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Chair

Mr. Kevin Sorenson

Standing Committee on Public Safety and National Security

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● (1530)

[*English*]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): I call the meeting to order.

Good afternoon everyone. This is meeting number 59 of the Standing Committee on Public Safety and National Security, on Monday, November 19, 2012.

Today our committee is commencing our study of Bill S-7, An Act to amend the Criminal Code, the Canada Evidence Act and the Security of Information Act.

Our first witness is the Hon. Rob Nicholson, Minister of Justice. He is accompanied by Mr. Donald Piragoff, senior assistant deputy minister of the policy sector at the Department of Justice. I see Mr. Glenn Gilmour of the criminal law policy section will also be with us.

We want to thank the minister for coming to the public safety and national security committee. It's an honour. We are frequented by the Minister of Public Safety here, but a special welcome to you today, sir. We thank you for assisting us with our study of this bill and providing us with the appropriate officials from your department to help us understand it better.

I also understand you will be with us for one hour. You have an introductory statement on Bill S-7 and then you will take some questions.

Welcome. We look forward to your comments.

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

You're right: I'm not often before this committee. In fact, I don't remember ever appearing before this committee, but the honour is certainly mine to do so.

Thank you very much for the opportunity to talk about the Combating Terrorism Act, Bill S-7. It proposes to amend the Criminal Code to ensure that Canada has the tools it needs to combat terrorism and to protect its citizens.

The legislation proposes to re-enact the investigative hearing and the recognizance with conditions clauses. In addition, it will create a new offence of leaving or attempting to leave Canada for the purpose of committing certain terrorism offences.

These tools were first created as part of the Anti-terrorism Act. The investigative hearing was intended to help in the investigation of past or future terrorism offences, while recognizance with conditions was intended to disrupt those who were in the planning stages of an attack.

The proposed investigative hearing provision would allow the courts to compel a person who has information regarding a past or future terrorism offence to appear in court and to provide the information under questioning.

The proposed recognizance with conditions provisions would require a person to enter into an agreement, before a judge, to abide by reasonable conditions imposed by the judge in order to prevent the carrying out of a terrorist activity.

The investigative hearing and recognizance with conditions, when enacted, would contain new safeguards in addition to the numerous safeguards originally enacted in 2001. Let me list some of them.

First, for the investigative hearing, the consent of the relevant attorney general would be required. Second, the person compelled to appear in court would have the ability to retain and instruct counsel at any stage of the proceedings.

In all cases, reasonable attempts would first need to be made to obtain the information by other means. The information provided by the person or anything derived from that information would be generally inadmissible against him or her in any criminal proceeding.

If a person were arrested with a warrant to attend the investigative hearing, there would be clear limits, set out in the bill, as to how long the period of detention could be.

The federal and provincial attorneys general would be required to report annually on any use of the investigative hearing provision, and the annual reports of the Attorney General of Canada would include an additional requirement that he or she provide an opinion, supported by reasons, on whether the provision should remain in force.

Now I'll go to recognizance with conditions. Again the consent of the relevant attorney general would be required.

A warrantless arrest of a person could only be made in very limited circumstances, such as where the laying of information before a judge has been rendered impractical by reason of exigent circumstances and the peace officer suspects, on reasonable grounds, that the detention of the person is necessary to prevent a terrorist activity.

If the person were arrested without warrant, the officer would either have to lay information before the judge, generally within 24 hours, or release the person, and before laying the information, the peace officer would have to obtain the consent of the attorney general.

A person detained in custody would have to be brought before a provincial court judge without unreasonable delay, and in any event within 24 hours of arrest, unless a judge was not available within that period of time, in which case a person would have to be taken before a judge as soon as was feasible. The hearing would then have to be held within 48 hours.

The Minister of Public Safety and the minister responsible for policing in each province would be required to report annually on the arrest without warrant power, while federal and provincial attorneys general would be required to report annually on any use of the other elements of this regime.

The annual reports of the Attorney General of Canada and the Minister of Public Safety would include an additional requirement that they provide an opinion, supported by reasons, on whether the provisions should remain in force.

● (1535)

As well, Bill S-7 proposes the creation of new offences for leaving or attempting to leave Canada, or going or attempting to go on board a conveyance with the intent to leave Canada for the purpose of knowingly participating in or contributing to any activity of a terrorist group for the purpose of enhancing the ability of any terrorist group to commit a terrorist activity, knowingly facilitating a terrorist activity, committing an indictable offence on behalf of a terrorist group, or committing an indictable offence that constitutes a terrorist activity.

These new offences are intended to strengthen the ability of law enforcement to arrest, and the crown to prosecute, a person who has left Canada or is attempting to leave Canada for the purpose of committing these terrorism offences.

Finally, Bill S-7 also responds to the parliamentary review of the Anti-terrorism Act that was conducted by committees of the House of Commons and the Senate from 2004 to 2007 and proposes some changes to section 38 of the Canada Evidence Act to ensure that it accords with recent jurisprudence in that area.

I would like to address some of the criticisms made regarding investigative hearings and recognizance with conditions.

One criticism has been that the tools are unnecessary because to date the current criminal law provisions designed to combat terrorism have proven to be sufficient.

If we were to approach life based on the assumption that because no harm has actually befallen us there would be no need to prepare for the possibility that harm might arise, ours would be a far different world. That is not the case. That is not the world in which we live. We know that we have to take steps to reduce the possibility of harm that can suddenly arise, and it's only prudent to take steps to try to prevent such a risk from arising. The fact that no harm has yet arisen or that the proposed amendments have not been utilized is insufficient reason to conclude that these measures are not needed.

Some have claimed that investigative hearing offends the right to remain silent. This argument was expressly made in the 2004 constitutional challenge to the investigative hearing and was rejected by the Supreme Court of Canada. The court noted that certain elements of the protections against self-incrimination in the investigative hearing legislation even go—and I quote—"beyond the requirements in the jurisprudence, and provide...absolute derivative use of immunity, such that evidence derived from the evidence provided at the judicial investigative hearing may not be presented against the witness in another prosecution."

Let me address another criticism made of Bill S-7. The bill proposes to create four new terrorism offences of leaving and attempting to leave Canada for the purpose of committing terrorism offences outside the country. There are those who have expressed the concern that the creation of these offences could violate Canada's international obligations in the event that someone who is charged with any of these crimes is a young person—that is, someone who is under 18 years of age—but, as you know, there is a specific piece of legislation that applies to young persons charged with crimes, and that is, of course, the Youth Criminal Justice Act. Bill S-7 does not change that in any way. In fact, the Youth Criminal Justice Act specifically states that despite any other act of Parliament, other than the Contraventions Act and National Defence Act, it has exclusive jurisdiction in respect of any offence alleged to have been committed by a person while he or she was a young person.

The Youth Criminal Justice Act recognizes that the youth justice system must be separate from the adult system and be based on the principle of diminished moral blameworthiness of youth. It emphasizes rehabilitation and reintegration, just and proportionate responses to offending, and enhanced procedural protections for youth. It contains a number of significant legal safeguards to ensure that young people are treated fairly and their rights are protected. It also sets out specific youth sentencing principles and options.

Thank you very much. I look forward to any questions you may have.

● (1540)

The Chair: Thank you very much, Minister.

We'll move into the first round with Ms. Bergen for seven minutes.

Ms. Candice Bergen (Portage—Lisgar, CPC): Thank you very much, Mr. Chair.

I also want to thank you, Minister Nicholson, as well as your officials, for being here.

As our chair said, it's the first time we've had you at our committee, and we welcome you. We're very pleased that we can look at this important bill that our government obviously supports and believes to be an important tool in fighting terrorism.

Minister, I want to ask you specifically about the two provisions you spoke about, which will be reinstated with this bill. My understanding is that they ceased to exist in 2007 and that our Prime Minister and our government, ever since then, have been working to reinstate them. Can you explain in layman's terms what "recognizance with conditions" is and is not, in terms of the rights that individuals would still have as opposed to the rights of someone who was actually placed under arrest? Can you explain what it is and why it's an important tool for law enforcement to have in fighting terrorism?

Hon. Rob Nicholson: The "recognizance with conditions" provisions require an individual to enter into an agreement before a judge to abide by reasonable conditions imposed by the judge in order to prevent the carrying out of a terrorist activity.

This, along with the investigative hearings and the new provisions with respect to intercepting someone leaving the country for the purpose of participating or assisting in terrorist activities, is part of the preventative measures. These are measures put in place to stop the kind of activity that can terrorize a community or a country. They are put in place to prevent other very serious crime from happening.

I think they're important. That's why they were placed in there, in the original legislation, approximately 10 years ago now. They were there so that the police would have the tools to break up the kind of activity that we have witnessed in the world. I think they're important measures. I know those in the law enforcement community are very interested in making sure they have this measure. People involved with fighting terrorism are supportive of it.

As you quite correctly pointed out, they did lapse in 2007. The legislation provided that unless Parliament renewed them or extended them.... I was justice minister at the time, and my understanding was that we were going to be able to at that time, but that wasn't the case.

We continue to believe in the importance of them, Mr. Chair, so I'm pleased that they've now been passed by the Senate. Certainly it's my hope that we will continue, that they'll be passed completely by Parliament, and that they'll be part of the tools that law enforcement agents will have to break up terrorist activity.

● (1545)

Ms. Candice Bergen: Just to be clear, if law enforcement suspects that an individual is engaged in activity that would be contributing to terrorism in some way, or compromising the safety of Canadians in terms of terrorist activity, law enforcement could go to a judge and ask that conditions be imposed on that individual so that those actions cease to happen, and then, together with the investigative hearing, be able to determine if there are other actions that need to end.

Is there a responsibility on those investigators and the judge to make sure that all other avenues of investigation have already occurred?

Hon. Rob Nicholson: There is. That is one of the issues that will be before the courts: to see whether in fact this was reasonable and other tools were investigated and other attempts looked at.

It's a question not just of the investigative officer but also, as I indicated, with the consent of either the provincial or the federal attorney general. As I pointed out in my opening remarks, a number of safeguards have been put in place in addition to the ones that were there 10 years ago, when this was brought before Parliament.

I think these are reasonable measures, because ultimately we all have a stake in trying to prevent and break up possible terrorist activity. That's the world in which we live. We understand that. The tools have to be there. However, as you've pointed out, there's a requirement to look at these acts in a reasonable manner; that will be overseen by the court. It will need the consent of the Attorney General.

As I pointed out as well, these won't be operating in a complete vacuum, in the sense that there will be no oversight. No: the attorneys general will make annual reports and assessments; Parliament can, on a regular basis, have a look; and the public will know when and if these measures have been used, and their usefulness.

Again, I think these are important tools to have.

The Chair: You have a minute and a half left.

Ms. Candice Bergen: In regard to the safeguards that are in place, can you expand a little further on those, Minister, including the rights that an individual would have and the role that obviously not just law enforcement but the judge will play in making sure those safeguards are upheld while at the same time protecting the safety of Canadians?

Hon. Rob Nicholson: I think it's important, and I think it's important to note that the individual has the right to counsel throughout this process. I think that's an important component.

As I indicated as well, the statements made by the individual won't be used against him or her in subsequent criminal proceedings. I think that's important. The two exceptions are, of course, if there was perjury or if the individual was contradicting the facts they'd already given. Those are some exceptions, but this will not be used against them in criminal proceedings. That's the general rule. They have legal counsel that they're entitled to.

I think both of those points are important.

Ms. Candice Bergen: Thank you very much.

The Chair: Thank you very much, Ms. Bergen.

We'll move to Mr. Garrison, please, for seven minutes.

Mr. Randall Garrison (Esquimalt—Juan de Fuca, NDP): Thank you very much, Mr. Chair.

Thank you to the minister and the officials for appearing today.

Obviously, on all sides of the House we share the concern about preventing terrorism, but what we've seen with the introduction of this piece of legislation and several others causes concern because it appears the government is relying on further legislative measures, some of which clearly have impacts at least on basic rights, while at the same time cutting budget spending in the front-end areas of law enforcement and the Canada Border Services Agency, which might have the biggest impact in actually preventing terrorism. That's the context in which I am approaching my questions: this question of balance between the measures we're taking in order to prevent terrorism and basic rights in Canada.

You started off by talking about why we need investigative hearings and recognizance with conditions, since they were never used when they were in place. What consultations have taken place at this point that would lead you to believe these measures should be reintroduced? In other words, where is the demand? Has this come from law enforcement, has it come from community agencies, has it come from CSIS? Why are you bringing these back at this point in Parliament when they had never been used before?

● (1550)

Hon. Rob Nicholson: These measures were enacted to meet the challenges that the world faced in the early part of the 2000s. As you know, these were looked at and a number of people came forward in 2007. You might want to have a look at this. It was proposed by the government at the time that we would continue. We had a look at them ourselves and we had discussions, as I do when I go across this country. I always meet with law enforcement agencies, I meet with attorneys general, I meet with people who are concerned about terrorism or crime in this country.

What we have done is strike that balance that you mentioned in your question to me. You'll see the safeguards are there throughout. There are more safeguards with respect to this provision than there are to ordinary criminal law provisions, quite frankly. You can be charged under the Criminal Code, and the consent of the federal attorney general or the provincial attorney general or the agents of the attorney general isn't needed. Here you need that consent, so this is an added protection over and above what might normally be considered.

So have we struck the right balance? Yes, I believe we have, and I think your investigation will confirm that. I've pointed out half a dozen of them to you, and when you have a look at the legislation, I think you'll come to the same conclusion that I and my colleagues have, which is that this is very reasonable and these tools are good to have.

The fact that they're not necessary does not dissuade me that these are important tools. If we were the subject of a terrorist attack that could have been prevented had tools like these been there, we would be subject to criticism, as you can imagine, and the horror of the Canadian public, saying that every step has to be taken to prevent such things.

I'm very interested in changes to our laws that help prevent tragedy and crime. You perhaps had a look at the provisions with respect to protecting children. The two new offences we put in there were designed to break up any kind of activity before the child gets molested, in terms of two adults conspiring with each other or if the individual gives sexually explicit material to a child. Again, people ask, “Why is this necessary?” Well, we want to stop the activity before the child is actually abused. This is in that same line. We want to have the tools in place to break up and investigate possible terrorist activity before it actually happens.

Again, I think these measures are very reasonable. They were reasonable 10 years ago when the then government introduced them, and this is our fourth attempt, as you may know, Mr. Chair, to introduce them. I think these are important tools to have, and with respect to the balance you indicated, I outlined half a dozen in my initial comments to you. I think your analysis and study of this will confirm that.

Mr. Randall Garrison: My understanding, then, is that this is the consultation in these hearings. We will be looking forward to hearing what witnesses have to say here.

In 2006 the House of Commons Subcommittee on the Review of the Anti-terrorism Act, with regard to investigative hearings, suggested that these hearings should only be used when there is imminent peril that a terrorist offence will be committed. I think that was recommendation 4 in 2006. Yet this legislation still casts the retrospective light, and you are talking about preventing future terrorism attacks. Why not go with that recommendation from the committee to limit investigative hearings only to future acts?

Hon. Rob Nicholson: As Mr. Piragoff pointed out to me, to have the tools to be able to have some retrospective investigation into past activity is important to preventing future activity. I don't buy into the theory or possibility that somebody, just because they have been involved with prior terrorist activity, won't do anything in the future. I don't subscribe to that. Yes, you can be called before an investigative hearing regarding what you have done in the past in terms of facilitating or participating in terrorist activity. It seems to me that's a part of what we're trying to do: break up any possible future terrorist activity. I think this is only reasonable.

● (1555)

The Chair: You have 30 seconds.

Mr. Randall Garrison: Maybe I'll ask just a very quick and more specific question.

You said that as a protection against self-incrimination, any information derived in an investigative hearing can't be used in criminal proceedings.

Hon. Rob Nicholson: It's a general rule.

Mr. Randall Garrison: Are you then confirming that it could be used in immigration proceedings, citizenship proceedings, or any legal proceedings other than criminal proceedings?

Hon. Rob Nicholson: The Supreme Court of Canada has already interpreted that the protection against self-incrimination applies to immigration or extradition matters. I hope that answers your question.

The Chair: Thank you.

We will move back to Ms. Findlay, please.

Welcome to the committee.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): Thank you.

Hello to you, Minister, and to your officials. Thank you for being here today to talk with us about this important legislation.

I noticed in some news coverage of the Prime Minister today that he made some remarks at a public forum. He was speaking about the border between the United States and Canada. He said we share security needs and security threats. This is the world we live in today.

I am mindful of your statement that this is added protection and a balanced approach. I know we have in fact increased front-line border services officers by 26%. This is just one aspect of what we're trying to do to keep Canadians safe.

I'm a British Columbia member of Parliament, and of course there has been a lot of attention on the Air India case. In June 2004, there was a reference made with respect to that prosecution to the Supreme Court of Canada. At that time, the court upheld the constitutionality of investigative hearings. Does it give you a certain comfort with regard to this legislation that the Supreme Court of Canada has already found investigative hearings to be constitutional?

Hon. Rob Nicholson: You have raised a couple of matters, Ms. Findlay. Certainly, with respect to border security—and, as you know, I come from a border community that has four separate bridges along the Niagara River—I am keenly aware, as I have been all my life, of the issues that exist between our countries and the need for cooperation between Canada and the United States.

It does give me some comfort to know that in 2004 the Supreme Court of Canada upheld the investigative hearings provisions of the legislation that existed at that time. I am satisfied that all of the provisions are constitutional. That is a decision we make whenever we table legislation. For those who may argue that somehow these tools to prevent or control terrorist activity are somehow unreasonable—you are quite correct—I take some comfort in knowing, at least with respect to investigative hearings, that the top court in the country has had a look at them and has judged them to be constitutional. Again, this is consistent with the message we have consistently given with respect to these provisions—that they are necessary, that they are important to have, and that they are added tools in the fight against terrorism in this country, which affects not just Canada but the world. It's important that we have them. Yes, I do believe they will pass constitutional muster. As I say, one important component of these provisions has already met that test, in 2004.

Ms. Kerry-Lynne D. Findlay: There was also a companion case back in 2004, referred to as "Re Vancouver Sun", that also went to the Supreme Court of Canada. In that case, they held that there was a presumption that investigative hearings should be held in open court. That is, of course, consistent with most of our court proceedings.

However, I believe there is within this bill the ability, within judicial discretion, to order that such a hearing might be heard in private—for instance, if the safety of the person being brought forward to give testimony might be at risk or whatever. Is it correct that the presumption is a public hearing, but there can be flexibility for the judge?

● (1600)

Hon. Rob Nicholson: Yes. There was a companion case that was also dealt with in 2004 by the Supreme Court of Canada. They indicated, as you quite correctly pointed out, that there would be a presumption that this will be held in open court.

That being said, as sometimes happens in other aspects of our criminal law in this country, where it has become necessary and reasonable.... You cited the example of, for instance, the protection and the safety of a witness; the courts will take that into consideration.

The presumption of an open hearing has been part of the laws of this country for centuries. This bill is consistent with that presumption, as indeed all our legislation is. That said, we have a responsibility to protect those individuals who do come before the court, and therefore that additional power is given to the court.

Ms. Kerry-Lynne D. Findlay: The Special Senate Committee on Anti-terrorism looked at this bill before it came to us. I know they made a couple of what I would term minor amendments to Bill S-7. One of those was in the context of the recognizance with conditions. It amended that power by allowing for the conditions imposed in such a recognizance to be varied, not only by the judge who originally imposed the conditions but also by a judge of the same level of court.

How do you see that distinction, and why is that important?

Hon. Rob Nicholson: I think that's a very good point and I appreciate your raising it. That is an amendment or a change that we have accepted.

You will know, Ms. Findlay, from practising law, that sometimes it's not practical to get back before the same judge who issued the judgment, so you have to have some other mechanism by which the conditions can be reviewed. I think that's only fair. I think that's reasonable.

When that amendment came from the Senate, I was pleased to have it. I think it's reasonable. Things can happen. The judge may not be available. It may be impossible to get hold of that individual.

I think this is part of the reasonableness that characterizes this legislation, and I appreciate your raising it.

The Chair: Thank you very much.

We'll move to Mr. Scarpaleggia, please, for seven minutes.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Thank you very much.

Welcome, Minister.

You mentioned that even though investigative hearings and recognizance provisions have not been used, it's not proof, really, that they're not needed. It's the old argument that you may never need the airbag in your car, but you like to know it's there.

You speak about the need for those provisions in rather absolute terms—that we need them even if we don't use them, that we need them going forward.

If we absolutely need them, why would we need to sunset them?

Hon. Rob Nicholson: Again, these are additional powers that are given to the court. They are in direct response to the terrorist threat that we face.

Indeed, that was the rationale back 10 years ago, when a previous government enacted these measures. The rationale was that special powers are necessary to deal with what we have to face in the world.

At that time there was a five-year sunset clause on it. I have no problem with that, if you're proposing an amendment to get rid of—

Mr. Francis Scarpaleggia: No—

Hon. Rob Nicholson: I was just finding some clarification, Mr. Scarpaleggia, but I think it's reasonable to put in a five-year sunset clause.

Not only that, but as I indicated in my opening comments, as Attorney General of Canada I will give an annual report on this, and for provisions specific to the public safety minister, there will be an annual report on that.

I think that's appropriate and fair, but if, five years from now, you think without question that these measures continue to be necessary, you might want to have a private member's bill to say that we don't need to be looking at these provisions every five years. We would certainly look carefully at that.

Mr. Francis Scarpaleggia: That's what I'm saying. You're not absolutely sure they're needed in the long term.

Hon. Rob Nicholson: I believe they are needed, but just as we continuously review all pieces of legislation we have before Parliament to ensure they are doing what they can to represent victims and law-abiding Canadians, it's a continuing process. I hope the war on terrorism is over in the sense that we don't ever have to face anything like this, but again, I believe the tools have to be there.

● (1605)

Mr. Francis Scarpaleggia: If I'm not mistaken, in 2005 the Liberal government, under Paul Martin at the time, introduced Bill C-81.

Am I correct that there was a bill introduced, the idea of which was to create a committee of Parliament, a kind of national security...?

The Chair: I served on that committee. I don't know if it ever really came to a bill, did it?

Mr. Francis Scarpaleggia: Well, I think I read somewhere that there was Bill C-81, but I defer to you, Chair, because you have more lengthy experience on this committee.

But what do you think of that idea? It would empower MPs, for example, to know what the level of security threat was. I've been on this committee for over a year, and I don't think we've ever met in camera on anything, much less on issues of national security.

I'm wondering if you think it would be a good counterweight, really, for MPs to be able to look at, in camera, what the real security threats are—in other words, to have some of the same information that you have when you bring out legislation like this so that we could judge as well the extent to which these provisions are absolutely necessary.

Would you be in favour of that kind of thing?

Hon. Rob Nicholson: Well, I'm not in a position to comment on what was done or not done in 2005 by the previous government. With respect to the conduct of this committee, you're probably better off referring these matters to Mr. Toews in terms of the conduct of the committee.

That said, there are provisions, as you alluded to, for Parliament to have a look at these measures. I'm not requiring you to do them every six months, but there are provisions of doing it within five years.

Again, the committees control their own agenda in terms of what they want to discuss or what they want to investigate. Certainly I leave that to you and the committee, Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: I'd like to move on to the next question.

Is there any time limit on the forced questioning, or can it be extended indefinitely? How long can the questioning go in an investigative hearing, and who can ask questions during the interrogation—the judge, the crown prosecutor, a police officer, a CSIS agent, the lawyer of the person being questioned?

Hon. Rob Nicholson: As you might expect, the crown prosecutors would be asking the questions. As to the length of those questions, it's a little bit like all hearings before the court. They may be over very quickly or they may continue at some length.

Again, there is complete judicial oversight with respect to the hearing. It has to be conducted in a reasonable and fair manner. The individual has the right to have counsel at any time during the proceedings, to have a lawyer there with them, so....

Mr. Francis Scarpaleggia: In terms of leaving the country for the purposes of engaging in terrorist activity, how would you ascertain whether the person is leaving the country for that reason? Would it be more or less an after-the-fact thing, whereby someone would be apprehended abroad and then you would trace it back to the fact that they left Canada for this purpose? In practical terms, how would this part of the law be implemented?

Hon. Rob Nicholson: I suppose it's like any other Criminal Code offence, in that the information would come to law investigators. It may be parents letting the authorities know that their children are getting on a plane to join a terrorist group somewhere outside of the country, so it may come from parents, but when the information comes to law enforcement agents, it would be investigated, as they do in other criminal offences, and a decision would be made at that time.

Mr. Francis Scarpaleggia: Thank you.

The Chair: We'll go back to Madame Doré Lefebvre.

[*Translation*]

You have five minutes.

Ms. Rosane Doré Lefebvre (Alfred-Pellan, NDP): Thank you very much, Mr. Chair.

I also want to thank the minister for joining us today. The comments are most interesting.

The bill had been considered by the Standing Committee on Justice and Human Rights in the past. However, the Standing Committee on Public Safety and National Security is studying it as well, and we can benefit from that and from your comments.

I would like to briefly discuss the prohibition to leave or attempt to leave Canada to commit terrorism offences. As you mentioned in your opening remarks, clauses 6 to 8 of Bill S-7 would add four new offences to the Criminal Code. From now on, it would be prohibited to leave or attempt to leave Canada to participate in the activity of a terrorist group, facilitate terrorist activity, commit an offence for a terrorist group or commit an offence that constitutes terrorist activity.

Given that there are currently no exit interviews for individuals who leave Canada, how will law enforcement officers be able to determine that a person is leaving or attempting to leave Canada in order to commit acts of terrorism?

● (1610)

[*English*]

Hon. Rob Nicholson: Again, it would obviously depend upon the circumstances and the facts of individual cases. I gave one example to Mr. Scarpaleggia. You might have the parents contact law enforcement and say their son or daughter is getting on a plane and to join some sort of terrorist activity or terrorist group in some other country. There are many ways this information could come to law enforcement agents. They are carrying on a continuing effort to protect Canadians, so there are an infinite number of ways they would get the information that a person is leaving to join a terrorist activity or to assist in facilitating it. The offence is drawn broadly, in the sense that it captures the kind of activity.

What you're doing as well is sending out the correct message that in this country we don't tolerate that activity. It is unacceptable for somebody to leave this country to participate in terrorist activity somewhere else in the world. Yes, the tool is there to intercept that individual, but it also sends out the message—and I think it's the correct message—that Canadians find it unacceptable for anybody to leave this country to participate in criminal or terrorist activities.

Again, I think it's one more step that we can and should have implemented in the laws of this country.

[*Translation*]

Ms. Rosane Doré Lefebvre: At the beginning of your answer, you said that parents could report their children's intent to join a terrorist group. Could that apply to minors? In your opening remarks, you also mentioned that there were specific laws for minors. You say that parents could report that their child is going abroad. Would that be related to minors or not?

[*English*]

Hon. Rob Nicholson: That's right. As with all Criminal Code offences, the Youth Criminal Justice Act applies completely, and in no way compromises any of the provisions. You'll remember that in my opening remarks I set out some of the philosophy with respect to the Youth Criminal Justice Act to rehabilitate young people, to assist them and to get them reintegrated back into the community, and this bill in no way compromises any of the powers within the Youth Criminal Justice Act. That's the reason I mentioned it in my opening remarks, Mr. Chair. I wanted that to be very clear so that there's no misunderstanding: the Youth Criminal Justice Act and all its provisions—all its provisions—will continue to apply.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you.

Is the government planning to create an exit information system for everyone leaving Canada? Would that violate civil liberties?

[*English*]

Hon. Rob Nicholson: No, that's not the government's intention.

The Chair: Very quickly, Madame Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Okay.

Subsection 6(1) of the Canadian Charter of Rights and Freedoms guarantees the right to enter or leave Canada for all Canadians. Could the new offences added to the Criminal Code violate the charter? Can you discuss that further?

[*English*]

Hon. Rob Nicholson: All rights are subject to reasonable limitations. Again, if there was evidence that somebody is leaving this country for the purpose of participating in a terrorist activity, I think most Canadians would think that's reasonable, and I'm completely confident that's accommodated within the Constitution of this country as well.

The Chair: Thank you, Mr. Minister.

Thank you, Madame Lefebvre.

Mr. Hawn is next, please, for five minutes.

Hon. Laurie Hawn (Edmonton Centre, CPC): Thank you, Chair, and thank you, Minister, and your officials, for being here.

Some people suggest it's not needed because it hasn't been used—and Mr. Scarpaleggia's airbag analogy was very apt, I thought—or that this is aimed at the U.S., that there is no threat to Canada, that 9/11 didn't happen here. Well, there are 24 Canadian families who might disagree with that.

Let's talk about absolutes. There's an absolute certainty, in my view, that there is a terrorist threat alive in the world today. One of my other hats is as the Canadian co-chair of the Canada-U.S. Permanent Joint Board on Defence, and one of the things we look at is critical infrastructure. Canada and the U.S. are basically one grid of critical infrastructure, whether it's pipelines, power grids, telecom, media, Internet, whatever. Somebody could get at the U.S. by getting at Canada, very easily, so if we leave ourselves vulnerable by not having these kinds of safeguards in place, are we not posing a threat, in fact, to the U.S. because they can get at those kinds of critical infrastructures by attacking Canada and not necessarily directly attacking the U.S.?

● (1615)

Hon. Rob Nicholson: It's hard to imagine a terrorist threat to the United States that wouldn't also endanger Canada. I get together on a regular basis with the attorneys general of New Zealand, Australia, Great Britain, the United States, and Canada. We have very many shared interests when it comes to issues involving the law and the justice system in this country. It makes sense for us to get together, because we do share these common concerns.

As was pointed out by my colleagues at the table, we are in discussions with the United States on issues that affect the border. I think that's important because of the size of the border and because of all the important reasons you have set out in your comments.

Yes, we all have a stake in supporting our allies and in helping each other, because many times, with respect to crimes in this world, they find that they don't respect boundaries. Crimes that take place in one country affect people in other countries. There's probably no better example than the United States. As you pointed out, that terrible attack on September 11 that took place in the United States affected Canadians in many ways. It affected them because of the lives lost, but there were many repercussions from it that we experience to this day.

This is why it's important for us to continuously update our laws. In your examination of this issue, you may look at the Australian example and the British example, because they face the same challenges we do. Again, this is a reasonable response.

Hon. Laurie Hawn: Can I ask you a question on that? You talked about discussions with our allies and so on, which obviously are ongoing all the time. Can you make any comparisons to similar legislation in some of the other countries you have mentioned? Are we more severe, less severe, or in line?

Hon. Rob Nicholson: When we bring in legislation, we bring it in based on Canadian experience and Canadian analysis of the threats we face. That said, Britain has undergone a couple of revisions. There are provisions with respect to the detention of an individual. That's not the focus here; our focus is on investigation. We're not in the business of trying to imprison somebody we want to question. That's not what we're all about. I'm not suggesting that anybody else is, but if you look at the tone of a number of the pieces of legislation.... In the British example, a person can be detained for, I believe, 14 days. Fourteen days is the newest incarnation of that measure. I believe it was 28 days not that long ago. When you analyze this bill, you'll see that very quickly we have the individual before courts. Again, the focus is not to punish somebody in an investigative hearing; it's to get information that may assist in preventing terrorist activity at home or abroad.

We have a look at what Australia and other countries that have similar legal systems do. It's helpful, but ultimately it has to be a Canadian answer, a Canadian experience, and Canadian legislation. That's what we're all about, and this legislation is consistent with that approach.

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

We'll move back to Mr. Rafferty, please.

Before we do, in answer to Mr. Scarpaleggia's question, yes, Bill C-81 was introduced but was never brought to second reading. It was never really brought forward.

Go ahead, Mr. Rafferty.

● (1620)

Mr. John Rafferty (Thunder Bay—Rainy River, NDP): Thank you, Chair.

Thank you, Minister, and gentlemen, for being here.

Minister, what would your definition of a terrorist act be?

Hon. Rob Nicholson: Well, we're going to start with what happened on September 11 in the United States. That was a terrorist act. We see examples throughout the world. I know that London has experienced them. You can look at the Air India crash that took place. I was a fairly new member of Parliament back then. It was right here, and it was a Canadian example of these things.

Mr. John Rafferty: What I'm thinking of is a situation like Nazi slogans written on a synagogue, for example. Is that a terrorist act?

Hon. Rob Nicholson: Sorry, would you repeat that? I apologize, Mr. Rafferty.

Mr. John Rafferty: I'm thinking not of the very obvious sorts of cases, but of cases in which there might be a grey area—writing Nazi slogans on the side of a synagogue and that sort of thing. The reason I ask this question is that what this recognizance clause allows a peace officer or peace agent to do is arrest someone without a warrant, if the agent believes that a terrorist act is going to be committed.

The first question is, how do these people know or how do they qualify an act as “terrorist” before they arrest someone without a warrant?

Second, does it make you at all uneasy that this clause could be used not in the proper way; in other words, as a denial of justice for someone, or in a situation of ruining someone's reputation when they're absolutely innocent of something?

I think there is a grey area here. Who makes this determination?

Hon. Rob Nicholson: You've made a very good point. You asked me what my definition is, or how I would describe a terrorist activity, but it's not my definition of a terrorist activity that ultimately will determine it; it's the definition contained within the Criminal Code. Everyone who comes forward using either these sections or other sections of the laws of this country is bound by the definition that Parliament has put together.

Mr. John Rafferty: But who is checking into that peace agent who wants to arrest someone without a warrant? Is that—

Hon. Rob Nicholson: They make that determination on a regular basis. If they believe that somebody is committing a crime and don't adhere to not just the definition of terrorism but to any of the provisions of the Criminal Code.... This is why we have judicial oversight. I have indicated the consents of the attorneys general, whether at the provincial or the federal level, depending upon the prosecution.

Peace officers are bound by the provisions of the Criminal Code, so it's that definition that will govern the activity of these individuals.

Mr. John Rafferty: There is also a clause to be seen that I think says “as soon as possible”, so detention could last for a length of time.

Hon. Rob Nicholson: It's not more than 24 hours, and again, every effort has to be made. It's not a question, as I indicated in one of the examples, of detaining somebody for 14 days or 28 days. That's not the case in Canada, and you, if you practised law, would know that even with respect to bail hearings and that sort of thing, we get people before the courts as quickly as possible.

Mr. John Rafferty: I have another question. This is maybe the second or third time now that it has been asked.

You made a comment about an example of getting a call from parents that their son or daughter was going to leave the country to commit a terrorist act. Again, I'm getting back to the peace agent or the person who makes this determination. How will they make a determination whether, for example, the parents are telling the truth or don't want their daughter to go off and marry somebody they don't approve of? Is there some kind of safeguard to ensure that the information they're getting is correct before someone ends up in detention who really shouldn't be in detention?

Hon. Rob Nicholson: Again, it's like any criminal offence: you have to have reasonable, probable grounds. One of the things that—

● (1625)

Mr. John Rafferty: It has to be done quickly; they're getting on a plane—

Hon. Rob Nicholson: And you want it to be done quickly. If we're trying to prevent a terrorist activity, we want them to move quickly on that score, but we also want to move quickly to make sure that somebody isn't unfairly detained or improperly detained.

This is why I'm satisfied and pleased, and I hope you are when you have a look at all the safeguards that have been put in place on this, starting with the consent of the Attorney General. I'm satisfied that these, just like all investigations of criminal activity, have to be reasonable under the circumstances, and so—

The Chair: Mr. Rafferty, our time is pretty well up here.

Hon. Rob Nicholson: If you're asking me, I have complete confidence in the Canadian judicial and criminal system. It doesn't get any better than right here in Canada.

The Chair: Thank you, Mr. Minister.

We'll now move back to Ms. Findlay, please, for five minutes, and in fact to wrap this up.

Ms. Kerry-Lynne D. Findlay: Mr. Minister, I know there are similar pieces of legislation in other countries—the United Kingdom, for instance, and Australia. My understanding is that in the United Kingdom, detention can be up to 14 days. I think that in Australia too it's up to that number.

Am I correct in understanding what you're saying, that as with other parts of the Criminal Code, here someone must be brought before a judge within 24 hours? Perhaps that can be extended to 48 hours, but the maximum would be 72 hours; is that correct?

Hon. Rob Nicholson: That is very correct, and thank you, Ms. Findlay, for setting that out. I think that's important. I'm often asked this question whenever we have changes to the criminal law of this country: yes, but in some other jurisdiction, here is what they're doing.

I appreciate that. Each country, each jurisdiction, has to have a look at these issues and come up with a plan. Countries with legal systems similar to our own are continuously looking at these things, and you pointed out that in the British example an individual can be detained for 14 days; up until very recently that was 28 days. They're having a look at it themselves.

That said, it's a little bit like bail hearings. We want to get people before the criminal justice system. We want to get them into court. We want them to have that opportunity to make sure their rights are protected. Again, I pointed out to you that the individual has the right to counsel. I think that's only appropriate and fair in our judicial system.

Getting somebody before a judge in an expeditious manner is critically important. I think that's fair on every level. We want to have information. We want to protect Canadians against terrorist activity, and at the same time we want to make sure this is a reasonable process that protects the rights of an individual and at the same time protects the rights of Canadians.

In that sense, it's dissimilar to what's taking place in Great Britain and Australia, but nonetheless this is a very reasonable response with considerable safeguards. Your analysis, Mr. Chair and committee members, will confirm, I believe, the comments that I have made: that this measure can and should be brought back into the laws of this country.

It was on the books for five years after it was passed, and not by this government. I wish we were in power for the last 10 years, but that wasn't the case. We didn't bring it in, but that said, I think these were important measures to have and I wish you and committee every success on that. However, I believe your analysis will confirm that these measures are very reasonable and are just what this country can and should have on its books.

Ms. Kerry-Lynne D. Findlay: Am I correct in understanding that the purpose investigative hearings is to disrupt terrorist activity or potential terrorist activity at a preventative stage, but that they do not result in a criminal offence or a criminal hearing? Is that correct?

Hon. Rob Nicholson: I think it's a good point. I forget whether it was Mr. Scarpaleggia who asked me about this, but I was asked about it. This information on those investigative hearings, whether it's information with respect to past or future or indeed present terrorist activity, will not be used to incriminate the individual in any criminal charges that may have been laid or would be laid on the individual, so there's protection against self-incrimination.

I did say there would be an example if the individual is perjuring himself or herself. There are the usual common law exceptions, but that said, it's very clear that this kind of evidence won't be used at any subsequent criminal hearing. I think that's reasonable as well.

Ms. Kerry-Lynne D. Findlay: I understand that, but also the recognizance with conditions is not in itself a criminal charge, is it?

● (1630)

Hon. Rob Nicholson: It's not a charge, no. It's like a peace bond. Most people are quite familiar with them. The individual is brought before the court and conditions are set upon that individual. That has been part of our criminal justice system for many years. This is one more tool to break up the kind of activity that all of us abhor and want to do everything we can to stop.

Ms. Kerry-Lynne D. Findlay: Thank you.

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

I see that our hour is up. We want to thank you for appearing and commencing this study. We look forward to the study.

We are going to suspend for just one moment and then we will pick up where we left off. We'll just continue on the same, so we'll suspend for one moment and allow the minister to leave.

Now we'll call this meeting back to order. This is just really a continuation of the first hour. We are not going to go back to the first round, the second round. We're going to stay on the round that we are on.

Mr. Rousseau, it was your turn to question the minister. As you can see, our minister has had to leave after the first hour, but there are two officials from the department here who can answer your questions.

You have five minutes.

[*Translation*]

Mr. Jean Rousseau (Compton—Stanstead, NDP): Thank you very much, Mr. Chair.

I am an ardent supporter of human rights and freedoms, including the freedom of movement within the country and the freedom to exit and enter the country. As a Canadian, I have the right to leave and enter the country as I please, and I would like to know whether the new offences added to the Criminal Code through Bill S-7 violate that right I have, as a Canadian, under subsection 6(1) of the charter.

Could you clarify that for us, please?

[*English*]

The Chair: Go ahead, Mr. Piragoff.

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

As the minister indicated, all the rights in the Canadian Charter of Rights and Freedoms are subject to section 1 of the charter, which provides that the rights are guaranteed, subject to reasonable limits imposed by a free and democratic society. The view of the government is that it is a reasonable limit upon Canadians' constitutional rights to enter, remain in, or leave the country if they are leaving the country for the purposes of facilitating, participating in, or actually committing a terrorist offence.

This is not simply a question of people leaving to go to a foreign country to commit terrorist acts. It may be that they're going there to obtain training and then coming back to Canada and actually threatening the lives and safety of Canadians. They are trained by a terrorist group, and then they're able to use that training to threaten the safety of Canadians.

In the context of public safety there's a strong case to be made that it is a reasonable limit to prevent people who are intentionally leaving the country not for a holiday and not for personal purposes, but for terrorist purposes. We should be able to stop them.

We stop people from coming into the country if they have criminal designs or criminal purposes. We stop people from coming into the country if they have terrorist purposes. Our immigration law provides that. The government believes it's also a reasonable limit on people who leave this country for terrorist purposes, and even come back to this country. That is also a reasonable limit. It's a balance, as the minister indicated.

● (1635)

[*Translation*]

Mr. Jean Rousseau: The gun registry system has been abolished. Will the government now create a registry to monitor Canadians' entries and exits?

[*English*]

Mr. Donald Piragoff: Mr. Chair, I think the minister answered that question already. The government does not intend to have a monitoring system. The minister said this is like any other criminal offence. Information comes to the attention of the police; upon further investigation, if the police have reasonable and probable grounds to believe that a person is about to commit an offence or will commit an offence, then they are entitled to arrest the individual.

Their source of information, as the minister indicated, may be parents indicating to the authorities that one of their children intends to leave the country. It could be other people in the community who are aware that youth in the community have been radicalized and that they intend to leave the country to be trained, or even worse, to actually join a terrorist group in a foreign country.

The minister indicated that Canadians would be very upset with the government if the government were to say, “Yes, we knew, and we suspected these youth were going to leave the country, but we had no power to stop them.” Then the kids go off and get killed. There would be some very upset Canadian families if that were the case.

[*Translation*]

Mr. Jean Rousseau: So information will have to be retained on individuals who are leaving and entering the country. Would Canadian citizens born in other countries potentially be the object of racial profiling? Who will establish the objective criteria? Will testimony from individuals be eligible to be used as evidence against others?

[*English*]

Mr. Donald Piragoff: Well, as the minister indicated, there is no record. There's no intention to keep a record of why people leave the country. When I go into a bank, there's no record as to why I walk into a bank. When I walk into a bank to make a deposit, to make a withdrawal, or to rob the bank, there is no record. It's the same situation when I walk onto a plane; no one knows why I'm getting on a plane.

However, if the police find out somehow that the reason I'm walking into the bank is to rob the bank, or if the police find out somehow that I'm getting on a plane for the purposes of committing a terrorist act, then the police have the right to intervene and stop me at the bank door or stop me at the airplane door. That's the way the criminal law works. We don't keep registers of people coming and going into the banks or onto airplanes, but if they can prove that the person is going into the bank or going onto a plane to commit a criminal offence, then the police have the authority to arrest individuals. It's the same—

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

Mr. Jean Rousseau: That's it? I was on a roll.

The Chair: That was six minutes.

We'll now move back to Mr. Leef, please, for five minutes.

Mr. Ryan Leef (Yukon, CPC): Thank you.

Thank you very much for that explanation, actually. I think you've provided a real “plain English” explanation that will resonate with Canadians about how that's applied and how we go about putting that provision in place.

Maybe I could get you to do the same with the provision for a recognizance; I think that has a possibility to stem a little bit of confusion. When somebody goes before the courts and a recognizance is negotiated, maybe you could give us some background on what sort of condition could be applied, based on your years of experience.

If somebody is involved in computer crime, for example, or computer terrorism, and using that as a networking system to communicate, could a reasonable condition be to stop them from communicating with the utilization of technology? Maybe you could give us some background on that so that we can understand the kinds of conditions that might be or could possibly be imposed and what would be reasonable and what would not be reasonable in terms of conditions.

Mr. Donald Piragoff: The types of conditions are very much contextual to the circumstances. You gave examples of misuse of a computer. Parliament has dealt previously with situations of imposing conditions on people who use computers to communicate with children for the purposes of luring, for example, and part of that was actually a power enacted by Parliament to provide conditions or prohibitions on people's use of computers.

Likewise, if the activity involves supporting terrorist groups by distributing material, etc., or being involved on the Internet, if it's reasonable that the person not go on the Internet or only go on the Internet with supervision, that could be a reasonable condition. It really depends on the circumstance: if the conduct of an activity has nothing to do with the computer, then prohibiting someone from communicating on the computer would not be reasonable. It really comes down to that question.

The other question you asked me was about the purpose of the recognizance with conditions. As the minister indicated, the purpose of that provision is not to detain a person. It's not preventative arrest. It is recognizance with conditions.

The purpose is to put a person under judicial control. It's to put some conditions on the individual. It is not to detain them for a long period of time, hoping that in that period of 14 days you'll put your case together and get enough evidence such that you can actually lay charges. That's not the purpose of this measure. It's very much, as the minister said, a provision to disrupt activity for people who have not yet committed a crime, or for whom there is not enough evidence to charge them or others. It's a means of putting some judicial control on the individual.

Of course, once you put judicial control on this individual, you've also indicated to others that the authorities are essentially investigating, and they will know that something is up. It may deter others from actually participating and going further with their ideas.

● (1640)

Mr. Ryan Leef: With their right to counsel, then, of course they're able to make representation when it comes to a recognizance issue. They can put a case forward as to what conditions they themselves might feel are onerous. They have an opportunity to plead their case. The judge can review and consider, and the crown has an ability to retort on it as well. It's a transparent process.

Mr. Donald Piragoff: As the minister said, Canadian law is not without precedent in this area. We have many years of experience with the peace bond process, which is very similar, whereby a person is ordered to appear before a court for the court to determine whether conditions should be put on the individual to ensure they do not cause danger to other individuals. In that hearing process the person has the right to counsel, evidence can be presented, and arguments can be made as to what conditions should or should not be put on an individual and on what's reasonable. These provisions are mirrored on existing provisions that have been on Canadian law books for many years.

The Chair: Thank you, Mr. Leef.

We'll go to Mr. Norlock, please.

Mr. Norlock, you have five minutes.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much, Mr. Chair, and through you to the witnesses, thanks for appearing today.

I'd like to start with a couple of questions, if we have time to go through them, and I would like you to be comprehensive in your answer, if possible.

The first one has to do with some of the recommendations made in previous hearings and suggestions from House of Commons and Senate committees in relation to the investigative hearing and recognizance with conditions, and how they have been incorporated into this bill. I believe there were some in 2006 as a result of the House of Commons Subcommittee on the Review of the Anti-terrorism Act that I happened to be a part of, and the February 2007 special Senate committee hearing, if you can recall.

Mr. Glenn Gilmour (Counsel, Criminal Law Policy Section, Department of Justice): With regard to the recognizance with conditions, it was the special Senate committee that recommended that the annual report for both the investigative hearing and the recognizance with conditions be an expanded annual report and that the Minister of Justice, or in this case the Attorney General of Canada, should be required to provide a statement along with reasons as to why he considers these two powers need to be renewed. We've taken that recommendation, and it's now in Bill S-7.

The House of Commons report recommended that the powers be extended for five years, and that recommendation is found in Bill S-7. As a result of the initial first attempt to bring back these provisions as they expired, when it was in the former iteration of Bill S-7, the Senate amended the legislation to make sure that there was a mandatory parliamentary review of these two powers before the powers expired. That amendment was made to Bill S-7 when it passed through the Senate, and that amendment continues to be part of this bill as well.

With regard to the investigative hearing, as you know, substantial safeguards were already in existence when the original legislation was passed in 2001, including the very robust use and derivative use immunity provision that the minister talked about earlier.

In addition, in order to respond to the recommendations of the House of Commons committee, which issued its own special report on these two powers in 2005 or 2006, I believe, we made a couple of extra changes.

The first was in relation to the requirement that had previously been existing in relation to using the investigative hearing to obtain information about a future terrorism offence. The condition was that you had to use reasonable attempts to get the information by other means; we decided to expand that not only to future terrorism offences but also to past terrorism offences, so for every case in which you want to use the investigative hearing, whether for a past or future terrorism offence, there would have to be an effort made by the police to obtain that information by other means. Reasonable attempts must have been made to obtain that information by other means.

Another change we made was because of the concern that was expressed before the House of Commons committee that was examining these two powers in the Anti-Terrorism Act in particular. There was a concern in relation to the investigative hearing. There is a power to arrest with warrant someone who is about to abscond, for example, before attending the investigative hearing. The question was raised that if you arrest that person by means of a warrant, how long can you detain that person under that warrant before the person can be released?

We wanted to make absolutely certain that the limit on detention was very clear in the code, so we put in the same time limit for detention for witnesses before a criminal trial. We plugged that into the investigative hearing provision, and that's the section 707 of the Criminal Code under which a witness can be detained. For example, if a witness is served with a summons to testify at a criminal trial and there is evidence that the person is about to leave without testifying, the person can be arrested by means of a warrant or arrest. The maximum period of time, though, that the witness can be detained is for a total of 90 days—30 days basically, and subject to judicial review, up to a total of 90 days. There is now that additional protection.

● (1645)

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

We'll move back to Mr. Garrison, please, for five minutes.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

To the officials, thank you for staying on with us to answer some more detailed questions.

I'll go back to the recognizance with conditions. I think both the minister and you referred to the period of 12 months. After my quick reading of the law, can that recognizance with conditions be renewed, and if so, how many times can it be renewed? Can it be renewed indefinitely? I don't see anything in the bill that addresses that aspect.

Mr. Donald Piragoff: It would have to be a new one. The recognizance with conditions can be a maximum of 12 months, and at the expiry of 12 months that recognizance would end, unless, of course, the authorities made an application for a new one. However, it would have to be a new application.

Mr. Randall Garrison: If there was a perception that the situation had not significantly changed, there would be the likelihood that there would be a reapplication and a new recognizance with conditions ordered.

● (1650)

Mr. Donald Piragoff: Yes, if the situation had not changed. Again, it really depends on what the facts are. It's not simply a renewal process; it's an actual new application. A full application would have to be made.

Mr. Randall Garrison: The distinction, then, is that there would have to be another hearing where someone would be entitled to legal counsel and go through the entire process again, but there's nothing to prevent it from happening on a repeated basis; the 12 months is not a maximum for an individual.

Mr. Donald Piragoff: If the judge is still of the opinion, or a second judge or another judge is of the opinion, that the conditions are necessary in order to prevent a terrorist activity, then that situation still exists. Just because 12 months or 11 months have expired doesn't all of a sudden mean the person is no longer a threat or the person should not be kept under conditions. It really becomes a factual situation. One would hope that over a period of time the threat would have lessened as a result of the imposition of the conditions.

Remember, the recognizance may not necessarily mean that this individual is the threat or the major perpetrator. These may be individuals who were involved in providing material support. By this period of time, other things may have happened. The police may have actually gained enough evidence to arrest the principal perpetrators in the interim.

It's geared toward prevention. It's not geared toward prosecution or investigation.

Mr. Randall Garrison: Then the same thing, I presume, would be true if someone refused the conditions. They could be jailed for up to a year; if they came back and a new application was made, essentially they could be maintained in jail indefinitely in Canada without being convicted of anything.

Mr. Donald Piragoff: That's the existing law with the peace bonds. The only way a person can be detained under a peace bond or under these proposed provisions is if they refuse to accept the conditions, in which case the judges say they shall be detained. That's based on parallels with the existing law for peace bonds right now. What I'm trying to say is that it's not a new concept.

Mr. Randall Garrison: I'm not an expert, but it would seem to be a big difference in that most peace bonds are entered into voluntarily in the Canadian court system. In other words, when someone asks for a peace bond, the other party comes into court and usually voluntarily agrees to it. In my experience with them, they are not always the result of an order that someone has refused to accept but are entered into voluntarily.

Mr. Donald Piragoff: I can't comment on the practice of how often the person is voluntarily.... And what does “voluntarily” mean, when the alternative is detention?

The Chair: You have about half a minute.

Mr. Randall Garrison: There's a great deal of concern, which I'll come back to if I get another chance, in some of the minority communities that in all the discussions around terrorism there's a focus on only one kind of terrorism, and normally that's associated with Islamic extremism or Islamic fundamentalism.

It seems in the community that often members of the Muslim community, for instance, have been the ones subject to security certificates, and no one else has been. There's a fear that this will be, as Mr. Rousseau raised earlier, subject to a kind of racial profiling, so that a certain group of Canadians become subject to penalties and restrictions that others are not subject to, because of events that take place outside the country.

The Chair: Thank you, Mr. Garrison. Unfortunately there's no time for the answer on that one, but you may want to incorporate it into another question.

Mr. Payne is next, please.

Mr. LaVar Payne (Medicine Hat, CPC): Thank you, Chair, and thanks to the witnesses for coming.

This is a really important study on this bill. I recently had a town hall meeting, and certainly one of the issues was terrorism.

I want to follow up on my colleague's comments in terms of investigative hearings.

Mr. Gilmour, first of all, you talked about the 90 days being under the Criminal Code section 707. I'm wondering if that is sufficient time to get the hearing done or to ensure they will be able to get the results they are looking for.

● (1655)

Mr. Glenn Gilmour: I would hope there would be sufficient time. Remember, this is an area into which we've built additional safeguards to add to the multiplicity of safeguards that were already part of the original legislation back in 2001. I wouldn't want to expand it beyond 90 days. We're trying to achieve consistency in treatment between a person who is arrested in order to testify, essentially as a witness at an investigative hearing, and a person who is compelled to testify before a criminal trial, and 90 days is the maximum for the latter. It seemed reasonable and logical to apply the same limit to someone who is detained as a witness pursuant to a warrant for an investigative hearing.

Mr. Donald Piragoff: It was also a recommendation of the committee.

Mr. Glenn Gilmour: It was also, as I mentioned, our effort to fulfill a recommendation made by the House of Commons committee that originally reviewed these two powers. They were concerned that the law was unclear as to how long a period of detention there would be for someone who was arrested pursuant to a warrant to attend that investigative hearing. Now the law, under Bill S-7, will be very clear that the maximum period of detention can't be any more than 90 days, and I stress “maximum” period of detention. Under section 707, if I recall correctly, every 30 days the judge has to determine whether the witness should continue to be detained.

Mr. LaVar Payne: When the minister was here, I believe I heard him say that the investigative hearings are constitutional. I just want to make sure you confirm that, so that Canadians understand that what we're doing here in this proposed law is constitutional and is not infringing on anybody's particular rights.

Second, do other countries have investigative hearings? If so, are they any different from what we're doing, or are we very similar in that process?

Mr. Glenn Gilmour: If you don't mind, I'll try my hand at answering that question.

With regard to the comparative aspect first, I think it is fair to say we are either equivalent or more restrained in our scope in terms of investigative hearing procedure.

The United States, of course, has the grand jury system, whereby a person could be compelled to testify in order to determine whether a criminal charge would be laid.

Australia has the equivalent of an investigative hearing system, which to some degree is similar to ours but in some respects is also different from ours. Their investigative hearing process is set out in their security intelligence legislation, but they have something equivalent to ours.

A major difference is in the United Kingdom. Mr. Piragoff mentioned that our investigative hearing process does not entail any criminal penalty relating to any offence at all. It's just to have someone come before the judge and answer questions posed to them by the crown. In the United Kingdom there is a specific offence of failing to disclose information about a possible terrorism offence, or for that matter even a past terrorism offence, to a police constable. Failure to provide that information is itself a criminal offence that's set out in an amendment to their Terrorism Act 2000. To that extent, it's fair to say that the United Kingdom goes even more strongly towards punishment and criminalization than we do.

I'm sorry; I forgot the first part of your question.

The Chair: The first part will have to be dealt with another time as well.

I'll go to Mr. Scarpaleggia, please.

Mr. Francis Scarpaleggia: In some countries, such as the U.K., failure to testify is punishable by...what were you saying?

Mr. Glenn Gilmour: It's a crime. It's not so much failure to testify; it's failure to report to a police constable if you have information.

Mr. Francis Scarpaleggia: Okay. In this case, if you are brought in for an investigative hearing and you don't cooperate, what are the sanctions?

● (1700)

Mr. Glenn Gilmour: The sanctions could be, I suppose, contempt of court. If the judge orders the person to answer and he refuses to, he will be dealt with in just the same way as would any other person who refused to answer.

Mr. Francis Scarpaleggia: You mentioned something about three days, which I didn't quite catch. Was it three-day limits on… detention?

Mr. Glenn Gilmour: I was talking, I think, about section 707 of the Criminal Code.

Mr. Francis Scarpaleggia: Yes, that's right.

Mr. Glenn Gilmour: A witness can be arrested pursuant to a warrant under the Criminal Code. There is a specific power to do that in certain limited cases, such as, for example, where a witness is about to abscond. Under section 707 of the Criminal Code, there's a scheme set out for how long a witness can be detained pursuant to that arrest warrant. The absolute maximum period is 90 days, but, as I said, at least every 30 days the judge has to review whether the witness should continue to be detained.

Mr. Francis Scarpaleggia: Maybe we meant 30 days?

Mr. Glenn Gilmour: I guess I wasn't as clear in my pronunciation as I should have been.

Mr. Francis Scarpaleggia: There's one part of the bill that I didn't understand when I looked at it a while ago. Maybe you could tell me what it means.

Clause 2 of Bill S-7 proposes to amend subsection 7(2) of the Criminal Code, which describes acts or omissions committed in relation to aircraft, airport, and air navigation facilities, in circumstances where these acts take place outside of Canada. Why are wording changes to section 7(2) of the Criminal Code required?

Also, what does "...act or omission committed..." mean? What would an act or omission be in relation to aircraft, airport, or air navigation facilities?

Mr. Glenn Gilmour: It could be criminal negligence, for example.

Mr. Francis Scarpaleggia: Oh, I see. Okay. Yes.

Mr. Glenn Gilmour: It is failing to do something that is your duty to do.

Mr. Francis Scarpaleggia: I understand.

Mr. Glenn Gilmour: On the proposed amendments to paragraph 7(2)(b), they're just technical amendments. What they're meant to do is to line up the various parts. At the end of paragraph 7(2)(b), for example, there's a reference to "an offence against any of paragraphs 77(c), (d) or (g)". There had been drafting errors—I'm not sure if "errors" is quite the right word, but they didn't quite line up properly. The offences were not right, and this is our response, to clarify.

Mr. Francis Scarpaleggia: Could we have introduced the notion of a special advocate into this legislation in the way we have a special advocate when security certificates are involved? Is there a possibility, or does it just not fit with this kind of legislation? Technically it just doesn't fit, or could it have been done? I'm not sure, but I thought a committee recommended the notion that a special advocate be introduced.

How could that be done, and why wasn't it done if it could be done?

Mr. Donald Piragoff: I think you answered the question when you said it doesn't fit.

The person is entitled to counsel, so the person has his or her own counsel. Special advocates in immigration proceedings are used in situations when the state has security information it wishes to present before the court but the information is of such sensitive nature that it should not be disclosed to the individual or his or her counsel. That's why the special advocate there is a person who would hear the information and represent the interests and cross-examine information. However, in this situation, the state is not leading any evidence against the individual. It's very much a situation in which the person being investigated provides testimony and that person could have his or her own lawyer if he or she wished.

The Chair: Please be very quick, Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: I'll make your life easier.

The Chair: Thank you, sir.

We'll go to Mr. Rafferty first, and then we'll come back to Mr. Payne.

Mr. John Rafferty: Mr. Piragoff, I wonder if you could explain to us why this bill is coming via the Senate and not through the House of Commons initially?

Mr. Donald Piragoff: I don't know. That's an issue for the government.

Mr. John Rafferty: You weren't part of any decision-making there?

Mr. Donald Piragoff: No.

Mr. John Rafferty: You heard the minister say earlier that he was talking about this bill and the provisions, in particular, being consistent with 200 years of history in terms of law. I think that's what he said—"being consistent"—yet previously, witnesses—and lawyers, I might add—have indicated that these two provisions we're talking about in particular today are a substantial departure from Canadian legal traditions. I don't expect you to say why they have said that. I'm not going to ask you that, because you probably don't know why they said it, but I wonder if you personally think that having these two kinds of provisions in there is a change in Canadian legal traditions.

● (1705)

Mr. Donald Piragoff: Thank you. I can't give you my personal opinion because my personal opinion is really not that important.

What I can do is explain how these provisions are similar to the existing law and how they are different. The minister said that they are based on tradition and to some extent that is true; the provisions are modelled on the existing precedents in the criminal law. For example, the recognizance with conditions is modelled very much on the peace bond process.

So we do have a jurisprudence, we do have a legislative history that goes back many years dealing with peace bonds. The differences, of course, between the peace bond and this are in the question of the threshold. Arresting a person you believe has committed a criminal offence is one thing; arresting a person you believe will commit a criminal offence requires a higher standard. It requires reasonable grounds to believe that this particular individual will commit an offence.

This has a different standard. If the police have to have reasonable grounds that a terrorism offence will be committed, the threshold is lower in that they have to have reasonable grounds to suspect. It's not that this individual is the one who is going to commit a terrorist activity; it's that putting conditions on this individual will prevent the commission of the activity. It's different—

Mr. John Rafferty: Thank you very much. I only have five minutes altogether, and I do have a couple more questions.

We heard from the minister that there is a very small chance that these provisions are ever going to be used. They certainly weren't in the past, and they sunsetted. You probably remember the example that I gave before about someone falsely saying that someone was about to leave the country and committing an act and there is probably an extremely small chance that this is ever going to happen, but if there is a very small chance, should there not be some safeguards or some other sort of transparency in the bill, in addition to what is here, to ensure that doesn't happen?

Mr. Donald Piragoff: Just for correction, it's not quite true to say that the provisions have never been used in the first five years. Their use was attempted once in the investigative hearing in the Air India case. That's why it went to the Supreme Court of Canada. Once the Supreme Court of Canada made a decision, some 18 months later, by then the crown prosecutor indicated he didn't need to get the evidence from this witness anymore. I think he obtained it from some other source.

On the question about safeguards, that's a question for this committee to decide. This bill has more safeguards than exist under the normal criminal process, as the minister indicated.

Do you need more? That's really a question for the committee to answer.

Mr. John Rafferty: Okay, thank you.

I have one more question.

It says in the bill that testimony from the investigative proceedings can't or must not be used against a witness, but the minister did indicate that in certain cases it could be. He used perjury as an example. Does that concern you?

Maybe Mr. Gilmour might want to answer. Does it concern you as a lawyer, or someone more familiar with the law? Is it problematic in any way?

Mr. Donald Piragoff: That's a reflection of the existing law, both common law and also the law under the Canada Evidence Act. Where you have protection against self-incrimination, it applies except for prosecution for perjury or providing contradictory evidence—so you can't purposely lie and then protect yourself from purposely lying—but the contents of what you said cannot be used against you in other proceedings.

What the Supreme Court of Canada did indicate was that the previous legislation, which has also been proposed to be re-enacted, goes beyond the common law protection and also protects individuals from derivative evidence in that if evidence is found as a result of what the person said, that evidence is also not admissible. It goes beyond the common law.

● (1710)

The Chair: Thank you very much.

We will now move back to Mr. Payne, please. I think there was one more question you had for Mr. Gilmour. I think it was Mr. Norlock who had asked for comprehensive answers, and we didn't quite have enough time there, so go ahead, Mr. Payne.

Mr. LaVar Payne: I hope I might be able to get more than one question in, Chair, on my second time.

My question really was around the constitutionality. My constituents certainly, and Canadians I'm sure, are concerned about the bill and whether it infringes on the constitutional rights that individuals have. I will let you play with that one for half a moment.

Mr. Glenn Gilmour: As Mr. Piragoff explained, the investigative hearing was used that one time, in the sense that consent was given by the relevant attorney general to use an investigative hearing in the Air India case, with the result that its constitutionality was challenged and it went to the Supreme Court of Canada.

There were a number of arguments made by those who were opposing the investigative hearing. They argued that the investigative hearing offends the right to silence. They argued that it offends the concept of judicial independence as well. The Supreme Court of Canada, in a majority decision, ruled that in large part because of the strong protections against use and derivative use immunity, which was explained earlier, that the right to silence and the right against self-incrimination did not arise in the case of the investigative hearing. They also concluded that the judge at an investigative hearing acts judicially, just as he would at any other court proceeding, and is not merely a puppet, if you will, of the state. They rejected that argument as well.

As has been mentioned also, the Supreme Court did extend the protection of use and derivative use immunity beyond the criminal proceedings to extradition and deportation hearings. There were concerns that evidence could possibly be used to send that person abroad to states that have a less robust protection of human rights, shall we say, than Canada. We anticipate, of course, that this legislation would be interpreted in line with the Supreme Court of Canada decision so that the use and derivative use provisions would extend not only to criminal proceedings but to deportation and extradition proceedings.

Mr. LaVar Payne: Thank you, Chair.

For my last question, I want to ask about the bill. It provides that before law enforcement resorts to investigative hearings, they have to make reasonable attempts to get information.

Could you expand on that? What are the means that would be contemplated, and how would they get that information?

Mr. Glenn Gilmour: Again, it would depend on the facts and circumstances of any particular case. For example, they could talk to people in the community to try to obtain the information through that means. The means include all those that are available to the police, just as in any other regular police operation.

Mr. LaVar Payne: So it's like any normal investigation process.

Thank you.

The Chair: Is there anyone else?

Go ahead, Mr. Hawn.

Hon. Laurie Hawn: I have a quick one on Mr. Rousseau's concerns about the government or people knowing when people enter and leave the country. We already know that. We've known that for years. It happens every time you swipe a passport coming or going. There are all the airplane records. When people fly on airplanes, those records are there. There are no new records being kept. We already know when people come and go, so what's the big deal?

That was rhetorical. You don't have to answer that.

The Chair: All right.

You have another minute, if there's someone else, and if not, we'll go back to Mr. Garrison.

Mr. Randall Garrison: Do you mean with their minute?

The Chair: Well, it will be your five minutes.

Mr. Randall Garrison: Thank you very much.

When I ran out of time, I was asking about the perception in some communities, particularly the Muslim-Canadian community, that the existence of the various anti-terrorism measures that have been adopted and the focus on Islamic extremism in the Middle East are resulting in greater subjection of these new measures onto Muslims in Canada than on other minority groups. There is the perception that adding these two things will add to that perception, and perhaps even decrease the confidence of Muslim-Canadians in the law enforcement system.

Could you make any comment on that?

● (1715)

Mr. Donald Piragoff: The same issues were raised in 2001 when the original legislation was enacted, including these provisions. Maybe that's one of the reasons that Parliament put in the five-year review clause: to see to what extent they're used, how they're used, and whether there is a concern they're being used to target certain groups.

The terrorist threat in Canada does not come from one particular religious group. We have terrorist threats coming from other parts of the world, including Southeast Asia and south Asia. They also have terrorist groups. It's not just Muslims.

To some extent, it's a historical situation. At one time in this country, terrorists were the Irish in the Fenian raids. It depends on the historical point in time as to what the predominant threat is and what part of the world it's coming from.

When the RCMP and CSIS testify—because I believe they will be testifying—you can ask them about security threat assessments. They'll tell you that it doesn't come from one particular region of the world or one particular religious group. It's quite varied.

Mr. Randall Garrison: Do you believe that the reporting provisions that are in this bill are robust enough that it would allow us, for instance, as parliamentarians, to judge whether some kind of profiling is happening or groups are being targeted?

In other words, will the reports that are required have enough detail, enough information, so that we could judge how fairly the law is being applied or used? It might be to dispute charges that it's unfair. I'm not saying we would necessarily find it's unfair, but would there be enough information for parliamentarians to judge that in the reports that are envisioned in the law?

Mr. Donald Piragoff: The annual report is just one piece of evidence that a parliamentary review would undertake. I know that the parliamentary reviews that were undertaken a number of years ago were quite extensive. They went on for months and a number of different witnesses were heard. The reports by the Attorney General and the Minister of Public Safety would be one piece of evidence before a parliamentary review, but there would also be witnesses, witnesses from the community, expert witnesses, etc., who would testify as to how the provisions have operated in the previous five years.

Mr. Randall Garrison: The provisions appear to say, though, that the annual reports are very narrow. I'm just questioning what you envision would be in those annual reports. It says how many times it has been used and this time it adds the provision, I think, around why things were being used, but who determines what will be in that report?

Mr. Donald Piragoff: It's a report of the Attorney General and a report of the Minister of Public Safety. They'll determine what to put in the report, but Parliament has given some indication as to what it wants. It wants to know whether the provisions have been used and whether they believe the provisions should remain. If in one particular year they have not been used, then it's a very easy report. However, there still is the second part, which is whether they believe that it should be retained even though it wasn't used in that particular year. There is a qualitative assessment required by Parliament to two ministers on a yearly basis as to the usefulness of the provisions, even if they haven't been used.

Mr. Randall Garrison: I want to follow up with something you raised a few minutes ago. I believe it was derivative use immunity, which is a term I just learned today. I think I understand what it means. The question would arise, then, of whether investigative hearings are really a good idea. In other words, will they impede prosecution of people who might be guilty of involvement in terrorism if anything that's revealed in this cannot be used against them? Will it not make prosecutions of those people more difficult?

Mr. Donald Piragoff: In the Air India case, the witness the crown prosecutor wished to examine was not one of the accused. It was a relative who held some information. I think when you speak to the authorities, basically it will be useful to obtain the evidence of witnesses, not necessarily the potential accused person. It's other people who may have information that can be used for the purpose of investigating others.

Mr. Randall Garrison: So will the derivative—

● (1720)

The Chair: Thank you, Mr. Garrison. We'll get back to you in a minute.

Go ahead, Ms. Findlay, please.

Ms. Kerry-Lynne D. Findlay: Thank you.

In addition to changes to the Criminal Code, this bill would enact some changes to the Canada Evidence Act, and one of them that I don't think we've discussed yet is that it would reduce the duration of an Attorney General certificate, which can be used to prevent disclosure of sensitive government information, from 15 years to 10 years.

Could you explain just what an Attorney General certificate is in this context, and why there's a move to reduce that time?

Mr. Glenn Gilmour: The Attorney General certificate is a certificate signed by the Attorney General of Canada to prevent sensitive government information from being disclosed. Originally I believe it allowed for the duration of that certificate to be 15 years, but because a recommendation was made by one of the parliamentary committees reviewing the Anti-terrorism Act that this period of time be reduced from 15 years to 10 years, that recommendation appears in Bill S-7.

Ms. Kerry-Lynne D. Findlay: Are you familiar with why 10 years seemed sufficient, or why the recommendation came about to make that reduction?

Mr. Glenn Gilmour: It was a reasoned judgment that 10 years would likely, in most cases, be sufficient to protect that information from disclosure.

Ms. Kerry-Lynne D. Findlay: So it's yet another attempt just to make this process that much more transparent, correct?

Mr. Glenn Gilmour: That's right. As I mentioned, it was in response to one of the recommendations made by the parliamentary review of the Anti-terrorism Act.

Ms. Kerry-Lynne D. Findlay: Thank you.

The Chair: There are three more minutes.

Go ahead, Ms. Bergen.

Ms. Candice Bergen: I just wanted to go back to the new offence that's going to be created of leaving Canada for the purpose of committing a terrorism offence. Do these exist in any other countries, or is this new to Canada?

Mr. Glenn Gilmour: If I recall correctly, the U.K. has a specific offence of attending a terrorist training camp anywhere in the world.

Ms. Candice Bergen: So it's similar in that if you leave the U.K. to go to a terrorist camp, that's an offence, whereas this new law being created is focused on leaving Canada for that purpose.

Mr. Glenn Gilmour: Well, this is probably akin to the U.K. offence in that it's part of an attempt to deal with the issue of youth being radicalized and leaving Canada either to obtain further training somewhere by attending a terrorist training camp or to go to other countries to engage in terrorist activity of some kind.

As has been mentioned, four new terrorism offences are suggested by this bill.

One is the offence of leaving Canada or attempting to leave Canada for the purpose of committing the offence in section 83.18 of the Criminal Code, which is the offence of knowingly participating in or contributing to any activity of a terrorist group for the purpose of enhancing the ability of any terrorist group to commit a terrorist activity.

The second is leaving or attempting to leave Canada for the purpose of knowingly facilitating a terrorist activity.

The third is attempting to leave Canada or leaving Canada for the purpose of committing an indictable offence outside of Canada for the benefit of, in association with, or at the direction of a terrorist group.

The final one is attempting to leave Canada or leaving Canada for the purpose of committing an indictable offence that constitutes, in the particular facts of the case at hand, a terrorist activity. In other words, the indictable offence is one that would fall within the definition of terrorist activity found in section 83.01 of the code.

What these offences do is provide an appropriate punishment for trying to leave Canada in order to commit those various terrorism offences. As I believe the minister mentioned, one of the concerns—certainly it's mentioned as well in the most recent CSIS annual report—is the issue of persons leaving Canada to go elsewhere in order to engage in terrorist activity, such as persons leaving to join al-Shabaab in Somalia. These cases help to focus law enforcement on these particular offences, and hopefully it will have a denunciatory effect in making it clear that Canadians see this conduct as something that should be clearly criminalized, with a suitable punishment.

● (1725)

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

We'll now move back to Mr. Rousseau.

[*Translation*]

You have the floor for five minutes.

Mr. Jean Rousseau: Thank you very much, Mr. Chair.

[*English*]

Thank you very much, gentlemen, for being here today and for answering our questions. Remember, this is just for us to understand the legislation more. Some of the questions might be seen to be partisan, but they're not. We really want to understand the legislation.

[*Translation*]

That said, I will ask my questions in French.

Do you think the behaviour seen during the demonstrations at the G8 and G20 summits in Toronto constitutes acts of terrorism?

I will explain why I am asking you this. We need to determine how to decide which groups of people—be they organized or not—can be considered as terrorist groups. I know some people who participate in survival camps in the canyon in Colorado, in the Alps, and sometimes even on Texas ranches with guns. Those are survival camps for all kinds of situations.

How will we distinguish between actual terrorist groups and recreational groups involved in outdoor activities? The groups I mentioned consider what they do as outdoor activities.

[*English*]

Mr. Donald Piragoff: Thank you. That's a good point. That's why the safeguards in the bill and in the existing law are so important. Even under the existing law, it is a crime to attend a training camp if the purpose of attending a training camp is to facilitate the capacity of a terrorist group.

It's not an offence to go to a survival camp in Colorado or a survival camp in the Middle East. It's not an offence to go somewhere to learn how to shoot an AK-47. However, if the person is going to learn how to shoot an AK-47 for the express purpose of helping improve the capacity of a terrorist group, that makes it an offence. That's why the offences are actually worded that way. You have to prove that the purpose of receiving training is to enhance the capacity of a terrorist group. It's not just simply that you want to learn how to shoot an AK-47 or you want to be able to have survival skills.

Those are built into the definition of the offences, but that's why the offences also require the consent of the Attorney General before charges are laid. It's not simply a police officer who makes the determination; you have to get the consent of the Attorney General to say that the prosecution or an arrest would be appropriate.

[*Translation*]

Mr. Jean Rousseau: At the NDP, our concerns always have to do with the repercussions on the charter—including the increase of related complaints, freedom of association, and so on. How much do you think the implementation and enforcement of all the provisions of Bill S-7 will cost taxpayers?

[*English*]

Mr. Donald Piragoff: It's hard to say how much it will cost to enforce. It all depends to what extent they are used, so it's a little hypothetical. In terms of whether there will be challenges, we do anticipate that there will be challenges. We believe that there are arguments that would support the constitutional validity of these provisions; we will have our argument in court, and the courts will decide. That's part of the guarantees of our country: we have a judiciary that determines the issues in the end.

The Chair: Thank you, Mr. Rousseau,

I see that our time is just about there. We have just enough time for one question from the chair.

The question that I have is perhaps a hypothetical situation. Let's say there are two countries, country A and country B. Country A has been known to have terrorist activity in the past, and someone is a dual citizen, a Canadian and also a citizen of that country. Perhaps a war would break out between the two countries. We know then that some Canadians would want to go, or would go, or would try to go to serve in that war. Is there any way that going could be deemed as a potential terrorist training?

● (1730)

Mr. Donald Piragoff: The definition of terrorism excludes actions by military forces of a country. Under international law, actions by military forces for the benefit of a state are not considered to be terrorist acts, so if people are acting on behalf of a state or on behalf of the armed forces of a country, then those are not considered to be terrorist acts for the purposes of international conventions or the purposes of this law. Therefore, if the person joins an army of another country, that would not be considered to be terrorism.

The Chair: Thank you. Treasonous, perhaps, but not....

All right, thank you very much. Unfortunately our time has ended. We thank the department for coming before our committee today. Thank you for helping us to understand this bill a little better.

The meeting is adjourned.

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