House of Commons
CANADA

Standing Committee on Public Safety and National Security

SECU • NUMBER 049 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Wednesday, December 15, 2010

Chair

Mr. Kevin Sorenson

Standing Committee on Public Safety and National Security

Wednesday, December 15, 2010

● (1545)

[*English*]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Good afternoon, everyone. This is meeting number 49 of the Standing Committee on Public Safety and National Security on Wednesday, December 15, 2010.

I remind everyone here today that we are being televised. Today we are continuing our study of Bill C-17, an act to amend the Criminal Code, investigative hearing and recognizance with conditions.

We're pleased to have appearing before us today the Honourable Rob Nicholson, Minister of Justice. Appearing along with the minister are his officials from the Department of Justice: Donald Piragoff, senior assistant deputy minister, policy sector, and Douglas Breithaupt, director and general counsel, criminal law policy section.

In the second hour we will have others from the department—Glenn Gilmour, counsel, criminal law policy section. Some of them will be in here for our second hour today. We apologize to our minister and to others. As you know, we had votes in the House a little earlier.

We look forward to your comments, Minister, and we will give the floor to you. Then we will move into rounds of questioning.

Hon. Rob Nicholson (Minister of Justice): Thank you very much, Mr. Chairman.

I'm pleased to appear before this committee. My memory may not serve me correctly, but I think it's been quite some time since I've been before this particular committee.

I'm here, of course, on Bill C-17, a bill that will re-enact the investigative hearings and the recognizance with conditions provisions of the Criminal Code. As you will know, these were part of the Criminal Code from late 2001, and they sunsetted, unfortunately, on March 1, 2007. They've been the subject of considerable review as part of the mandatory review of the Anti-terrorism Act, as well as in the form of Bill C-17's predecessor bill in the previous Parliament. Our government believes that this bill responds to the issues raised in those reviews and those debates.

Mr. Chair, let me outline what Bill C-17 proposes.

First, the investigative hearing provision would give a judge, on application from a peace officer, the power to compel someone with information about a terrorism offence that has been or will be committed to appear before him or her to answer questions and/or produce anything in their possession or control. The person would be attending as a witness and not as an accused.

Second, the recognizance with conditions provisions would allow a peace officer—one who has reasonable grounds to believe that a terrorist activity will be carried out and has reasonable grounds to suspect that the imposition of recognizance with conditions on a particular person is necessary to prevent a terrorist activity from being carried out—to apply to a judge to have that person compelled to appear before the judge, where it will be determined if reasonable conditions should be imposed on the person in order to prevent the terrorist activity.

Third, in addition to the annual reporting requirements, Bill C-17 contains a requirement that both these tools should be subject to a mandatory parliamentary review. During the second reading debate, it was suggested that a review of both houses of Parliament would be appropriate. I wish to point out that the bill provides that the review may be undertaken by a committee established by either house of Parliament, or both houses. That, ultimately, is for Parliament to decide.

Mr. Chair, I think it's essential that we outline some of the key safeguards that have in fact been added to the original investigative hearings provisions.

First, the bill provides that in all cases a judge would have to be satisfied that an investigative hearing is warranted, on the basis that reasonable attempts had already been undertaken to obtain the information by other means. Previously, the safeguard only applied to future terrorism offences, not past ones.

Second, the original 2001 legislation imposed annual reporting requirements on the use of the investigative hearing and recognizance with conditions by provincial and federal officials, including the Attorney General of Canada. However, the special Senate committee reviewing the Anti-terrorism Act recommended that the Attorney General of Canada also include, in the annual report, a clear statement and explanation indicating whether or not the provisions remained warranted. The bill would implement this recommendation, while also requiring the Minister of Public Safety to make a similar statement in his annual report.

Third, in 2006, the House of Commons Subcommittee on the Review of the Anti-terrorism Act expressed some concern about whether a person detained for an investigative hearing would be entitled to existing avenues of release under the Criminal Code. In response to this, Bill C-17 would propose, through the application of section 707 of the Criminal code, putting a cap on the period in relation to which an arrested person could be detained for an investigative hearing.

Mr. Chair, I think it's important to note that Bill C-17 would continue to allow for the holding of an investigative hearing concerning a past terrorism offence. The government believes that the past offences, in and of themselves, merit investigation. Without a doubt, they may provide crucial information with regard to the planning of future ones.

● (1550)

I will turn now to some of the key provisions that have been added to the original recognizance with conditions provision.

First, during the Senate committee review of former Bill S-3, the government agreed with Senator Baker's recommendation to bring the recognizance with conditions provision in line with the Supreme Court of Canada's decision in R. v. Hall, where a phrase found in one of the grounds of detention in the bail provisions of the Criminal Code was found to be unconstitutional. We agreed then and we agree now. Bill C-17 includes this change to be consistent with the Hall decision.

There were a few issues raised in previous debates, of course, that I must address. Some have argued that these provisions are not necessary because they have been rarely used. However, the fact that something has been rarely used is very different from saying that circumstances will never arise that could require its use in the future. The tools in C-17 are modest and restrained compared to anti-terrorism measures that exist in other major democracies.

Mr. Chair, in relation to the investigative hearing, some have argued that it does away with the right to remain silent, but as you know, the original legislation contains strong protections against self-incrimination in covering both use and derivative use of immunity. These protections continue in this bill, you'll be pleased to know.

It's important to note that a majority of the Supreme Court of Canada, in a 2004 constitutional challenge to the investigative hearing scheme that arose during the Air India prosecution, emphasized the strong protections against self-incrimination it provided, in fact going beyond the requirements and the jurisprudence to protect against self-incrimination.

The final issue, Mr. Chair, is whether the Criminal Code already contains provisions that could be used for terrorism-related offences such as sections 495 and 810.01. Subsection 495(1) allows a peace officer to arrest without a warrant a person who it is reasonably believed is about to commit an indictable offence. However, a police officer may, at the time of the possible arrest, not reach this threshold. Given the grave nature of the harm posed by terrorist activity, there is a need to be able to act quickly to address the threat.

In my remarks today I have attempted to highlight a few of the safeguards and improvements made to the investigative hearing and recognizance with conditions proposals while at the same time addressing some of the issues that have been raised.

This proposed legislation, in my view, is balanced, fair, and necessary.

Thank you very much.

The Chair: Thank you very much, Mr. Minister, for your opening statements.

We'll move into the first round of questions. I'm going to try to keep these right on time because the minister has another appointment at 4:30.

Mr. Holland.

Mr. Mark Holland (Ajax—Pickering, Lib.): Thank you very much, Mr. Chair.

Thank you, Minister, for appearing before our committee today.

Minister, one of the things I'm concerned about is the issue of oversight. If we were to continue these provisions, we'd be doing so without the government having moved at all on a series of recommendations going all the way back to Justice O'Connor, of course reinforced by Justice Iacobucci, and then reiterated in the Brown report on the RCMP pension scandal, repeated by the public safety and national security committee, and repeated by Paul Kennedy when he was then the RCMP public complaints commissioner.

Minister, where are we on this? We were told that the reason the government wasn't acting upon these recommendations that pertained to oversight.... As you should be aware, there are many departments, including Immigration, that have no oversight whatsoever. We were told the reason you were not acting was because of Justice Major's report. It's now been longer than six months since Justice Major's report has been out, and yet this government is still not acting on these recommendations, many of which are five years old.

Can you first of all inform us where we are on these oversight provisions?

Hon. Rob Nicholson: Well, again, the government's action plan in response to the Air India inquiry is committed to enabling an interagency review mechanism. The government is moving forward on that, I can say, with respect to all the recommendations contained therein. As you indicated, we've moved already on some of them. The bill that we have before Parliament right now with respect to mega trials is in response to the challenges that were uncovered at that particular time.

The government is moving forward. The bill you have before you is very specific with respect to the provisions that sunsetted in 2007. We have made the case, as have others, that these provisions are necessary. We're asking you to move forward on them.

● (1555)

Mr. Mark Holland: But if I could, Minister, to be very specific, among the key recommendations out of O'Connor was the need to have oversight over every area involved in security and intelligence. As an example, there is no oversight at all over immigration or over the Canada Border Services Agency. Also as an example, the RCMP has extremely limited oversight, whereby the office of the public complaints commissioner is unable to proactively initiate investigations; his office is unable to force or compel testimony.

All of these commissions of inquiry have been saying for a period of five years that this is absolutely critical as we move forward in dealing with security and intelligence matters, yet there is nothing on these matters in the so-called action plan that you reference, despite the fact that the government, after each one of these inquiries, has said that they would act on the provisions with regard to oversight.

Can the minister, through you, Mr. Chair, not agree with me that it is very difficult to see supporting measures like this in the absence of vigorous oversight?

Hon. Rob Nicholson: Well, again, Mr. Holland, the action plan says that the government is committed to "enable the review of national security activities involving multiple departments and agencies, and create an internal mechanism to ensure accountability and compliance with the laws and policies governing national security information sharing".

The bill you have before you is very specific. As I indicated in my opening remarks, and as I'm sure you have discovered in your examination of this, and as will be confirmed by others who will appear before you, there are safeguards all the way through, and safeguards for the use of both provisions, including the consent of the Attorney General and judicial oversight for that. These sections are very specific with respect to containing and investigating possible terrorist activity in this, and they stand on their own, and they should be. They were on their own from 2001 to 2007, and they should be enacted again.

Mr. Mark Holland: But I think my point is that for five years we've been getting vague aspirational statements that you're going to do something in this regard with respect to oversight and it has not been done.

Let me be very specific in another area. Justice Iacobucci's inquiry on Mr. El Maati, Mr. Almalki, and Mr. Nureddin, who, as a result of security and intelligence failures, faced horrific ordeals abroad, where they were detained and tortured.... Yet this government has yet to issue an apology to them and has yet to act on the conclusions of Justice Iacobucci. We know that these gentlemen still, to this day, find themselves not able to fly or to move freely in many different instances because this government refuses to act on those recommendations.

The question is, Minister, if for years now the government has not acted either on those recommendations or on the abuses contained in those cases, how can we have confidence to move forward with these measures, particularly when we're only given vague assurances that someday, somewhere, and sometime we're going to get the oversight that has been asked for during more than five years?

Hon. Rob Nicholson: Again, Mr. Holland, I indicated to you that there are safeguards built within this legislation in terms of its use, but I also indicated to you that both the Attorney General and the public safety minister will be tabling their comments and their review of the use of these provisions. So that oversight would be within the purview of Parliament to decide whether these provisions continue to be necessary. So you will have that.

As I say, we've gone further than what it was originally. It originally said that the Attorney General of Canada would present a review on a yearly basis of these particular provisions and the necessity of using them; we've gone beyond that. We have the public safety minister who will do that. So in terms of your question with respect to the oversight or the analysis, there will be considerable analysis and oversight of these two particular provisions that, quite frankly, are far beyond many other provisions.

Again, I believe that's very adequate at the other end, after these are put in place, the review of them.... But at the beginning, when law enforcement agencies need these tools to combat terrorism in Canada, you will find, as I'm sure you have discovered, a wide range of safeguards that will protect individuals who get involved with this.

● (1600)

The Chair: You have 30 seconds.

Mr. Mark Holland: Minister, my problem is this: any time you extend extraordinary powers, there have to be checks and balances in place. There has to be adequate oversight—

Hon. Rob Nicholson: That's my point.

Mr. Mark Holland: —and, Minister, with respect, for five years, through various commissions of inquiry and through recommendations of this committee and elsewhere, there has been no action taken, period, full stop. Vague aspirational statements that one day, somehow and somewhere, we're going to get this don't cut it after five years.

We were told that you were waiting for Major. Where specifically is the oversight for immigration, for the Canada Border Services Agency, and for the other 10 agencies that have no oversight that are involved in security intelligence?

The Chair: Thank you, Mr. Holland.

Mr. Mark Holland: And where is your apology to Mr. El Maati, Mr. Almalki, and Mr. Nureddin?

The Chair: Thank you very much, Mr. Holland.

You'll have to answer that question in another round somewhere, sometime, Mr. Minister.

We'll now move to Mr. Gaudet or Madam Mourani.

[*Translation*]

Mrs. Mourani, you have seven minutes.

Mrs. Maria Mourani (Ahuntsic, BQ): Thank you, Mr. Chair.

Good afternoon, Minister. Earlier, you talked about a wide range of safeguards that allowed for a certain control to be achieved. We should go over those provisions. When you talk about a range of safeguards, what exactly do you mean?

[*English*]

Hon. Rob Nicholson: With respect to the investigative hearings, only a judge or a superior court judge could hear a peace officer's application. That is one of them. In addition to that, you need the prior consent of the Attorney General of Canada or the attorney general or solicitor general of the province. There would have to be reasonable grounds to believe that a terrorism offence has been or will be committed, and the judge will have to be satisfied that reasonable attempts have been made to obtain the information by other means for both future and past terrorism offences.

I could get into others. The witness would have the right to retain and instruct counsel at any stage of the proceedings. I think it's quite extensive and impressive. Again, I don't want to take up all of your time, but my comments with respect to the consents of the provincial or the federal attorneys general continue with respect to the recognisance with conditions as well, so—

[*Translation*]

Mrs. Maria Mourani: Minister, I understand all that, as I have read the bill. However, earlier, you talked about the Minister of Public Safety, who will exercise some control and provide for increased monitoring. I am trying to understand what that means.

[*English*]

Hon. Rob Nicholson: Yes. I'm glad to address that, but I said that the federal and provincial attorneys general would be required to report annually on any use made of these powers. The Minister of Public Safety and the minister responsible for policing in each province are required to report annually on the arrest without warrant power. By getting these reports and reviews from both the public safety ministers or solicitors general, in the provinces in which these have been used, and the federal ministers, this goes to your question with respect to oversight and accountability.

[*Translation*]

Mrs. Maria Mourani: When you talk about monitoring and accountability, it makes me think of the G20 Summit, when special powers were in effect. It appears that no such powers were actually granted, but people were made to believe that the police had been given special powers. There have been human rights violation claims, which turned out to be valid. The Minister of Public Safety testified before the committee and said that he was not responsible for anything and was virtually unaware of anything.

Yet, you are asking us to give you more powers, to give more powers to the police, to law enforcement agencies, and not to worry because the Minister of Public Safety will act as something of a guarantee that everything will be monitored. How do you expect us to believe this after the recent events at the G20 Summit and the minister simply washing his hands of the whole thing?

[*English*]

Hon. Rob Nicholson: I don't agree with your characterization of my colleague, the Minister of Public Safety, with respect. If you were talking about provincial statutes or provincial policing, my understanding is that it's being looked into by the Province of Ontario.

● (1605)

[*Translation*]

Mrs. Maria Mourani: No, I am talking about the RCMP.

[*English*]

Hon. Rob Nicholson: But that being said—

[*Translation*]

Mrs. Maria Mourani: No, I am talking about the RCMP, Minister.

[*English*]

Hon. Rob Nicholson: Sorry? You're asking questions.

The Chair: Let him finish.

[*Translation*]

Mrs. Maria Mourani: I am talking about the RCMP, which was responsible for the Integrated Security Unit at the G20.

[*English*]

Hon. Rob Nicholson: Yes. With respect to the provisions of this bill, as you can see, there is judicial oversight and involvement right from the very beginning, and not just with respect to the judiciary, which I believe should give you a great deal of confidence in that. In addition, you have the consent of the Attorney General. That has to be obtained as well. Also there is a review process of these provisions.

What I'm suggesting to you is not just a matter of police agencies, whether they be the RCMP or provincial or municipal policing agencies. That's not where the decisions are made in this. There is a judicial oversight at that point in time as well as the consent of the Attorney General. I would—

[*Translation*]

Mrs. Maria Mourani: Very well.

[*English*]

Hon. Rob Nicholson: —suggest to you that with those at the political level, the judiciary, and the policing—

[*Translation*]

Mrs. Maria Mourani: Minister, I have to interrupt you.

[*English*]

Hon. Rob Nicholson: —all working together on this, you'll agree with me—

[*Translation*]

Mrs. Maria Mourani: Could you put in your earpiece, please?

[*English*]

Hon. Rob Nicholson: —that this provides the accountability and the oversight you're looking for.

[*Translation*]

Mrs. Maria Mourani: There is something that I am very curious about in this judicial process. I am talking about the information that will be presented to the judge so that he can decide whether a person should be taken into preventive custody. There will not be any charges laid. A charge being laid results in a trial, a conviction and, finally, imprisonment. We are talking about preventive detention.

Given the fact that CSIS uses information obtained through torture and that this kind of information is ineffective and dishonest—we saw this in the case of Omar Khadr who accused Maher Arar because he himself was tortured—how can we have trust in a system, Minister, that is based on torture and where information is elicited through torture in foreign countries? We now know that the information that came from the United States and from Guantanamo was extracted through torture, and let's not even talk about Iraq and the Abou Ghraib prison.

[*English*]

The Chair: Thank you, Ms. Mourani.

Go ahead, Mr. Minister.

Hon. Rob Nicholson: The presumption contained within this legislation is that the individual will be released. That is the presumption. These are tested in the Canadian judicial system, which I'm quite sure we all have confidence in, and we have the oversight and the safeguards. Mr. Chair, in your review you will go through all those safeguards that I began to outline for Ms. Mourani, and I'm confident that this will work well.

The stakes are pretty high. Let's face it, we're talking about terrorist activity. We know that Canada is targeted for terrorist activity, as are other countries, and we have to have provisions. We have to meet that need.

In terms of the proper balance, I believe we have struck that balance here. These measures have been on the books for the first seven years of this decade—

[*Translation*]

Mrs. Maria Mourani: Are you aware...

[*English*]

The Chair: Ms. Mourani, your time is up.

[*Translation*]

Mrs. Maria Mourani: Pardon me?

[*English*]

The Chair: Your time is up.

Have you completed that response, Minister?

Hon. Rob Nicholson: That's fine. I want to make sure we get everyone in.

The Chair: All right.

Please go ahead, Mr. Davies.

Mr. Don Davies (Vancouver Kingsway, NDP): Thank you, Mr. Chairman.

Thank you, Mr. Minister, for appearing today.

One of the major parts of this bill is the part that surrounds compelling testimony. I'll read from proposed subsection 83.28(10) of the bill:

> No person shall be excused from answering a question or producing a thing under subsection (8) on the ground that the answer or thing may tend to incriminate them or subject them to any proceeding or penalty, but

Then proposed paragraph 83.28(10)(b) says:

> no evidence derived from the evidence obtained from the person shall be used or received against the person in any criminal proceedings against them, other than a prosecution under section 132 or 136

which I think is perjury.

We heard testimony on Monday from Professor Craig Forcese. This is what he said to this committee, Mr. Minister:

> ...the Supreme Court read in certain requirements to the use of investigative hearings, the most important being an expansion of what's known as "derivative use immunity", guaranteed in the present bill by proposed subsection 83.28(10).
>
> While that clause extends immunity to subsequent criminal proceedings, the Supreme Court said it must go further than that. It cannot be used in any kind of proceeding, including extradition and immigration proceedings. This is a constitutional requirement, and it should be codified right on the face of the bill.

Mr. Minister, you've talked about judicial oversight. You mentioned it a number of times. We've already had some judicial oversight from the Supreme Court of Canada telling us that in this section we need to codify protection against derivative evidence being used in immigration or extradition proceedings, yet that's not in the bill.

Would you be in favour of amending the bill, Mr. Minister, to comply with the Supreme Court of Canada directions?

● (1610)

Hon. Rob Nicholson: We always comply with the Supreme Court of Canada directions, and certainly when the Supreme Court of Canada has pronounced on those, then those in effect become the law under our system, as you know. I'm very interested in any recommendations and any views you have on that particular issue.

Mr. Don Davies: I take it you are probably agreeable to that amendment. If I read the Supreme Court correctly, they said it should be codified. It should not be just a pronouncement from the court in common law, but actually codified in the bill. Were we to do that, would you be in favour of it?

Hon. Rob Nicholson: I don't remember. It's been a while since I read that particular.... I don't remember that they said it had to be codified. I think they pronounced on it very clearly. That said, I look forward to any recommendations or suggestions you have in this respect.

Mr. Don Davies: Thank you, Mr. Minister.

On Monday we also heard from eminent national security expert Paul Copeland. He has served with distinction as a special advocate in security certificate cases. He had a lengthy resumé, which he provided to this committee. Here's what Mr. Copeland said:

> ...I have not seen, in any of the material I've read, any valid justification advanced for this drastic change in the Canadian legal process.

Mr. Minister, everyone supports giving police the tools they need to keep Canadians safe, but our problem with the bill is that so far we've seen no concrete evidence put forward that the lack of these extraordinary powers has hindered police to the extent that Canadians are put at risk.

Mr. Minister, do you have any concrete, specific examples of cases in which police investigations have been foiled because of the lack of these powers?

Hon. Rob Nicholson: When the RCMP testifies, they'd be in a better position to answer, but I think it's important to have these tools on the books, and you can question the RCMP or other individuals who will come to testify before this. To say that there have been no changes or no justification.... We know that this is a much different world that we live in today from the one we experienced ten years ago, and we have to keep up to date with these tools.

I don't appear before this committee very often, but many times when I appear before the justice committee, what we are doing is just modernizing the Criminal Code to stay up to date with organized crime and to bring the Criminal Code and the laws of this country into the 21st century. Things move very quickly in this area. We are all facing a terrorist threat; we have to have means on the books so that law enforcement agencies can investigate them.

As you can see, these provisions are preventative in nature, and we want them to be able to prevent terrorism activity.

Mr. Don Davies: But they're more than just preventative. This adds a clause for preventative arrest that says that if a peace officer suspects that immediate detention is necessary, he or she may arrest a person without a warrant, prior to laying the information but before the person has had a chance to appear. So this subjects Canadians to preventative arrest, to being arrested, before there is any evidence presented against them or any kind of information or the chance to even appear, for up to 72 hours. Before such a radical—

Hon. Rob Nicholson: I think it's 24 hours, but....

Mr. Don Davies: Yes, it's 24, but it can be extended.

Before we make such a serious incursion into Canadians' historic constitutional rights, I think we have an obligation to make sure that the present Criminal Code is not sufficient to deal with these situations.

I'm going to ask you again. Is there any evidence that you've seen that shows that the Criminal Code, as it presently stands, is not sufficient to deal with this situation?

Hon. Rob Nicholson: You will hear from law enforcement agencies and I'm sure you will hear from the RCMP, and you'll hear from them that they want to have the ability to prevent or break up possible terrorist activity in this country. They tell me in my discussions with them that they will have to move very quickly when they come across evidence or when information is brought before them.

Again I go back to what I said to you earlier. The Criminal Code provisions are just not enough; we have to move forward. We have to have tools on the books—as we did for most of this decade with respect to this—so that if and when the RCMP or other law enforcement agencies come across this kind of activity and want to break up or prevent terrorist activity or gain information on possible terrorist activity.... The tools have to be on the books.

At the same time, I hear what you're saying with respect to those safeguards. In response to Ms. Mourani, I started to list all the different safeguards that are in here. I think they're quite impressive, and I would commend to your review all the safeguards we are putting in here, because it is important to have these tools. At the same time, we have to make sure we safeguard the rights of individual Canadians who may become involved with this. I'm satisfied that the balance is reached with this piece of legislation.

Thank you for your comments.

● (1615)

The Chair: Please summarize very quickly, Mr. Davies.

Mr. Don Davies: Mr. Minister, my only point would be that I think there's a way to protect Canadians from terrorism and still respect their constitutional right not to be arrested and detained by police before they even have the chance to appear.

Hon. Rob Nicholson: I think we do that in this legislation—

Mr. Don Davies: Well, it allows police that power.

Hon. Rob Nicholson: —but if they come across terrorist activity and they believe it's about to be committed, we want to do something about that in terms of protecting Canadians.

Mr. Don Davies: And do you not think they can do that and respect the charter and Constitution at the same time?

Hon. Rob Nicholson: I think there are constitutional safeguards built into this legislation and I'd ask you to have a look. But the police officer who comes across or gets information that a terrorist activity is about to be committed has to have the tools to safeguard and protect Canadians. At the same time, there have to be safeguards with respect to that individual, and I think that balance is struck in this bill.

The Chair: Thank you very much, Mr. Minister.

We'll go to Mr. MacKenzie quickly and then to Mr. Lobb.

Mr. Dave MacKenzie (Oxford, CPC): Thank you, Chair, and thank you to the panel.

I will share my time with Mr. Lobb.

Mr. Minister, I listened to the rant of the Liberal Party about all the issues about oversight. My recollection is that all of those incidents for which they are pushing for some apologies or some oversight occurred under the former government's watch.

Hon. Rob Nicholson: I know. It's true.

Mr. Dave MacKenzie: It would seem that Canadians would wonder why the party that was in power, if they want to apologize, wouldn't apologize. Now there's some rush to fix a problem that occurred when they were in power, and I just wonder—

Hon. Rob Nicholson: Mr. MacKenzie, you make a very valid point. These two provisions.... As much as I would be pleased on behalf of this particular government to take credit for all the tough-on-crime legislation—all that we have done to protect victims and law-abiding Canadians—these provisions were actually put in by the previous government in 2001 in response to the 9/11 crisis that the world faced. There were sunsetting provisions, as you know, put into the legislation, but these provisions were put in by the previous government.

We have modified them; we have put more safeguards, more oversight in. I make no apology for that. But the actual provisions themselves—the recognizance with convictions and the investigative hearings—were something that the government determined back almost a decade ago that they had to have; they determined that police officers had to have these provisions.

I guess I'm trying to preach to the group of individuals who enacted these provisions. Surprises never cease on this, but this is where these provisions came from. As much as I would like to take credit for everything that is done and let our government take credit for everything that is done to modernize our laws with respect to helping victims, these two provisions actually were drafted by the previous government—albeit that we have put some additional safeguards and oversight in place, and again I make no apology for that.

Mr. Dave MacKenzie: Thank you, Minister. I'll turn it over to Mr. Lobb.

The Chair: Mr. Lobb, please.

Mr. Ben Lobb (Huron—Bruce, CPC): Thank you, Mr. Chair.

Hon. Rob Nicholson: And to be fair, the House of Commons itself—this committee—recommended that we do this. It's a little difficult to say that this committee recommended that we put these in. They were drafted by the previous government, who felt they were necessary to fight terrorism, in committee. Again, that being said, I don't mind coming here defending it. Other members have changed their minds or have forgotten where these originated.

I don't mind doing that, Mr. MacKenzie, but those are the facts.

The Chair: Mr. Lobb.

Mr. Ben Lobb: With the investigative hearing, obviously the purpose is to facilitate an opportunity to collect information about a potential terrorism offence. We've heard a few members on the other side of the table today talk about the balance or the possible risks for human rights issues. This bill has a number of human rights safeguards, and maybe it would be important to reassure them and reassure Canadians about how this will provide a balance for both a safe society and protecting the individual's rights.

Hon. Rob Nicholson: Mr. Lobb, thank you very much for that, and thank you for your interest and dedication to protecting Canadians and standing up for victims in this country. I've told you this before. I make no bones about it; I've been very appreciative of it.

You point out a very good point, that there are safeguards built into this process all the way through. I indicated to Ms. Mourani that others—the prior consent of the Attorney General of Canada or of the provinces and the fact that there is judicial oversight on these—are very important, and they form an integral component of what we are trying to do. As I indicated to them, there's a cooperation between all levels: between law enforcement agencies, the judiciary, and even the political oversight. I don't think it gets much better than that.

I would ask, when you're having a look at this legislation, that you have a look at what other—I mentioned major democracies.... And I appreciate that the Bloc had quite a bit of criticism of the way the Americans have done this, but you can go beyond the United States. Look at what the United Kingdom has done.

I believe the United Kingdom has a much tougher regime in place. Again, when we go back to the criminal law, much of our criminal law was modelled on British precedents, but if you have a look at where Great Britain is on these things, they're way ahead of us on that. That's before I even get into what takes place on the European continent.

In terms of where Canada stands, I think you will find that when you compare Canada.... And even those people who do not like the United States or the way they do business—I don't want to even get into that.... I'm not getting into that; I'm saying, look at other major democracies around the world, and I think you will be quite impressed. You'll say, yes, the Canadian approach is a very balanced, reasonable approach to a problem that we all face, and that's the problem of terrorism.

Those countries that are victims of terrorism, that are targeted by terrorist groups...I think you should have a look at what they do, and I'm pretty sure the conclusion that all members will come to, consistent with their previous recommendation to move forward on these provisions, is to say that these are a reasonable, balanced approach.

● (1620)

Mr. Ben Lobb: I have one other quick question, if I may.

We had some witnesses at our last meeting who were very concerned or wanted to see an amendment to deal only with imminent terrorism offences. To me, this defies logic; I disagree with their point on that.

I wonder whether you can go into a little further detail on that issue.

Hon. Rob Nicholson: These things shouldn't be looked at in isolation. It's not just imminent terrorist activity—that's part of it—that they may cover, but having knowledge of past terrorist activity can be very helpful in preventing and intercepting any attempts to commit new terrorism offences.

That's all we're saying. We want to have a complete approach to this. We can't say, “That's a terrorist activity that took place yesterday; we can't get into that.” No, we recognize that.... I mentioned the United Kingdom and their activities. Getting information about the subway bombings that took place, say, the day before might help them to predict or intercept future terrorist activities. So too for us: any terrorist activity that has taken place in the past is relevant for us to know.

So I think it has to be complete, and that's what this bill does, sir.

The Chair: Thank you, Mr. Minister.

We'll now move back to the opposition side.

We have Mr. Kania for five minutes, please.

Mr. Andrew Kania (Brampton West, Lib.): Thank you, Mr. Chair and Mr. Minister.

Just going back to something that my friend Mr. MacKenzie indicated, Justice O'Connor's recommendations came out while the Conservatives were in government. Is that correct?

Hon. Rob Nicholson: Yes.

Mr. Andrew Kania: The Conservative government has promised to implement all of those recommendations. Is that correct?

Hon. Rob Nicholson: The Conservative government, as we do with all of those, looks at all the recommendations. Again, in the example I gave—

Mr. Andrew Kania: I'm just asking whether you promised.

Hon. Rob Nicholson: Your committee recommended that we bring forward these provisions. We do that.

To say that we have promised to implement all recommendations of any particular report.... We look at them very carefully, we agree with them in principle, and we act on them.

Mr. Andrew Kania: My question is whether the Conservatives have promised to implement all of Justice O'Connor's recommendations, yes or no.

Hon. Rob Nicholson: We have indicated we would come forward with an action plan that would address the concerns raised, and we have done that.

Mr. Andrew Kania: And that was the recommendation from approximately five years ago. Is that correct?

● (1625)

Hon. Rob Nicholson: The action plan covers recommendations from a number of different areas, as I said earlier, I think in answer to Mr. Holland—I quoted parts of that action plan—which should give you some comfort.

Mr. Andrew Kania: As we sit here today, those recommendations have not been implemented. Is that correct?

Hon. Rob Nicholson: I'm here to testify with respect to the two provisions that sunsetted and that we want to have.

Now, if you want to get into a broad discussion of policing and public safety and all the different recommendations, I'll get back to megatrials, if you want, and how that has been one of the consistent recommendations that we've had. But I'm asking you to focus on these particular provisions, which I believe have widespread support, which were recommended by this committee and recommended by a previous Liberal government. I'm asking you to implement and go forward with those.

Mr. Andrew Kania: Thank you, Minister. I'm going to focus my questions on that after you, if you would, please, respect us and answer a simple question that I put, which should only take five seconds, that is, whether those recommendations have been implemented yet.

And they haven't been. Can you not just admit that Justice O'Connor's recommendations haven't yet been implemented? How hard is that?

Hon. Rob Nicholson: Again, nothing is ever complete, if that's what you're trying to suggest. But I can tell you that we have moved forward and we will continue to move forward on all different areas. One of the areas we're moving forward on is this particular piece of legislation, but I can't even say that has been done, because you'll have to pass it first to get that one done.

I'd like to talk about all these recommendations in the past tense, but you know very well how difficult it is to get any changes brought forward. But I'm certainly hoping we'll have luck with this one.

Mr. Andrew Kania: Once again, have Justice O'Connor's recommendations been implemented, yes or no?

Hon. Rob Nicholson: Well, again, we're in the process of implementing the recommendations from that and a number of other reports, including Justice Major's, and that's part of the action plan we have.

But it's not complete. As I say, it's important...I cannot talk about it in the past tense and say we have done it, we have brought in those anti-terrorism provisions. I always have to be careful and say that I have it before Parliament, and we are acting on these. Once it gets royal assent—and I hope that's very soon—then I'll be able to speak in the past tense: that these provisions have been done.

Mr. Andrew Kania: I will take that as a very long way to say, "Yes, you're right. It has not been implemented yet."

And now I'll get on to the bill.

Concerning this sunset clause, we have not had this legislation in effect since February 2007. Is that correct?

Hon. Rob Nicholson: That's correct. They sunset it.

Mr. Andrew Kania: Okay.

I want to be clear. I'm in favour of whatever is reasonable to protect Canadians, so I'm not against this.

Hon. Rob Nicholson: Good.

Mr. Andrew Kania: But I'm asking for reasoned, logical analysis, not positions or rhetoric.

Hon. Rob Nicholson: Yes, I guess so.

Mr. Andrew Kania: Since February 2007, how has Canada or how have Canadians, in any way, suffered or been prejudiced by the fact that we have not had these provisions in place? It's been a number of years, so tell us about that.

Hon. Rob Nicholson: You'd have to ask the RCMP and law enforcement agencies who investigate these. I hear from them, law enforcement agencies in general, on a regular basis that when they don't have the tools to investigate certain kinds of activity, Canadians are the poorer for that.

If you're asking me whether we've been subject to terrorist activities that these may have...I want these tools on the books for any future terrorism activity, and I want them to be available. It would be too late if a terrorist activity took place in Canada and we heard from law enforcement agencies, “I wish we had the tools; I wish we were able to intercept this.” And then I would imagine you might be among the first, your colleagues, to criticize us and say, “Why didn't the Conservatives bring in these provisions?”

So that's what we're doing today with these provisions. They're the best ones to answer that question. But what I hear from them and what I hear from my colleagues when we discuss these is that they are very much in support of it.

I agree with your committee's recommendation that these are important, that we have to have them, and I appreciate that.

The Chair: Thank you very much, Mr. Minister.

We have about two more minutes. The minister has to leave at 4:30.

Mr. MacKenzie.

Mr. Dave MacKenzie: Thank you again, Chair.

Minister, one of the things I think that always comes up is the whole idea that so much of this has something to do with 9/11, but at the same time, radicalization and homegrown terrorism has certainly changed since 2001.

Hon. Rob Nicholson: There's no question about it.

Mr. Dave MacKenzie: The fact is that society in our own country is different. These are the kinds of tools going forward...and I think you've talked about the future.

Hon. Rob Nicholson: Yes. You've made a very good point.

Very often, in discussions, everyone refers to 9/11. But Mr. MacKenzie, you're quite correct. The recent Air India report underscores the fact that this country was targeted for terrorist activity, major terrorist activity, years before September 11, 2001. And again, in terms of our response, we have to have tools like the tools you have before you.

As I say, it's not just your government or me or the Prime Minister who believes this. There's widespread support to get these tools on the books. They were written by the previous government, who knew and understood that we had to have these tools on the books. Law enforcement agencies support them. We have received judicial approval for part of these particular proposals that we have.

It's my hope, and certainly the hope of everybody, that we don't have to use these. Of course, I would hope that would be the case, but we live in a world that is subject to terrorist activity. No country is immune from it. The laws have to be on the books.

I asked people who were looking at this to check what other major democracies were doing, that they would came back and say, yes, the Canadian approach is very reasonable. Those safeguards are very important; they're very reasonable as well, and this is exactly the kind of legislation we have to have on the books in Canada to protect Canadians.

● (1630)

The Chair: Thank you very much.

I want to thank the minister for attending here today.

We certainly look forward. We have a number of pieces of legislation before our committee. Hopefully we'll be able to report some of this back fairly soon, after the Christmas break.

We do thank you for your attendance and for your testimony and also for letting the officials stay for our next hour. We look forward to what they have, should there be other questions—

Hon. Rob Nicholson: I've just been thanked by the officials. That's very good, Mr. Chairman.

The Chair: Thank you very much, Mr. Minister.

We will suspend just for a moment to allow him to make his exit and then we'll continue.

● _____ (Pause) _____ ●

The Chair: We'll call this meeting back to order, and I will just pick this up from where we left it off. It seems to me that we wouldn't go back to a first round, second round, third round, but we'll just kind of keep going, if that's all right with the committee.

Mr. MacKenzie was wrapping up, so Mr. Rathgeber will go, and then we'll just continue on our second round.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair.

Thank you to all of the justice department officials for your attendance here today and for your expertise on this quest as we try to balance the civil liberties of Canadians with our bona fide security interests to protect ourselves against terrorism.

At our last meeting, we talked about the existing provisions of the Criminal Code. I know that my friends on the other side of the table believe that sections 810 and 495 of the Criminal Code adequately protect Canadians from terrorist attacks, both domestic and abroad. I'm skeptical of that position.

I was wondering if any of you could help the committee understand why section 810 of the existing Criminal Code is inadequate and why we need the provisions in Bill C-17. If you don't know, section 810 says if that a person who fears on reasonable grounds that another person will intimidate a justice system participant or commit a criminal organization offence, you can apply to a judge to have a recognizance.

● (1635)

Mr. Donald Piragoff (Senior Assistant Deputy Minister, Policy Sector, Department of Justice): Thank you.

Under the existing law, section 495, which entitles a police officer to arrest a person who is "about to commit" an offence, the police officer has to have reasonable grounds to believe two things: one, that an offence will be committed, so that an offence is "about" to be committed; and two, that the person who is to be arrested is the person who is going to commit the offence. It's a high standard: there are reasonable grounds to believe both criteria, both facts, that the offence will be committed and, secondly, that the person is the potential perpetrator.

Under the peace bond provision, the standard is, again, reasonable fear that a particular person will commit a terrorist offence or will commit other 810 provisions: a sexual offence or an organized crime offence. Again, there are reasonable grounds to fear or to believe that the particular person will engage in particular conduct.

Under the proposed bill—

Mr. Brent Rathgeber: Just for clarification, section 810 is the peace bond, right?

Mr. Donald Piragoff: Yes, section 810 is the peace bond. Section 495 is the existing provision that deals with the powers of a police officer to arrest without warrant.

Mr. Brent Rathgeber: Thank you.

Please go on.

Mr. Donald Piragoff: Under the bill, the test with respect to the preventative arrest for the purposes of attendance before a judge is that the police officer has to believe "on reasonable grounds"—again—"that a terrorist activity will be carried out". But what's different from the current law is that there may not be reasonable grounds to believe who the perpetrator is. So that's why this fills a gap.

With respect to the second stage, the bill provides that the police officer has to have reasonable grounds to suspect that arresting a person will "prevent" the activity. That doesn't mean that the person who's arrested is the perpetrator. It may be other individuals who are involved.

For example, the scenario that has been asked about before is where this provision would be used. One can imagine a situation where, say, there's a demonstration, the police have reasonable grounds to believe that a bomb is going to be detonated during the course of the demonstration—not by the demonstrators, but by other persons—and the actual perpetrators are not known. They know it's going to happen as a result of intelligence. But they also suspect a number of individuals who have been agitating, who have been making statements, and they may have reasonable grounds to suspect that these individuals know something, that they have assisted others, and by bringing them before a judge, that does two things: one, it puts them under the judicial control of the judge; and two, it also sends a clear message to others that the police are aware of a conspiracy or possible attempt. It's a way of publicly indicating that they know something is about to happen.

The Chair: Thank you, Mr. Rathgeber.

Mr. Brent Rathgeber: Thank you.

The Chair: We'll go back to Madame Mourani.

[*Translation*]

Mrs. Maria Mourani: Thank you, Mr. Chair.

Mr. Piragoff, I would like to continue discussing what you talked about earlier. So we can make people testify before a judge, but are those people protected? Let's consider people who are not involved in a plot, but could perhaps have been witness to discussions regarding a terrorist plot, for instance. Are there any measures that will protect those people if they talk about the infamous terrorists before a judge?

[*English*]

Mr. Donald Piragoff: *Merci*. The purpose of bringing them before the judge is for the judge to determine whether he or she should release the person with conditions or without conditions. So unlike some countries, where the purpose of the arrest is for the purpose of detention, the presumption in this bill is that it is very much to release the individual. As Professor Forcese said, it's catch and release. The purpose is that they will be released on condition. It is not for the purposes of detention; it really is for the purpose of disrupting preparatory conduct.

With respect to the protections, once a person is detained, then all of the existing safeguards that exist under the charter or the Criminal Code apply to these individuals because they are persons under detention. So they have the right to seek counsel, they have the right to remain silent, and all the charter protections apply to them because they are detained.

● (1640)

[*Translation*]

Mrs. Maria Mourani: Are charges levelled against that person?

Mr. Donald Piragoff: No, no charges are levelled.

Mrs. Maria Mourani: I will give you an example. During our tour for Correctional Services Canada regarding mental health, we went to the Whitemoor prison in England. This is a maximum security prison, it's very well monitored. If I remember correctly, 60% to 70% of the prison population was Muslim. Supposedly, these were terrorists.

Are we heading towards a higher prison population? Will we be creating prisons through preventive measures with this kind of a bill? I was so stunned by what we saw in England. Earlier, the minister actually talked about stricter measures in England.

[*English*]

Mr. Donald Piragoff: I think what the minister may have been referring to in the U.K. is that the U.K. law provides for preventive detention for up to 28 days before laying a charge. So a person can be arrested and not charged, but they can be detained up to 28 days without charge. Under our law a person cannot be detained, arrested, and held longer than 24 hours without seeing a judge, and then the police have to lay charges. This bill is based on the same types of safeguards that exist for people who are charged with an offence. They have to be brought before a judge within 24 hours. Under an offence the judge has to determine whether they should be released or given bail. Under this provision the judge has to release the person, so there's a presumption of release unless the police and the crown can convince the judge that conditions should be imposed. There's no possibility of detention here unless the individual refuses to abide by the conditions.

[*Translation*]

Mrs. Maria Mourani: There is something that worries me. If my memory serves me right, almost all our witnesses from last Monday —except for one person, while lawyers were present—told us that this law had not been useful. However, it has been in force since the 2001 terrorist attacks in the United States. The Criminal Code provides for taking the actions you mentioned, whether it is sending someone before a judge, getting a warrant or getting someone to testify. All that can currently be done through the Criminal Code, but it cannot be done in a preventive way, since charges have to be laid.

If the police have good intelligence, why can't they use the Criminal Code to charge people with conspiracy? Why not work with the Criminal Code? This law has never been used. The only time it was used in an investigation, it was struck down. I do not understand why we would get into that again.

[*English*]

Mr. Donald Piragoff: Under the existing law, there is no power to compel a witness to provide any evidence, and the investigative hearing is separate from the preventive arrest powers. Under the current law, people do not have to answer questions posed to them by the police or posed to them by any official. Everyone has the right to close the door and say, “I don't want to answer any questions.”

In other countries, such as the United Sates, they have a grand jury. Witnesses—not the accused, but witnesses—can be compelled to testify before a judge and a grand jury in the United States to provide testimony prior to charges being laid. In Canada, the only time witnesses can be compelled to testify before a court is when a charge has already been laid by the police and someone has been charged. You can force a witness to come only when there's a preliminary inquiry or a trial. This would provide Canada with the power to have—

● (1645)

[*Translation*]

Mrs. Maria Mourani: If it's that important, why has it never been used?

[*English*]

The Chair: Please be very quick.

Mr. Donald Piragoff: It could be used to obtain information from potential witnesses who might be reluctant to provide information to the police or to the authorities voluntarily, or who may be afraid to provide information voluntarily but would be willing do so if they were compelled to do so.

[*Translation*]

Mrs. Maria Mourani: I asked you a question: why were these powers not used, if they're so important? The gentleman explained to me the whole procedure again. My question is simple: if they are so important, why have the powers never been used?

[*English*]

The Chair: Thank you, Madam Mourani.

[*Translation*]

Mrs. Maria Mourani: Could you answer my question?

[*English*]

The Chair: We will now move to Mr. Norlock.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much, Mr. Chair.

I always begin by letting the folks at home know what we're doing and why we're doing it. Having been on the subcommittee on anti-terrorism subsequent to the sunset clause and our government taking power, I can tell you, for those folks who don't know, that the reason we have an anti-terrorism act is a direct result of a United Nations resolution. I believe it was resolution 1373, which was in 2001. It responded directly to the 9/11 act of terrorism that the whole world responded to.

That resolution demanded that member nations take certain steps within 90 days to prevent the financing of terrorism, to protect their citizens, to make their borders more difficult to be infiltrated by terrorists, etc. As a result, Parliament subsequently passed the Anti-terrorism Act under the previous government.

My question flows from some of those regulations. Part of that Anti-terrorism Act gave certain powers that had never been used before or had never even been contemplated before, powers that some folks thought ran contrary to the Canadian Charter of Rights and Freedoms. Subsequent to that, the Supreme Court ruled—I believe it was prior to 2007—that this section needed some improvement, and it gave the government a certain amount of time.

As a result of that time to correct—and you can correct me if I'm wrong, and there may be some adjustments to my process—the reason you're here today is that the Government of Canada is responding to the directives of the Supreme Court to ensure that the part of the law we're dealing with, the Anti-terrorism Act, does indeed comply. The Supreme Court did mention—and feel free to elaborate on that—that while it does contravene the Canadian Charter of Rights and Freedoms, there's a certain allowance for it because of the history and nature of terrorism.

There are provisions and protections, and the minister went into some of them. I suppose I'm saying that the proposed provisions were crafted with due regard to the Charter of Rights and Freedoms.

Would you, once again, let us know some of the balances or checks on the state to ensure that a person who has been detained or is subject to recognizance with conditions or investigative hearings has protections that were built in as a result of that Supreme Court dictum?

Mr. Donald Piragoff: Thank you.

Let me first start by answering the last question, Ms. Mourani's question, because it leads into yours.

Have the provisions ever been used? Yes, one of the provisions was used. That was the investigative hearing provision. It was used in the course of the Air India trial; an investigative hearing was commenced. During the course of the hearing, a challenge was made that the provision was unconstitutional. The issue went all the way up to the Supreme Court of Canada. The Supreme Court of Canada held that the provisions concerning investigative hearings were constitutional.

I believe the case that you were referring to was dealing with security certificates. It was the Supreme Court, on security certificates, that said that the law was unconstitutional, but it gave Parliament some time.

The Supreme Court said that the provision in this bill concerning investigative hearings is constitutional. They did make some suggestions—which I think Mr. Davies indicated—concerning interpretation, which are the law. They could be codified, but they are the law whether codified or not.

In terms of the protections, the minister reiterated a number of them.

Of the protections prior to the use of the powers, first, there's political control: requiring the consent of the Attorney General of Canada or of a province. These powers have judicial control; they need the consent of a judge, either before or after the power is exercised. And all these powers are subject to a sunset clause.

But they're also subject to a review being undertaken by a committee of the House of Commons or of the Senate at any time within the five-year period. The minister also indicated that there must be an annual report tabled with Parliament with respect to the use of these powers, and because it's a report made to Parliament, any parliamentary committee then could examine one of the ministers with respect to the use of those powers.

So those are the judicial safeguards as well as the accountability safeguards.

● (1650)

Mr. Rick Norlock: Thank you very much.

The Chair: Thank you, Mr. Norlock.

I'm going to change the schedule a little, because I think we cheated Mr. Davies and the NDP.

Of course, I'll always be here to protect your rights for a question, Mr. Davies, so continue.

Mr. Don Davies: Thank you, Mr. Chairman. We're in good hands, then.

I too want to explain a bit of our position to the Canadian public. I think it's quite clear to everybody looking at this bill that it proposes to make two substantive changes to what Canadians have come to expect from our legal system, which are the right not to be forced to give evidence and have that evidence used against the person, and second, the right not to be detained by the state for a period of time that in this case, I'm going to show you, can be at least four days, and then be let go without any arrest or charge.

I'm going to deal with the latter one first.

Mr. Piragoff, I believe you have said several times that a person has to be brought before a provincial court judge within 24 hours, but that, I put to you, sir, is not true. The legislation says that a person must be brought before a provincial court judge in 24 hours or as soon as feasible thereafter, if a provincial court judge is not available.

So my first question is this. It is possible, is it not, sir, that a person might not be brought in front of a provincial court judge for more than 24 hours? That's possible, is it not?

Mr. Donald Piragoff: The provision mirrors the existing law for arrest.

Mr. Don Davies: I didn't ask you whether it mirrored that. I asked you to make it clear. I want to clear it up. You said 24 hours.

Mr. Donald Piragoff: Well, wait. Yes, but—

Mr. Don Davies: It could be longer than 24 hours, right?

Mr. Donald Piragoff: If you can't find a judge because you're up in the Arctic, then there is a provision, yes.

Mr. Don Davies: Right. So you could be arrested and you could be detained—

Mr. Donald Piragoff: It could be 25, it could 30 hours, because a judge is not there—

Mr. Don Davies: Okay, let's stop there. You could be detained.

Mr. Donald Piragoff: —but that is the existing law; that is not new. That is not the new law. You said—

Mr. Don Davies: Sir, I'm not asking whether it's new; I'm clearing up the time period.

You said within 24 hours. It could be longer. Isn't that correct?

Mr. Donald Piragoff: As under the existing law.

Mr. Don Davies: That's fair enough. I hear your point on that—three times.

Second, after that it also says that a show cause hearing must be held to determine whether the person should be released or detained for a further period of time, and that hearing itself can be adjourned for a further 48 hours. Is that correct?

Mr. Donald Piragoff: As under the existing law.

Mr. Don Davies: Okay. So now a person could be arrested under this legislation and could be detained for, so far, up to more than three days before they get in front of a judge.

Mr. Donald Piragoff: Under the existing law that applies to criminal charges, a person is to be brought before a judge within 24 hours. Sometimes that may not happen, so the law provides some flexibility. The crown attorney is entitled—

● (1655)

Mr. Don Davies: Sir, we'll get further here if I can interrupt you.

I'm not asking you—

Mr. Donald Piragoff: Mr. Chairman, may I answer the question, please?

The Chair: I'll give you extra time, Mr. Davies. Just let him answer here.

Mr. Don Davies: Okay.

Mr. Donald Piragoff: Thank you, Mr. Chair.

Under the existing law the crown prosecutor can make an application to the judge that the state needs more time in order to convince the judge as to why the individual should be detained. And the judge is entitled, under the current law in the Criminal Code, to remand the person in custody for up to 72 hours.

Mr. Don Davies: Can I ask you, then, sir—

Mr. Donald Piragoff: This bill is mirrored on the same types of safeguards that exist with respect to persons who are charged. So the same time periods apply.

Mr. Don Davies: Mr. Piragoff, I'm going to interrupt you because you're wasting my time. I have seven minutes, sir.

I did not ask you what the current law is. We're dealing with this section under this legislation. To answer my question, yes, a person can be detained under this legislation, Bill C-17, for more than three days. Your answer, sir, is that we could do it anyway. That's not what I am asking you.

This legislation says that. So my next question is, if the current law allows this, what's the need for this provision, then?

Mr. Donald Piragoff: The nature of this provision is that under the current law it applies on arrest. I think I answered earlier that arrest requires that the police have reasonable and probable grounds to believe that an offence will be committed and that a particular individual is the person who will commit the offence.

This particular bill, while it requires that the police officer have reasonable grounds to believe that an offence will be committed, provides that the police officer may not know who the likely perpetrators are but knows that certain individuals are likely involved, and that if the individual is brought before a judge, that will likely prevent the commission of the terrorist activity because that person and other unknown persons who may be involved will know that the state is aware of the activities.

Mr. Don Davies: Well, actually, Mr. Piragoff, there is an important difference between this.... That's why this law is being proposed. The current law does not deal with the situation in which it allows the police to arrest someone when they don't have specific information that the person they're arresting may be involved.

That's the key difference, is it not?

Under the Criminal Code now, the police officer has to have reasonable and probable grounds that the person they're arresting is about to commit an offence.

Mr. Donald Piragoff: That's correct.

Mr. Don Davies: Under this legislation, they may not know that the particular person they're arresting has anything to do with it, but it allows them to arrest that person anyway. Is that correct?

Mr. Donald Piragoff: That's correct.

Mr. Don Davies: Yes. So people who may have nothing to do with the thing could be arrested under this legislation.

I put to you, sir, that this is an incursion into people's constitutional rights.

I'm going to ask you this as well.

Mr. Donald Piragoff: May I answer the question?

Mr. Don Davies: I didn't ask you a question yet.

The Chair: Let him finish, and then I will let you—

Mr. Don Davies: Well, I haven't asked a question yet, so I want to ask this question.

Someone is arrested for up to three or three and a half days, or detained. If the person is released—because this also says that if nothing ends up happening, they have to be released—what remedy does that citizen have after being arrested and detained for three and a half days, and then arrested without any real reason after? What remedy would you tell that Canadian they have?

Mr. Donald Piragoff: Thank you.

Mr. Chair, with respect to the first question, the police officer has to have suspicion. You can't just do anyone.... The bill makes it clear that there have to be reasonable grounds to suspect that the arrest of this particular person is necessary to prevent the carrying out of a terrorist activity.

Mr. Don Davies: How is that different from the current criminal law, then, sir?

Mr. Donald Piragoff: The current criminal law is that the police officer has reasonable grounds to believe that this particular individual is the person who is going to commit the terrorist act.

Mr. Don Davies: So what does this legislation make the police officer think about the person they're arresting?

Mr. Donald Piragoff: This provision could apply to others who are not going to be the actual bomb throwers but may have been involved in the conspiracy.

Mr. Don Davies: Well, that's a conspiracy; that's a criminal offence, sir. Is conspiracy not a Criminal Code offence?

Mr. Donald Piragoff: If they have evidence that there was a conspiracy—

Mr. Don Davies: Sir, you're talking in circles, because you're trying to script the truth, with respect.

This legislation is necessary because the current law requires the police officer to suspect a particular person to be about to commit an offence. This legislation says that they may not be able to prove or have any reasonable suspicion that the particular person they're throwing in the hoosegow actually is going to commit any offence. And that's the key difference.

Mr. Donald Piragoff: That's correct.

Mr. Don Davies: So you could throw an innocent person into detention for three and a half days without any evidence that the person is going to actually commit any offence. That's the key difference in this legislation.

Mr. Donald Piragoff: No. You said that the person is totally innocent without any evidence. The bill says that the police officer has to have reasonable grounds to suspect that the arrest of the person is necessary. That's not just pulling people off the street. You have to have reasonable grounds to suspect that the arrest of the person is necessary. There has to be some factual basis for it.

● (1700)

The Chair: Thank you, Mr. Piragoff, and thank you, Mr. Davies.

We'll now go to Madam Mendes.

[*Translation*]

Mrs. Alexandra Mendes (Brossard—La Prairie, Lib.): Thank you, Mr. Chair.

Mr. Piragoff, I would like to begin with an observation. There is a lack of supervision or close monitoring, if you will, when it comes to the application of this legislation. I would like to ask you a question that is somewhat similar to the one asked by Mrs. Mourani earlier.

If I remember correctly, this law has been used only used once since 2001, before becoming obsolete. It was used in the Air India case, right?

[*English*]

Mr. Donald Piragoff: Correct.

[*Translation*]

Mrs. Alexandra Mendes: In the case of 18 people charged in Toronto, the legislation was completely useless. However, at that time, the legislation was still in force. Why do we need to bring back this legislation when the authorities were able to uncover a plot and to avoid an incident without even invoking the provisions of the act? The act was in force, there had been no prorogation. Could you explain to me why the act should be brought back into force?

[*English*]

Mr. Donald Piragoff: I think the Toronto case was a situation in which the police had reasonable grounds to believe not only that a terrorist offence was being planned and would be committed, but also that they had reasonable grounds for believing who the actual individuals were. Therefore, rather than preventing the activity from happening by acting sooner and using powers like this, they chose to actually conduct a sting operation. They were surveilling people who they actually had reasonable grounds to believe would be the perpetrators—

Mrs. Alexandra Mendes: But do you agree, Mr. Piragoff—

Mr. Donald Piragoff: —until they collected more and more evidence and decided that they would actually arrest.

Mrs. Alexandra Mendes: Yes, but do you agree that they prevented the event from happening? They prevented it.

Mr. Donald Piragoff: They prevented it by the arrests, yes.

Mrs. Alexandra Mendes: Yes. They were able to act firmly and in a way that prevented a horrible act of terrorism without even needing to use these clauses.

Mr. Donald Piragoff: It was because, in that case, they had the evidence already.

Mrs. Alexandra Mendes: Wouldn't it always be the case that they would need some sort of evidence?

Mr. Donald Piragoff: You always have to have evidence. It's a question of whether you have enough evidence to arrest and charge a person as opposed to arresting a person to prevent them from carrying out their activities.

Mrs. Alexandra Mendes: Okay, but if you don't have the evidence, despite whichever kind of law you have, you won't be able to keep the person.

Mr. Donald Piragoff: That's right. That was my answer to Mr. Davies. You have to have some evidence. It's a question of what kind of evidence. Under the existing law, you have to have reasonable grounds—evidence—to justify that the actual person is the likely perpetrator, while under this bill—

Mrs. Alexandra Mendes: Or will likely perpetrate, because in the case of the Toronto 18, they hadn't perpetrated anything yet—

Mr. Donald Piragoff: I said "likely" perpetrators—while under this bill, you have to have evidence justifying the judge in believing the police officer's statement that there were reasonable grounds to suspect that the arrest of this person was necessary.

Mrs. Alexandra Mendes: That is the danger we see in this bill. Authorities now already do the job; the danger we see in this bill is that it would give unwarranted powers to the authorities to go beyond that. The former CSIS director has already said that it's not needed. They can do their job to prevent these acts from happening with the existing laws and the provisions they already have.

How often since 2007 has Canada been under threat? We don't know, or at least the public doesn't know, thank God, because the laws that we have allow the authorities to do their job. That's the bottom line. Our whole concern about this bill is that we don't really need to go beyond what we already have.

Do I have one minute left?

The Chair: How much time would you want, Madam Mendes?

Mrs. Alexandra Mendes: One minute would be wonderful.

The Chair: I'll give you two minutes.

Mrs. Alexandra Mendes: That's wonderful. Thank you very much, Mr. Chair. It's the Christmas spirit.

Do you want to finish your questions?

Mr. Andrew Kania: Sure.

I asked Minister Nicholson about this, and he didn't answer the question, so I'll ask you. This expired in February of 2007; he did agree with that. Between then and now we've had a number of years of experience. My question asked how Canada or Canadians have suffered as a result of not having these provisions in force. What have we needed, based on actual factual scenarios on the ground, that we haven't had?

● (1705)

Mr. Donald Piragoff: That question would be better posed to the RCMP or CSIS. They might be testifying on this bill as to how the existing law may have hindered them or not.

Mr. Andrew Kania: Minister Nicholson said something similar. He said he couldn't ask the RCMP, but he's the Minister of Justice who is proposing to bring back these provisions and make them law again. I would think the responsible answer from the Minister of Justice, who wants to pass this law, would be to give us examples of how we've suffered by not having these provisions, rather than to tell us to ask somebody else.

To repeat, do you have any information at all about how Canadians or Canada has suffered by not having these provisions from February 2007 to the present? I don't want to know if somebody else might have that information; I want to know whether you have anything.

Mr. Donald Piragoff: Whatever information I have has been provided by the RCMP and security forces. I think the question should be posed to them.

Mr. Andrew Kania: Okay. Are you aware of how Canada or Canadians have suffered in any way? I'll do that in two parts, if you like. If you are aware that there has been some need that wasn't satisfied and you're aware that we suffered, you can say "yes" or you can say "no". You don't have to provide any examples.

The Chair: There is one other option, which is to say that he prefers not to answer the question. There are three options.

Mr. Andrew Kania: I don't think it's necessary for you to interrupt me on that. It's my question—

The Chair: It's my job to make sure that when we have the department here.... I read from the book last meeting, and on those types of questions of security, departmental officials do not have to answer.

Continue, Mr. Kania. I'll let you continue.

Mr. Andrew Kania: I actually want to address this, since it was addressed last time by you. I don't think it's appropriate for you to be interrupting when other members are posing questions. We can have a point of order on this if you wish, but in essence you made a ruling that we don't agree with. We believe they do have to answer, so I'd appreciate it if you didn't interrupt my questioning—

The Chair: Thank you, Mr. Kania. Thank you. Your time is up.

We'll now go back to the government side. Go ahead, Mr. Norlock, please.

Mr. Rick Norlock: Mr. Chair, I believe it was Mr. McColeman's turn.

The Chair: I'm sorry. Yes, it's Mr. McColeman.

Mr. Andrew Kania: I have a point of order.

The Chair: Go ahead, Mr. Kania, on a point of order.

Mr. Andrew Kania: My time was not up when you interrupted.

The Chair: Your time right now is 7:40, and your time was just up to the seven-minute mark.

Mr. Andrew Kania: At the time that you interrupted me, it wasn't up yet, was it? Otherwise you would have simply said, "Time's up", rather than interrupting me.

The Chair: No.

Go ahead, Mr. McColeman.

Mr. Phil McColeman (Brant, CPC): Thank you, Mr. Chair.

I have several questions, but first I want to say that my background is construction, not law.

Across the table we've seen an aggressive labour lawyer trying to pin you down on certain things that may or may not be included in existing legislation. I'd like to take the approach of asking you some questions that were brought up in testimony from our last group of witnesses. Professor Forcese, from the University of Ottawa, has done a paper and some extensive study on the subject of whether or not this bill covers off some of the eventualities that could happen with the threat of terrorism. He admits there is a gap in the current legal law enforcement tools that this bill would address. He says it's a gap, albeit a small gap, but it's gap. Then, when the rest of the panel was surveyed on whether there was a gap based on his analysis, all disagreed that there was a gap.

As another side note, when asked if they thought terrorism was a real threat in Canada, all but one agreed that it was. Often the threat that we've seen—for example, with the Toronto 18—is that people are already committing acts. The police were aware of those acts as a result of that, but had they had some prior knowledge and been able to investigate prior, they might have stopped those acts.

That said, as the government and as your department, we've obviously looked at the laws of the other major countries in the world that have experienced real terrorist attacks, including Great Britain and the like, and the United States. Great Britain has 28 days, as you know, in terms of detention time.

I'd like your general comments, sir, on our law as it compares to those of other modern western democracies in terms of whether it gives the police the tools they need to close the gap that was talked about by one of our last witnesses. Also, when the department came to the determination of the types of clauses that would be included, were they evaluated against other countries and their existing laws?

● (1710)

Mr. Donald Piragoff: As you indicated, the U.K. legislation provides for preventive detention of up to 28 days. Australian criminal law is a state issue as opposed to a federal issue. It varies from state to state, but in many states in Australia, preventive detention can be for up to 14 days.

Our bill is not focused on detention. It's focused on arresting the person, bringing them before a judge, and then releasing them with or without conditions. It's not presupposed that a person will be detained for a long period of time, so that's a major difference.

With respect to the investigative hearing, the United States has the grand jury system. Canada had the grand jury system up until the mid-1960s. It permits a person to be brought before a judge in order to be examined under oath to provide testimony prior to a charge. That does not exist in Canadian law anymore, although it did under the grand jury when we had it.

The one exception where it does exist under Canadian law is under the Mutual Legal Assistance in Criminal Matters Act. That act provides for a judge to order a person to attend before him or her to testify under oath for the purposes of obtaining evidence to send to a foreign country pursuant to their judicial request to provide mutual legal assistance.

Those are the comparisons to other legislation, as well as some other past or current precedents that we have in Canada.

Mr. Phil McColeman: So from your answer to the question and the comments we've heard from other witnesses, who have actually said this is a tool that law enforcement would benefit from, and that we'd perhaps be able to stop something from happening in its tracks because we'd be able to investigate on a different basis than the current law allows us to do, and in comparison to our other international partners or other western democracies, which, frankly, are under threat from terrorism....

We know this. We know that we need to have law enforcement that has all the tools available to it in its toolbox to be able to fight that war, and that our law as proposed today is far less onerous on the side of the personal rights or human rights issue. We have it far more balanced than the other western democracies, based on some of the things that are included in their current terrorist legislation. Am I correct in saying that?

Mr. Donald Piragoff: This bill has more safeguards than a lot of legislation that exists in our allies' legislation.

Mr. Phil McColeman: So our government has taken into consideration those human rights values and those personal freedom values that Canadians enjoy and has balanced that with the need to make sure we have the effective tools in law enforcement's hands for fighting terrorism.

Mr. Donald Piragoff: In developing the bill, as I indicated...and this goes back to 2001. We looked at other laws in other countries. We also had regard to our own legal system, the Canadian Charter of Rights, the jurisprudence, and the existing provisions in the Criminal Code as to how persons who were accused were treated in terms of detention times and periods that they may be held.

We tried to parallel these provisions as much as possible on the existing powers and safeguards that apply to accused persons, and then, as this bill shows, there are a lot more safeguards to deal with persons who would be subject to this act than there are actually applicable to persons who are accused. Persons who are accused do not get the consent of the Attorney General before they are arrested, for example. They do not have oversight. They do not have parliamentary oversight. They do not have ministers who are required to make annual reports.

So actually, even though these are new powers that apply before the normal criminal process would kick into force, we have tried to put in more safeguards to balance the fact that we are into an area, a gap, that has not previously been legislated in.

● (1715)

The Chair: Thank you, Mr. Piragoff.

Now we'll go back to the opposition.

Mr. Andrew Kania: Thank you.

I'll go back to where I ended. I want to start by saying that I'm not against these provisions. It was a Liberal government that brought them in, initially, after 9/11, but we've had the benefit of experience over a number of years in terms of seeing what's effective and what's truly necessary.

So I'm trying to analyze this to see what we truly need to protect Canadians—and that's it; that's why I'm asking you these questions. They're not trick questions. They're simply trying to find out what we really need here in Canada.

So I'll ask you again. Do you have any information to suggest that since February of 2007—because we've been without these laws since February of 2007—because we have had that period of time without these laws, we've in any way been prejudiced or suffered or have been at risk and that they would have helped in some way? Yes or no.

Mr. Donald Piragoff: Obviously the crown prosecutors in the Air India case were of the opinion that the provisions on investigative hearings were useful for a witness they encountered who was not providing information, and therefore they made an application to use an investigative hearing to obtain evidence from a witness. So clearly it has been used at least once since 2001, and that was the investigative hearing provision in British Columbia.

Mr. Andrew Kania: When was that?

Mr. Donald Piragoff: In 2004.

Mr. Andrew Kania: Okay. So my question was, since these provisions expired in February of 2007, between then and now, do you have any information that Canada or Canadians have suffered because we've not had these provisions in place?

Mr. Donald Piragoff: That's a hypothetical because it's a negative: the provisions haven't been in place.

Mr. Andrew Kania: Exactly. So do you have any information from any source to suggest that because they've not been in place since February 2007 we have somehow suffered? Is there some particular example you're aware of between February 2007 and now in which it would have been helpful if we had had them?

Mr. Donald Piragoff: I think you would have to ask the investigative authorities whether they could have used an investigative hearing since 2004. I don't know what decisions have been made by individual attorneys general throughout the provinces or by the RCMP in terms of investigation. Those are questions you should be asking them.

Mr. Andrew Kania: That's fine, but my question is whether you're aware of any cases. I know there are lots of other people we can ask questions of. My question is to you, whether you are aware of any cases.

Mr. Donald Piragoff: Again I repeat, you should ask other individuals, who were actually operationally involved in these cases, whether they would have used these powers if they had been available since 2004.

Mr. Andrew Kania: I don't understand why you're having difficulty with this question. In your mind, do you have any information? Are you aware of any cases?

Mr. Donald Piragoff: You're asking me for a hypothetical—

Mr. Andrew Kania: No, I'm not. I'm asking you whether you're aware of any specific cases.

Mr. Donald Piragoff: I'm not privy to RCMP or Toronto Police operational tactics, or decisions made by crown attorneys in British Columbia or even the federal government. The Public Prosecution Service is an independent agency. They don't tell me the decisions they make. They don't tell me the decisions they would have made. So that's why I'm saying you have to ask those individuals—the prosecuting authorities, the Public Prosecution Service of Canada, the RCMP, CSIS—with respect to whether they have particular cases that would have been handled differently if these powers were in force or not.

● (1720)

Mr. Andrew Kania: You speak with those various bodies from time to time, correct?

The answer is obviously "yes".

Mr. Donald Piragoff: If you're asking me about certain things they told me or did not tell me, I'm not at liberty to tell you what the security agencies—

Mr. Andrew Kania: No. I asked you whether you speak to those bodies from time to time. I didn't think it was that difficult. You speak to those bodies from time to time. Is that correct?

Mr. Donald Piragoff: Yes, I speak to them, but if you're asking—

Mr. Andrew Kania: Good. Do they provide recommendations to you on matters from time to time—

Mr. Donald Piragoff: Yes, they do.

Mr. Andrew Kania: —about what they might like to see changed under the law?

Mr. Donald Piragoff: We consult the provinces. We consult the RCMP. We have a network of consultation in Canada to determine whether or not reforms are necessary.

Mr. Andrew Kania: Have you received any recommendations from anybody, whether oral or in writing, suggesting that it is necessary to put these back into the law?

Mr. Donald Piragoff: I think if you ask the RCMP, they would indicate that they think these provisions would be useful.

Mr. Andrew Kania: Have you received any recommendations, either orally or in writing—you yourself, your department—suggesting, making requests, that these are necessary?

Mr. Donald Piragoff: In oral conversations? I think my officials have consulted with the RCMP and others. I personally haven't, but there are others who have.

Mr. Andrew Kania: Thank you.

The Chair: Others in his department have.

Madam Mourani.

Mr. Andrew Kania: He didn't say that. He said others have. Don't add evidence, please.

The Chair: Madam Mourani.

[*Translation*]

Mrs. Maria Mourani: Thank you, Mr. Chair.

I have a very simple question for Mr. Piragoff. I would like to know what groups or individuals you consulted while this bill was being developed. Whom did you ask for an opinion on the bill?

[*English*]

Mr. Donald Piragoff: The original bill was reviewed by a Senate committee, as well as a committee of the House of Commons, which made recommendations. The House of Commons committee recommended that the provisions should be extended and continue. Both committees made recommendations as to amendments they thought should be made to improve the provisions. Both committees made reports.

We examined those reports. We consulted internally within the federal government with respect to the recommendations made by both the Senate committee and the House of Commons committee. We've also had consultations with the provinces, because we do discuss security issues with the provinces, because they do have a role in terms of investigation and prosecution. Those are the people who we would have been consulting with.

[*Translation*]

Mrs. Maria Mourani: You said you consulted RCMP and CSIS officials.

[*English*]

Mr. Donald Piragoff: They would have been part of internal government discussions.

[*Translation*]

Mrs. Maria Mourani: Did you consult any other agencies?

[*English*]

Mr. Donald Piragoff: I can't, off the top of my head, recall exactly who they were, but if you want, we can answer—

[*Translation*]

Mrs. Maria Mourani: I would like you to send us a list of departments, ministries and agencies that rely on Public Safety Canada.

Thank you.

[*English*]

The Chair: Are you finished, Madame Mourani?

[*Translation*]

Mrs. Maria Mourani: That's all, Mr. Chair.

[*English*]

The Chair: We will go back to the government side, but first I would like to ask a question.

For my own edification—and some of it may end up being hypothetical, but I want to go back to why this would be used.

The question has come up in regard to the Toronto 18. Am I not correct in assuming that authorities were able to somewhat gather evidence? They watched. They knew what was going on. Wouldn't it be their preference to charge under the existing Criminal Code in a case like the Toronto 18, where they had the opportunity to watch, to see, and to know there was evidence?

Wouldn't this be a practical bill...if all of a sudden that opportunity to gather evidence was not there, that phone call comes, there is an imminent threat, and they do not have the opportunity to gather that much-needed evidence but they have to stop a terrorist attack? That's what this bill is here to accomplish. Is that correct?

● (1725)

Mr. Donald Piragoff: The purpose is to provide the police with some power to disrupt preparatory acts before the police would actually have the ability to effect an arrest.

The Chair: So if you were a police officer, or even a CSIS agent, wouldn't you much rather charge someone under the Criminal Code? If you did, then you could use.... The problem here is that if we gather evidence in this hearing, it can't be used in a deportation and it can't be used in any criminal action anywhere down the road. Is that correct?

Mr. Donald Piragoff: During the investigative hearing, yes. It's clear in the bill that—

The Chair: So they couldn't take the evidence they have and use it against them. If I were an RCMP officer, I would say, “Listen, I'd rather gather evidence so that I can charge this guy and I can get him”, but this here is simply to save the public from a terrorist attack. Even though there may not be a charge, they may be able to save lives. Is that correct?

Mr. Donald Piragoff: That's a decision the police would have to make. If they have the evidence to effect an arrest, then I would think, as you say, they would effect the arrest. If they don't have the evidence yet to effect an arrest, this would give them the power to disrupt preparatory conduct and, as you say, protect the public.

The Chair: I'm going to call that government time.

I'm going to ask Mr. Davies if he would like to have a quick question at the end here.

Mr. Don Davies: Thank you, Mr. Chairman.

We had these provisions in substantially similar form from 2001 to 2007, and then of course they were sunsetted and we didn't have them for the last three years, from 2007 to 2010. I have two quick questions. One is, how many times were these provisions, preventive detention and administrative arrest, used from 2001 to 2007? Can I ask that first?

Mr. Donald Piragoff: The investigative hearing was used, as far as we know, once, in the course of the Air India trial in 2003, I believe it was. The preventive arrest powers, as far as we know, have not been used. We never used them in that time period.

Mr. Don Davies: We know that from 2007 to today, of course, they've never been used because there hasn't been a law.

Isn't it fair to say that pretty much in the last 10 years—we're in our tenth year now—we haven't had any example of a terrorist activity that's occurred that has not been able to be successfully broken up by the powers that are currently possessed by the police under the Criminal Code? Factually, that's what the evidence would suggest.

Mr. Donald Piragoff: Factually, we've been lucky and have not had a terrorist incident.

Mr. Don Davies: Would it be a fair conclusion to say that if we were just basing it on the facts, just on the evidence before us, not on our speculation or worry but just on the facts...would the logical, legal conclusion not be that the current powers we have under the Criminal Code are sufficient to break up potential terrorist activity, based on the facts?

Mr. Donald Piragoff: Based on the facts that have presented themselves to date, but I can't talk about what the facts might be in the future.

Mr. Don Davies: Sure.

Mr. Donald Piragoff: That's the issue. That's what this committee has to decide.

We can indicate where there's a gap, and I've indicated where the gap is. I think you and I agree where there is a gap in the law. The question of whether you believe that gap should be filled or not is a policy question, and that's not a question I can answer.

I can only tell you what the bill would do, where the gaps are in the law, and where the bright lines are in the law. Whether you want to extend the law is a policy issue. That's for parliamentarians to decide.

Mr. Don Davies: As a committee we want to determine what the proper policy should be. I'm trying to get a factual understanding in front of us to determine whether these powers are in fact needed or not.

Obviously, we could give extraordinary powers to the police. We could allow them to detain for a week. I understand your testimony is that these powers are more benign when compared to other jurisdictions, but they still do represent giving additional powers to the police for preventive arrest and administrative detention—I probably have those two mixed up—beyond what they have currently under the Criminal Code.

I want to thank you for your testimony here. I'm sure it will be very helpful as we deliberate going forward.

● (1730)

The Chair: Thank you very much, Mr. Davies, for ending on that note.

We want to commend you for sticking around for the last hour and for your input into this as we discuss this very important piece of legislation.

I think all parties want to get the balance, and they want to have the resources for our authorities to prevent terrorist attacks, but we also want to be very cautious of human rights and the balance there.

Anyway, thank you very much.

Before we adjourn, this is the last meeting. I want to wish each one of you a very Merry Christmas and a Happy Hanukkah, and all the other happy holidays, festive and whatever else. Have a Merry Christmas, and we'll see you back here hopefully in February and not a lot before.

We're adjourned.

Published under the authority of the Speaker of the House of Commons

SPEAKER'S PERMISSION

Additional copies may be obtained from: Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the following address: http://www.parl.gc.ca

Publié en conformité de l'autorité du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

On peut obtenir des copies supplémentaires en écrivant à : Les Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5
Téléphone : 613-941-5995 ou 1-800-635-7943
Télécopieur : 613-954-5779 ou 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : http://www.parl.gc.ca