whether you are really being satisfied or not. That is incorrect.

To resolve this problem, it's not about tools; it's about intelligence. It's about the smart moves. It's about diagnosing the problem properly so you give the right medicine. But if you keep taking the wrong medicine, it will make you sick. The medication as you are doing it will make you sick.

For me, the way it looks is like you're going back to the future to fix the problem, only to find that you're actually the cause of the problem. Because if we are not going to be fair in making these laws and making sure we don't alienate a complete part of the society, we are not going to be able to have that sort of policing, and we're not going to be able to have this kind of enlightenment for people to know what is the cause of terrorism and to go there before it happens and work right from the roots up.

Our objective is the same; the means, I think, are incorrect.

The Chair: Thank you.

Mr. Sorenson, your time expired long ago.

Mr. Ménard, please.

[*Translation*]

Mr. Serge Ménard: Thank you, Mr. Chairman.

I don't know who chose to bring you here together, but this is surely a good example of what we want to see in Canada and what we see in Montreal, and Toronto as well, I believe, that is to say the peaceful and mutually rewarding coexistence of the Jewish and Muslim communities. This enriches all of us, as citizens of a country where most of us are the children of immigrants.

My first comment is addressed to Mr. Elmenyawi.

Do you feel that there exists, in the Montreal Muslim community, the desire to cooperate with security forces and intelligence agencies, to effectively prevent terrorist movements from coming here, movements which, I am convinced, discredit Islam, first and foremost, as much as they harm democratic society?

• (1150)

[*English*]

Imam Elmenyawi: Absolutely. I was one of the signatories of the imams' statement. I met with Prime Minister Paul Martin in his office following that. Our statement is very clear in relation to terrorism.

When a terrorist act takes place.... In fact, in London, the first person who was buried was a Muslim woman who was a victim of this terrorist act. We are a part of society and a part of those victims.

Second, as a backlash for these kinds of acts, we are fingered as being the cause of it, or the religion is the cause of it, or the ideology, and there are all kinds of philosophical articles and papers and attacks that take place. We don't want to see that. We hate it. We don't want anybody to attach terrorism to Islam at all. Because of that, many people in the Muslim community are willing to work hand in hand with CSIS and the RCMP to make sure it stops. But don't look at us as second-class citizens who only become informers, which is a dirty job that people perceive as something wrong. We're not just a community of informers. We have lawyers. We have educated people. We have people with very good backgrounds and intelligence.

I spoke with Mr. Jim Judd in relation to this issue and he was very cooperative. We spoke about trying to find transparent rules to let people know that when they are checked they will not be profiled just because they are Muslims and they will not be taken to work for CSIS, for example. If there is transparency in the way they are hired,

if there are proper rules that are set out, you will find the Muslim community right in the forefront of fighting terrorism.

[*Translation*]

Mr. Serge Ménard: I would like to know whether the Muslim community's perception of the current act constitutes an obstacle to the cooperation which you and the leaders of the various organizations wish to see in the field, I am sure? I am certain that you will not become a terrorist and that the Muslim leaders do not have terrorist leanings. However, you are aware that this may develop somewhere in your community. In fact, perhaps you would be the last to know.

In your community, among young people, for instance, are there obstacles to this cooperation you aspire to?

[*English*]

Imam Elmenyawi: Yes. As part of my volunteer work I work as a Muslim chaplain at McGill University and at Concordia University, so I am there with the Muslim students. I also visit jails as a chaplain. I did meet with the person who firebombed the school library. I spoke with him. In fact, I was instrumental in getting him to write an apology, not only to the Jewish community but to the Muslim community as well, to make it very clear that this is something totally unacceptable.

I've been dealing with youth, and I've seen their faces when they came to me after September 11. They said, "Look, Uncle, you came from Egypt and you can go back to Egypt, but we're Canadian. We were born here, nowhere else, and now people are telling us to go back home. This is our home. Where do we go?" This loyalty must be there. We have to work to make sure that it isn't Islam that is being fought. There is a very critical line there, where it makes it appear that most of these rules and laws are designed to be against Islam and Muslims. As we see it, this is targeting Muslims. We have to make sure that when there is a report coming from CSIS, it does not say there is hate in mosques. Says who? Show us where. Don't make those secret ideas. This way, we're not going to be able to fight it. In fact, they're only throwing a stigmatization over the whole community. No, we don't have hate in our mosques, and if there is any, we would like to know where it is and we would like to talk about it.

When you say that students, for example, have done martial arts... automatically they become terrorists. Profiling is a very good tool, but it has to be used appropriately. It's not only by being Muslim that people are profiled; there are so many other things. As we know, in our justice system, if an animal has four legs, a tail, a head, and it barks, we say it's a dog. We say that is circumstantial evidence. In fact in Canada we learn that a seal can also bark. Here are the rules and the way it is done. The standard of proof is if a cow has four legs and a table has four legs, then the table is the daughter of a cow. All of a sudden we try to go after every four legs, which takes quite a bit longer. So we have to be a little bit more specific as we go through this.

• (1155)

[*Translation*]

Mr. Serge Ménard: I would now like to address some questions to Mr. Freiman and Mr. Matas.

Both of you made several references to the odious and truly antisemitic act that occurred in Montreal, which gave rise, at the time—as I am sure you are fully aware—to its condemnation by every sector of society. The person was found, arrested and convicted.

Do you really believe that the law that was enforced did not result in adequate condemnation of the offence?

[*English*]

Mr. Mark Freiman: I make it a practice never to criticize the outcome of specific cases or of court decisions.

The concern, Monsieur Ménard, is that the legislation itself.... If it is true that the act, with respect to the Montreal school, was the act of a disturbed young person, maybe his crime or his act was appropriately dealt with. I make no comment on that. The comment that I make and that the Canadian Jewish Congress wishes to place before this committee and through you before the House is that the legislation itself is not sufficient to deal with targeting of Jewish institutions or targeting of other communities' institutions.

The focus of the legislation is correct insofar as it deals with places of worship and cemeteries, but that same purpose to the legislation is not carried through if you don't include places of cultural or educational significance to specified minorities. If there is a good purpose—and we say there is—for Parliament to have amended the Criminal Code to make it a specific offence to carry out hate crimes against institutions of worship and cemeteries, that same logic dictates that places of education and of culture have to be included in the same category.

It is not a question of whether the punishment fits the crime in a specific case, but rather whether the legislation is capable of achieving its overall purposes in its present phrasing.

Mr. David Matas: If I may respond to that question as well, we were not happy with what happened, with the way that prosecution was conducted. We actually sent a letter to the prosecutor asking that the crime of mischief to religious property be prosecuted. It was not prosecuted. It seems that the prosecutor's view was that the legislation didn't cover this sort of property. That, in our view, is a problem with the law.

Let me read you something that actually was said in Parliament by Sarmite Bulte, the Parliamentary Secretary to the Minister of Canadian Heritage, on October 16, 2001. She said:

The harm done by a mischief against a religious property goes far beyond the physical damage to the property. The greatest harm comes from the message of hatred that is conveyed by the mischief.

And she goes on for quite some time. When you just prosecute for arson, you're not combating the message of hatred that's conveyed by the anti-terrorist attack. The punishment should fit the crime. The offence should fit the crime. Here we had a crime, an act where the crime charged did not adequately fit the crime because it was not combating the message of hatred that was conveyed.

Imam Elmenyawi: I will make just a quick comment in relation to this point.

[*Translation*]

Mr. Serge Ménard: I would have several more questions for you, but we have little time remaining.

To assess an anti-terrorist law, I think we have to see whether it is useful. If it is, it does not draw our attention, as there are fewer terrorist acts. But we can still assess it. Of all the witnesses to appear before us, you are among the few who are in favour of the act and would even like to see it made more stringent.

In light of the terrorist acts that were committed, for instance those of September 11—we know a lot about September 11 now—could you explain to me how anti-terrorism laws currently in effect could have prevented those events?

• (1200)

[*English*]

Mr. David Matas: Sure. First of all, we are calling for prohibition against incitement to terrorism. If there were an effective law against incitement to terrorism, that would have helped. Incitement to terrorism is, in a sense, the fuel that feeds the terrorism.

Secondly, we need a lot better identification, and that helps through the listing of organizations, this whole notion of listing of terrorist organizations. We didn't have that. It wasn't there. If we had had legislation that said Al Qaeda was banned before September 11.... These terrorists were in the United States. They weren't elsewhere. There was a lot of intelligence about them. Part of it was communication, but partly there just wasn't the law there in place. If there were a law saying that Al Qaeda was banned, their funds were frozen, and if you were part of them you were subject to criminal arrest, those guys would have been picked up before they ever got on the plane.

Imam Elmenyawi: It was there. They were banned before September 11. It was followed up on, they were known, and they were checked out, so I think we should be very careful—

Mr. David Matas: But not here. The Anti-terrorism Act in Canada...I mean, the question was here.

The Chair: Mr. Ménard, last point.

Mr. Serge Ménard: Your points are very good, but will you go as far as to say how useful it is to have people in jail on evidence they don't know about?

[*Translation*]

Mr. David Matas: I spoke English, but I did not necessarily expect you to do the same.

[*English*]

Mr. Serge Ménard: It was purely natural. You're lucky I didn't start in Spanish.

The Chair: Last point, please.

Mr. David Matas: Concerning the question about evidence, we're in favour of an amicus curiae or disclosing to a lawyer. Obviously there is some secret information that the government cannot disclose to people who are terrorist risks. But we would like to see an amendment to the legislation to allow for an amicus curiae to know the information or for a lawyer with a confidentiality agreement to know the information.

As I said, we don't necessarily disagree with Mr. Elmenyawi, and I'm happy to share the panel with him. It's just that these cannot be the only concerns.

The Chair: Thank you.

Mr. Comartin, please.

Mr. Joe Comartin: Thank you, Mr. Chair.

Thank you for being here. Mr. Freiman and Mr. Matas, your brief advocates that country of origin continue to be a basis on which we profile. I have real difficulty with that and I'd like to explore that with you a bit more.

Canada does not have a good history of using that approach, whether it was the Germans and the Italians in the First World War, the Germans in the Second World War, obviously the Japanese in the Second World War, or even, quite frankly, what we see happening with Israel being targeted in commercial relations and even on their passports simply because they're Israelis. I don't know how that advances it.

You heard the panel before you talking about it being criminal conduct that we have to be profiling, not other features, including what country you come from. I think in this particular circumstance, when you look at the people who have come to Canada to flee from those countries, in the vast majority of cases I don't know what good it does to profile along national lines.

Mr. Mark Freiman: Let me try. No one is suggesting that people be assumed to be terrorists or hostile to the interests of Canada on the basis of their national origin. The question is, how do security personnel and how does the security service apportion its scarce resources and where does it devote attention? Does it do it in a random way or does it focus based on predictors? Some predictors are simply not appropriate in a free and democratic society like ours. We cannot target people for extra attention, we can't devote extra attention simply because of their religion, their race, or all the other prohibitive grounds under human rights legislation. But if the question is where should we focus attention, then one factor—and a legitimate factor—is national origin where there is a demonstrable tie between a certain country and the exportation of terrorist behaviour. It's not to say you assume that people of that nationality are one thing or another; it is that you understand that there is a reason to be appropriately vigilant and to devote appropriate resources that way.

It's exactly the same as the analogy I used before. In dealing with problems of the global drug trade, it makes some sense to devote both material resources and intellectual resources to people whose origin is a country that exports and that has a record, and a demonstrable record, of exporting contraband drugs. It's not to say they're all guilty. It's not to say that most of them are guilty. It's simply a question of knowing where to focus attention.

• (1205)

Mr. David Matas: You don't actually have our written brief, and we don't address that issue. But I have something to say on the whole issue of visa requirements, even though you will not see anything in writing on that.

We already do profiling right now in Canadian law. Why do some countries have visa requirements and others do not? If you look at the regulatory impact analysis statement that accompanies each new visa requirement, they say that they think people from this country are going to claim refugee status. They want to stop them from doing that and therefore they are going to impose a visa requirement.

Now, I can understand that you might be hostile to racial profiling or profiling by nation of origin, but I would say if that's your hostility or your position, don't use a double standard. Don't say there will be no national profiling here but visas by country are okay. I think that if you're against profiling by country of origin, you have to be against the imposition of visa requirements.

Imam Elmenyawi: I want to add that if we do profile based on nationality—this generalization is always wrong, but if we do—and we use resources for a certain nationality, that would be a gift to terrorists. They always bring false passports. They only use the nationality that you love and the face that you like, and they will come in and do it. In general, profiling can be very dangerous, because that's exactly how they would play games with us. If they know how we profile, then they will escape it, and you'll be busy with everybody else.

Mr. Joe Comartin: Mr. Freiman, I can't help but think about the experiment that one of the universities did, going back to the drug analogy, of sending through five white women and five black women with drugs on them. I don't know if it was out of Colombia or one of the Caribbean countries. It's well known that all five of the white women got through and only one of the black women got through. To follow Mr. Elmenyawi's comment, it would be the same thing.

Mr. Matas, I have to say that I have serious trouble with the visa requirements that we've imposed. I'd not be applying a double standard, if I was making the decision. That's not to say we may not do so in certain cases, but in the vast majority of cases, I find our visa requirements fairly offensive when based on national origin.

The other point that I want to come back to is on what I see happening if we use nation of origin or nationality. Are we just dealing with semantics? Are we setting up a screen to pretend we are not profiling based on religion and ethnic origin simply because we say if they happen to come from this country, we're going to target them?

I also have real problems with how effective it is. It has never been proven to be effective in any of the literature and studies that I have seen.

That's all, Mr. Chair.

• (1210)

The Chair: Thank you.

Mr. Lee.

Mr. Derek Lee: Thank you.

I want to continue the discussion on profiling or targeting. There's a specific case that came to my attention as a member of Parliament, and it's instructive, because it shows the difficulty we're getting into.

A constituent whom I've known for a long time—I'll simply call him Thomas, which is not his real name—called me one day and said, "I think I'm being followed by CSIS." "You're crazy," I said, "there's no reason CSIS would want to follow you." So we talked a little bit about the ins and outs and I said, "If you have a problem, call me." "Yes," he said, "but there's this van, and it's down the street and I just have a feeling." Anyway, he was by profession a scientist in biology, a teacher and consultant. He was from another country and that country was actually publicly noted as one involved in exporting or facilitating terrorism. A few weeks passed and I got a phone call from him again and he said, "CSIS came to see me." I said, "You're kidding." He said, "Yes, they did", and he explained it.

Here's what it was. This guy has lived in Canada for 15 to 20 years. He goes to a technical conference in Europe on the biology of fish. He meets his old high school and university friend there, who was also from this particular country that exports and facilitates terrorism. His old university friend is a minister in that government. It turns out that the government, and the minister in the government and others, were on a current watch list at the time internationally. While he was there at this conference he bumps into his old friend and asks, how are you, haven't seen you in a long time. They have dinner and say see you later. Anyway, my constituent comes back and he is targeted for surveillance. Anyway, CSIS came to see him ultimately. Having done the surveillance, they said there's not much here, so they went to see him and explained to him that story.

He would have been targeted legitimately by CSIS for a legitimate reason: a suspicion that he, being from that country and knowing this person who was on the watch list, was meeting the person in a European city. And he was happy when it was over. He was happy to have the woman from CSIS come by and review the matter with him, and the van wasn't there any more.

That's an example of how CSIS has to make reference to national origins. It's not national origin per se, but the potential connection of my constituent to a possible conspiracy, or a possible movement of money or other facilitation of terrorism, was there. I don't have a solution, unless any of you do, to that kind of an operation. It was done legitimately. I'm not going to mention the country, but if I mention it you'll all know exactly what I'm talking about. It wasn't national origin that was the basis of this, but it was connected to where he came from and who he knew.

Mr. Joe Comartin: Or what he did.

Mr. Derek Lee: He didn't do anything, but what he might have been doing was at issue. Anyway, I'll leave that for the witnesses.

Mr. David Matas: Yes, I do have something to say to that.

I am constantly being investigated for possible terrorism. That was true when I came in here; I was searched, everybody went through my luggage. It was true when I came to Ottawa from Winnipeg; again, I went through security. And I don't mind that; I welcome it, because it shows there is some attempt to prevent terrorist acts. The mere fact you have to empty your pockets or put your computer through a screen or maybe somebody follows you for a bit, what that tells me is there's somebody around looking to see if there's a possibility of a terrorist threat. I find that comforting rather than alarming or threatening.

I think people to a certain extent should accept the fact that vigilance about terrorism is helpful rather than harmful, and we shouldn't say that simply because there is some investigation and searches and so on going on to prevent terrorism, something wrong is being done.

• (1215)

Imam Elmenyaw: Yes, I think CSIS and the RCMP have very good, trained people who are able to sit down and draw on those files as relates directly to the act itself, and who are closest to do that.

When it comes to Islamic terrorism in this case—and I hate to use the word "Islamic", I would rather say Muslim terrorists or something like that in order to relate to it—then we are lacking the education about Islam. We mix up the good with the bad. We create a greater number of people who use a lot more resources in order to be able to find things out.

That could be very harmful to our needs, because if you focus on any one area you'll lose another. I think the London bombing was a typical example of that. It wasn't about the people with the freedom of speech, because this was known to the police. These people were not in touch with the people who were considered a danger to society. They had nothing to do with them.

It is not about hate speech. It is not that that has to be watched. I am not saying that we should have any tolerance for it at all. We have to ensure that the file is done intelligently as to who might commit an act like this. But when it comes to Islamic research done in this area, I think we are lacking, and education is very important.

If I may, I would like to add the story about intelligence from 1,400 years ago when Muslims came to Egypt. They were to attack Egypt. There were about 4,000 in the army but they did not think they could invade because they needed more soldiers. Their leaders said that no one was coming and that they should start.

The intelligence people were watching them. The Muslims had a tradition that before they were to start they had something like a toothbrush to use on their teeth. It was made out of branches and was about the size of a pen. They started to wash, to pray, and to brush their teeth. As the intelligence people watched them they thought they were sharpening their teeth in order to eat them. So many of the Egyptians ran away. Actually an agreement was worked out whereby the army went in peacefully without much of a fight. It was all based on the lack of knowledge of a culture. It was new for the Egyptians at the time. They did not have anything at the time for brushing their teeth.

So it is very important to know what you're doing. You go there and you mix up the good and the bad, the religious person with somebody who has a version of their religion.

The Chair: Thank you.

Mr. Lee, do you have any further questions? I can share your time with Mr. Maloney. He has a couple of quick questions.

Mr. Derek Lee: That's fine.

Mr. John Maloney: I have a question for Mr. Freiman and Mr. Matas as well.

You mentioned security certificates and suggested that renewals should be approved by Parliament. What would you suggest or recommend that I as a parliamentarian should consider when addressing that question? What are your personal feelings on that?

Mr. Mark Freiman: I'm not sure what you're asking. At the moment it's not necessary. There is no sunset provision. We're urging that there be a sunset provision so that there can be a periodic review.

Speaking on behalf of the Canadian Jewish Congress and of myself, the best protection for civil liberties that we have is the Supreme Court of Canada as it interprets the Canadian Charter of Rights and Freedoms.

We have ultimate confidence in the ability of the court to apply the charter to reach the right balance. As everyone who talks about it knows, rights aren't absolute, nor is a response to a problem a blank cheque to overrun rights. In every case what's necessary is to do a charter analysis. The charter rights in question are all subject to reasonable limits prescribed by law that are demonstrably justifiable in a free and democratic society.

The best test of security certificates is a challenge in the court system, where an impartial, arm's-length, highly respected group of jurists see whether the government has justified the means that it uses in security certificates. If the court says that security certificates are demonstrably justifiable and don't violate civil liberties, that's good enough for us. That should be the way of testing the balance, rather than predetermining the issue and deciding in advance that these things cannot be, in light of the charter. They can be in the light of the charter, and it is the role of the court to show us where and how to draw the balance.

• (1220)

Mr. John Maloney: Is there a comment from the other panellists?

Mr. David Matas: Yes. I have a number of different recommendations dealing with this. None of them are in the B'nai Brith brief.

This is an issue that the Supreme Court of Canada has decided to hear. It's a complex area. If you were asking my advice to give you as a parliamentarian, I would suggest wait until you see what the Supreme Court of Canada decides on the issue before you start introducing legislation. There are a few recommendations I would make if the court just says everything is fine and the law can continue as it is. There are a few recommendations I would make for changes in the law.

One is that there be an opportunity for disclosure in some form, which is a concern Mr. Ménard raised, either through an amicus curiae or disclosure to the counsel with a confidentiality agreement. Secondly, I think the Security Intelligence Review Committee should be able to review the security certificates. They used to do so under the old legislation. That review was taken away under the new legislation. I think that was a mistake. There should be the possibility

of interrogatories so that the individual could ask a question and then the government could either answer it or get a ruling from the court on that interrogatory, whether or not it should be confidential.

Mr. Zed, I can see you sat forward as I started my list. As you can see, I have a rather long list and I'm only partway through it. I realize our time is short, and I appreciate that Mr. Maloney is interested in hearing it, but you're interested in concluding the meeting, and maybe the best thing to do would be just to send him something in writing.

The Chair: That would be very helpful. You're picking up my body language, but I also want to tell you that one of our colleagues has asked for a short question—

Mr. John Maloney: Mr. Elmenyawi would like to comment.

Imam Elmenyawi: The victims of terrorist acts lose the right to life, but that doesn't mean we would let anybody else lose their right wrongly, because that means we have as much committed a crime as well. So the idea we have is not about somebody criminal that we would like to catch. You can catch a criminal through the law. It is about taking an innocent person and letting him lose his right.

But another very serious issue is the appearance of justice, which I think is what Mr. Ménard was asking about earlier. What is making it very difficult for the Muslim community to participate with CSIS and the RCMP is that the appearance of justice is not there, so they are scared. They are scared that they will be found guilty when they are innocent, that they will be found guilty when they don't even know what the evidence is. It may be completely false, such as the map that happened to be given by the Canadian government...and in fact this man was tortured in Egypt and Syria based on this map.

This is very serious, and to have a lawyer or a friend of the court.... I have an article here related to very much the same thing. The man's name is Ian Macdonald. He was assigned to the special immigration appeal court in London, England. He resigned. I am just going to give the summation, the last sentence, after he wrote a whole article about why this doesn't work. You want to examine the evidence. Any lawyer knows that to check the veracity of the evidence it has to be cross-examined, and the person who is defending himself must know about it and inform his lawyer, what the defence is and the reason this is false. He said:

I now feel that whatever difference I might make as a special advocate on the inside is outweighed by the operation of a law, fundamentally flawed and contrary to our deepest notions of justice. My role has been altered to provide a false legitimacy to indefinite detention without knowledge of the accusations being made and without any kind of criminal charge or trial. For me this is untenable.

He ended by saying that "Such a law is an odious blot on our legal landscape, and for reasons of conscience I feel that I must resign."

That clearly indicates it is not workable; it is just not workable. We must make profound changes. It doesn't matter how many jurists feel the law is good; if the perception of the people says that the balance of justice is not there, we will all lose.

• (1225)

The Chair: Your two minutes is now four minutes. I'm not a very good negotiator.

Mr. Comartin, a short last question, and then we're suspending.

Mr. Joe Comartin: Mr. Elmenyaw, I have that letter as well, and I think we'll hear more from other panels this afternoon on that issue.

Mr. Matas, the CJC put forward a specific proposal on religious institutions. We just had some really bad incidents in Windsor recently and over the last year targeting residences of people within the Jewish community. I'm just wondering if you have looked at extending the definition to include perhaps the residence of a rabbi or other members of the congregation, teachers, doctors who are in the institutions, to extend it to the residential side, because that was the situation we had in Windsor.

Mr. David Matas: Right now the offence is mischief to religious property. We propose they extend it to all institutions, organizations, or edifices that are religiously affiliated in some way. On what you're talking about with private residences, obviously there are some cases where the person is targeted because of his religious affiliation, without the property itself being in any way associated with.... There are some houses that are owned by congregations and given to rabbis, and I would include those in this offence. But for somebody

who's targeted simply because.... Let's say somebody desecrates my house or that of a teacher at one of the schools. My own view is that could be adequately covered by enhanced sentencing, because the Criminal Code provides that where the motivation is hatred you could get enhanced sentencing. That could do it.

I would suggest also, because we are talking about incitement to terrorism here, that we need to change the law to have the same protection for incitement to terrorism as we have for incitement to hatred. So if the motivation is terroristic rather than hatred, the law as well as the sentencing guidelines should be the same.

The Chair: Thank you, Mr. Freiman, Mr. Elmenyaw, and Mr. Matas. We appreciate your interventions today and your contributions. To those of you who have said there is more material forthcoming, we'll be glad to receive it.

The clerk advises me we're adjourned until 1:30.

Thank you.

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