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Chair

Mr. Kevin Sorenson

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● (1530)

[*English*]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Good afternoon, everyone. This is meeting 62 of the Standing Committee on Public Safety and National Security. It's Wednesday, November 28, 2012. Today our committee is continuing our study of Bill S-7, An Act to amend the Criminal Code, the Canada Evidence Act and the Security of Information Act.

On our first panel testifying today, we will hear from Air India 182 Victims Families Association. We have Bal Gupta as the chair, who is present with us, and also Rob Alexander as a committee member and spokesperson. From the Canadian Coalition Against Terror, we have Maureen Basnicki, the co-founder and director.

Our committee thanks all of you for appearing before us today to help contribute in our work, and to help us understand a little more about issues that you've dealt with and how they may apply to Bill S-7.

My understanding is that you have different presentations or opening statements to bring, and then we'll go into a round of questions. Perhaps I will begin with Ms. Basnicki.

Could you open, please?

Ms. Maureen Basnicki (Co-founder, Canadian Coalition Against Terror): Thank you for having me. Good afternoon.

My name is Maureen Basnicki. I'm here as a co-founder of C-CAT, the Canadian Coalition Against Terror.

C-CAT is a non-partisan advocacy body comprised of Canadian terror victims, counterterrorism professionals, lawyers, and other individuals committed to enhancing Canada's counterterrorism policies. We represent a unique constituency of Canadians of every background, religion, and political affiliation who have become victims of terrorism. Some of us lost a single relative, others lost entire families, and some of us were injured ourselves. Any of us could have been any of you, under different circumstances, but all of us are united in our determination to ensure that other potential victims of terror are spared the horror that we had to endure.

Over the last few weeks, I have read some of the transcripts of the debates and testimony regarding Bill S-7. I would like to direct my comments to several recurrent themes in the concerns raised by critics about the very nature and legitimacy of the provisions in this bill, relating to investigative hearings, recognizance with conditions, and leaving Canada to commit a terrorist offence.

Some critics question whether Bill S-7, regardless of any proposed revisions, is needed, whether the threat of terrorism really warrants provisions that they describe as a departure from powers traditionally available to investigate criminal offences. Others question whether these provisions will violate the rights of Canadians, or whether this bill is the beginning of the much-dreaded slippery slope that will ultimately result in the abrogation of constitutional rights at a later date. And still others question whether passage of this bill is handing the government a blank cheque of sorts that could lay the groundwork for the ever-expanding use of the controversial provisions—originally justified only on the basis of the extraordinary and tragic events of 9/11.

Summarized in the words of one MP, these critics feel that at best there is no balance in this bill between security and the fundamental rights of Canadians.

At the core of this critique lies what I find to be a remarkable supposition, that terrorism as a phenomenon has not amply demonstrated the justification and need for some rather modest enhancements to the powers of authorities investigating terrorism cases. We believe this supposition clearly flies in the face of the words of Justice Dorno, who presided over the Toronto 18 cases and stated bluntly that terrorism offences are abnormal crimes whose object is to strike fear and terror into citizens in a way not seen in any other criminal offences.

Justice Dorno is entirely correct, as well as the Appeals Court in the Khawaja case, which noted the unique nature of terrorism-related offences and the special danger these crimes pose to Canadian society.

As I have stated previously in other testimony before Parliament, terrorism is not simply a more pernicious form of organized crime. The primary interest of most criminals is personal gain of some sort, while the objective of terrorism is to fundamentally undermine, if not destroy, the society or country being targeted.

We need to look no further than the daily newspaper to be reminded of the ability of terrorists to destabilize entire countries or regions and to inflict violence at a level once reserved only for sovereign entities. But most chillingly, for terrorists there is no weapon or tactic, including weapons of mass destruction, that is inherently beyond contemplation. Acquiring weapons of mass destruction is a stated terrorist imperative, and the immediacy and magnitude of this threat has led some of the world's most prominent experts to conclude that a terrorist attack with unconventional weaponry may be all but inevitable.

● (1535)

Given the magnitude of this threat, we must therefore disagree with those critics who have stated that the legislators who introduced these measures in 2001 were simply hitting the panic button in the aftermath of the urgency created by the events of 9/11 and that there is no justification or urgency today that mandates their continued presence in the Criminal Code of Canada. This is not the case.

Far from being an overreaction to 9/11, these provisions were, in fact, a sober and responsible recognition of the danger posed by terrorism to the future of the international community. They were an acknowledgment that the western world had already tumbled down a slippery slope of another sort and had grossly misread the terrorist peril because of what the 9/11 commission referred to as a "failure of imagination".

Today, in the aftermath of 9/11, lawmakers no longer need imagination to conceive of the unimaginable. They need legislative imagination to find better ways of navigating the competing concerns of security and liberty. I believe Bill S-7 has demonstrated that type of legislative imagination.

To suggest, as some have, that the supporters of this bill are soft on protecting constitutional rights is to ignore the fact that the vitality of a democracy is measured not only by its liberty but by its capacity and obligation to find a balance between those liberties and other concerns in uncharted waters.

Given the numerous safeguards, reporting requirements, and time limitations imposed on these provisions, we do not agree that Canadian legislators are betraying Canada's democratic ideals in seeking their passage. Rather, we see this bill as having found reasonable and effective accommodation in balancing what the Supreme Court of Canada has described as the "imperatives both of security and of accountable constitutional governance" while recognizing the truth of what British Minister of State Ian Pearson stated in the aftermath of the 2005 London bombings, that "...there is no human right more sacred than the right to be alive. Without this human right all others are impossible."

As for concerns that some of these measures are a blank cheque that might be used by the government, the record clearly indicates otherwise. Even this bill's most vociferous critics have acknowledged that the authorities have scrupulously avoided utilizing these tools. In fact, they have never been used and therefore have never been abused. There is clearly no ravenous appetite in law enforcement to utilize these provisions.

This does not mean that they are not invaluable tools for contending with an ever-adapting and evolving enemy that presents a danger of unprecedented dimensions. If these provisions succeed just once in stopping a terrorist outrage, they will have more than served their purpose. While we agree that some of these provisions should be sparingly used, others, such as those that prevent individuals from leaving Canada to be trained as terrorists, must be aggressively advocated by anyone concerned with human rights and war crimes. If Canada can prevent individuals within its borders from seeking advanced training to commit the worst atrocities in countries around the world, it absolutely should.

If for some the concern regarding potential future abuse of these tools supersedes the concern for saving real lives from a very real and immediate threat, they should consider the following: by assisting authorities in interdicting a major terrorist incident, these rather modest provisions will have protected our justice system from the inevitability of coming under even greater pressure, in the aftermath of an attack, to enact measures even more stringent and controversial to protect Canadians from other attacks.

We therefore urge all MPs to approach Bill S-7 with the security of Canadians in mind. Canada should not be removing reasonable tools for fighting terrorism while terrorists are busy sharpening their tools for use against Canadians and other innocent victims. While the provisions of Bill S-7 can always be revisited at a later date, the lives shattered by a future terrorist attack that may have been prevented cannot be reconstituted by any act of Parliament.

● (1540)

As a Canadian who lost her husband on 9/11, I am a living example of just how true that is.

Thank you.

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

We'll now move to Dr. Gupta, for 10 minutes, please.

Dr. Bal Gupta (Chair, Air India 182 Victims Families Association): I will share my time with Mr. Alexander.

My name is Bal Gupta, and it has been my misfortune to have been coordinator and chair of Air India 182 Victims Families Association from 1985 onwards.

I thank you very much for giving us an opportunity to testify.

From the perspective of victims impacted most directly by the terrorist bombing of Air India Flight 182 on June 23, 1985, the Air India 182 Victims Families Association strongly supports Bill S-7. This bill proposes to re-enact the investigative hearings and recognizance-with-conditions measures that were in the original Anti-terrorism Act and expired in 2007.

Bill S-7 also proposes new offences of leaving or attempting to leave Canada to commit a terrorism offence. These provisions, if enacted into law, will help in prevention, criminal investigation, and prosecution of terrorism offences.

Lest we forget, let us remember some painful facts and the enormity of the Air India 182 tragedy, which was a result of a terrorist conspiracy conceived and executed on Canadian soil.

A single terrorist act killed 329 persons. Statistically, that is a higher ratio than the number of 9/11 victims in the U.S.A., keeping the population in mind. Most victims were Canadians, from Newfoundland, Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia—all the provinces except P.E.I. Others came from many states in India and the U.S.A. They came from almost all religious backgrounds, including atheist, Buddhist, Christian, Hindu, Jain, Muslim, Sikh, and Zoroastrian. Eighty-six victims were children under the age of 12. Twenty-nine families—husband, wife, and all children—were wiped out. Thirty-two persons were left alone; the spouse and all the children were gone. Seven parents in their forties and fifties lost all their children, and two children, about the age of 10, lost both parents.

This was the largest terrorist act conceived and executed in Canada against Canadians, and it will continue to cause incalculable suffering and pain to thousands of friends and family members for decades to come.

In the Air India 182 bombing, I lost my wife, Ramwati, to whom I was married for over 20 years. In a tragic moment, I became a single parent to two young boys, aged 12 and 18 at the time. Even today, our family cannot enjoy the best of occasions in our lives because of the persistent, underlying inner grief and pain.

On the same day, a related act of terrorism involving a CP Air flight, a bomb explosion, killed two baggage handlers at Narita airport in Japan. This was followed by the murders of two important and prominent potential witnesses of a future Air India 182 trial—namely, two journalists, Mr. Tara Singh Hayer in British Columbia and Mr. Tarsem Purewal in the United Kingdom.

The intelligence and security agencies did not prevent the Air India 182 bombing. The eventual criminal trial in Canada, which took over 15 years to commence, failed to convict and punish the terrorists. The real culprits are still roaming free in Canada and elsewhere. The Air India 182 bombing, the largest act of terrorism in Canada, was not even—it is sad—recognized as a Canadian tragedy for over 20 years.

● (1545)

The Anti-terrorism Act was passed, and some terrorist entities or organizations were banned, only after 9/11 in the U.S.A., more than 16 years after Canada experienced the AI 182 bombing.

As families of the victims of the terrorist bombing of AI 182, we have suffered and continue to suffer incalculable grief and pain, which we do not wish to befall any other Canadian from future terrorist acts. AI 182 victims were mostly Canadians of East Indian origin, but make no mistake, the victims of the next terrorist act could be anybody. Terrorism cares little about a victim's colour, creed, gender, or age.

We, with first-hand experience of the effects of terrorism, ask all members of Parliament to protect Canadians by supporting the anti-terrorism measures in Bill S-7. There is no greater duty for the government than the protection of its law-abiding citizens.

The Chair: Thank you, Dr. Gupta.

I believe Mr. Alexander has an opening statement as well.

Mr. Rob Alexander (Committee Member and Spokesperson, Air India 182 Victims Families Association): Thank you, ladies and gentlemen, for allowing us to be here today. I will just carry on from Dr. Gupta's comments.

Today terrorism is an international phenomenon, and the terrorists in most cases have worldwide connections. Well-known examples include Spain, Indonesia, the U.K., Russia, India, Jordan, and many more. Recent cases of the Toronto 18 and Khwaja in Canada, and the millennium bomber in the U.S., involve Canadian connections and demonstrate that even today, 27 years after the Air India 182 bombing, Canada is not immune from terrorist attacks and attachments. The provisions of Bill S-7, if enacted into law, will help most importantly in preventing, and then investigating, and possibly prosecuting, terrorism offences.

I speak to you not as an expert in legal or constitutional matters, but as a Canadian victim of terrorism. I was 15, my brother was 9, my sister was only 11, and my mother 40 when my father, Dr. Mathew Alexander, was murdered in the terrorist bombing of Air India 182. He was going to visit his ailing mother back home in India, but never made it to see her. Our family was devastated in an instant—forever. Since then we have suffered pain and grief, which will continue with us throughout our lives. For that reason, we plead with all MPs to consider this outcome and keep Canada free from terrorism so that no Canadian will have to suffer what we have.

Investigative hearings can be helpful in preventing, investigating, and prosecuting terrorism offences. Let us not forget that the perpetrators of this serious crime of Air India 182 and its bombing are still roving free in Canada and elsewhere. Investigative hearings may be needed for effective ongoing criminal investigations. They were used once in the Air India 182 trial against Mrs. S. Reyat, and were found constitutional by the Supreme Court of Canada on June 23, 2004. If the identity of a Mr. X could have been determined, who was an alleged accomplice of Mr. Reyat and who stayed with the Reyat family for about a week, it could have potentially changed the course of that trial.

The prevention of terrorist acts is much more efficient and more humane than dealing with the aftermath of terrorism outcomes, which unfortunately we have first-hand experience of as victims' families. The recognizance-with-conditions provision will also help authorities in preventing terrorist acts. It will be an additional effective tool for the police and intelligence personnel in performing their duties. Successful use of this provision will disrupt the potential terrorist before they can carry out a terrorist act. Sadly, this tool was not available in 1985 to help prevent the Air India 182 bombing, which took so many Canadian lives.

The third provision in Bill S-7 proposes new offences of leaving or attempting to leave Canada to commit a terrorism offence. This is necessitated by the globalization of terrorism-related activities. There have been many reports of highly indoctrinated people from different parts of Canada leaving our soil to join terrorist training camps or terrorist training activities in other countries. Some of these individuals have reportedly disappeared and are presumed killed abroad, leaving their Canadian families to grieve. Also, these potential Canadian offenders may pose a potentially mortal threat and danger to members of our Canadian Armed Forces on duty abroad.

In our opinion, this provision will help in minimizing this dilemma. We believe the procedural safeguards clearly provided in Bill S-7 will be a strong and practical deterrent against misuse or abuse of these provisions.

In summary, we speak to you as persons living first-hand in the aftermath of the most heinous act of terrorism in Canadian history. Part of our mission is to speak out on terrorism issues to ensure that Canada is safer and more secure for its citizens now and in the future. We sincerely believe that Bill S-7, if enacted, will assist Canada in further combatting terrorism. Civil liberties are important, but they must be weighed against the potential violent consequences of a terrorist act against Canadians, and deterrents must be present to do so.

● (1550)

We request, plead, and urge all MPs to keep Canada free from terrorism so that no other Canadians will have to suffer what we have since June 1985.

Thank you for the opportunity to speak here today.

The Chair: Thank you very much, Mr. Alexander, and to all our guests, thank you for your presentations.

We'll move into the first round of questioning, which is a seven-minute round.

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

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

Thank you very much to all our witnesses. A lot of times in the public safety committee and as Canadians we tend to think of public safety issues and justice issues around those front-line crimes against the person. It's a sobering reminder to have everyone here today testify about some very real and imminent threats to our country, both past and present, something that hopefully we can work to deter in the future. Your testimony today brought a real economic point to what Canadians have faced in these tragic events in the past, so thank you for sharing a bit of your story and for your courage in testifying today.

Ms. Basnicki, you mentioned that the vitality of our democracy is not only measured by its liberties but by the balance of how we enjoy those liberties and what reasonable measures we put in place to ensure that some of our liberties aren't affected. For instance, our right to safety and security is only philosophical, in my opinion, if we don't put in steps like this bill to actually take tangible steps to protect those sorts of things.

From the perspective of your membership—maybe I'll open this question to everybody—you've spoken on behalf of the group and said, yes, you're very supportive of this. What kind of feedback do you hear from your groups about the tools and techniques that are going to be used in this legislation and on whether or not people feel those are reasonable applications and are not broaching on people's right to complete civil liberty?

● (1555)

Ms. Maureen Basnicki: Not all family members agree on all matters relating to terrorism in the process that they go through, but I can say with conviction that there is a consensus, and a majority feel that these proposed counterterrorist measures are more than appropriate.

In the past, there seems to have been an emphasis on the rights of the perpetrator, or the accused, or the “alleged terrorist”, but you know, there's nothing alleged about us as victims. We're real live victims, and we want the balance to be there. But we see that, if anything, there has been a tendency in the past to protect the rights of the terrorist or the alleged terrorist more than protecting the rights of our safety and security.

In my conversations with other family members, when I told them I was testifying on the anti-terrorist bill—and I testified at the beginning, when the bill was first introduced—they responded with, “Go, Maureen, go”: there was unanimous support for it.

Dr. Bal Gupta: I think I can say the same thing. I personally appeared before the Senate committee in 2007, when the sunset clause was being debated. We, all the members, agreed that those two clauses, the investigative hearings and the recognizance with conditions, were very valid clauses for fighting terrorism.

Let me go a step further. Measure the rights of a terrorist, or somebody who is planning something who has been taken away to answer some questions, or somebody who is detained for a certain number of days after the Attorney General approves and a justice so orders, against the rights of a four-and-a-half-year-old girl who lost her mother in Air India 182. She was four and a half. You will be happy to know—I cry when I see her—that she is a medical doctor doing her residency in England, at Oxford. Or measure it against the rights of an 84-year-old lady in India, who couldn't even cry after having lost her son, her daughter-in-law, and three grandsons.

You have to balance the rights. That's what we meant when we said that deterrence must be present, both ways—to deter terrorism and to deter any abuse or misuse of the provisions. And they are there. The Attorney General's approval and the justice is there, and the evidence will not be used against the person who is giving it.

We have to balance these things, and I think the bill, as it is, is quite balanced, in our opinion.

● (1600)

Mr. Ryan Leef: Thank you very much.

Maybe you can tell me what the investigative hearing would mean to you and your members if the provision were used and we were to have a witness come forward and testify about past events that would allow law enforcement, Canadian intelligence systems, the ability to utilize that information and prevent a future terrorist attack. What would that mean to your members?

Ms. Maureen Basnicki: What would it mean? We're unanimous in wishing to do everything possible to prevent future acts of terrorism. If you have even a remote suspicion that a Canadian citizen, and in this case a non-Canadian, is attempting to murder fellow Canadians, then it becomes common sense. You want to do everything possible, given the extraordinary circumstances, to prevent a heinous crime from being committed by terrorists. If you can allow time—and there are checks and balances here for the time—to prevent a crime from happening, then the job has been done.

The Chair: Thank you very much.

Mr. Scott.

Mr. Craig Scott (Toronto—Danforth, NDP): Thank you, Mr. Chair.

I echo the sentiments and the comments of my colleague Mr. Leef.

Thank you so much for coming to testify. I can only imagine the grief that all of you suffered at the time and are still feeling. I think it's important that Canadians constantly remind themselves of two things that your stories represent. One is that Canadians and other nationalities were part of what happened on 9/11, and there's a certain global story about the victims of 9/11. The other is that, with Air India, people sometimes forget that a large number of human beings were killed in Air India, and that a large number of them were Canadians. This was not fully acknowledged at the time, and it is something that we're going to have to come to terms with.

Mr. Alexander, I'd like to ask you to elaborate on your description of the initiation of an investigative hearing, when the previous provisions were still in force, that never ended up taking place. You mentioned that if a Mr. X had ever been tracked down then things might have changed. You said it would have potentially changed the course of that trial. Could you set the scene a bit more, tell us what you meant, and then elaborate?

Mr. Rob Alexander: I might add some of the details that were going on and being brought out when the trial was going on.

A Mr. X was identified as staying with Mr. Reyat, who was convicted of building the bomb that was put on Air India. To this day they still don't know who that is. They've never testified; even though that Mr. X stayed with that family for over a week, they forgot who that person was. I can tell you, from my own personal experience, that even if someone stayed with me when I was a child 20 or 25 years ago, I would still remember.

So that extra piece of information, when all that was...and Dr. Gupta can speak to this as well. That part of the investigative hearings could help bring that information out. That did change a lot of the information that was brought out in the trial, because people were a little bit afraid of what was going on, who was being brought to trial, and who was the accused. People were very tight-lipped about what they were speaking about in the trial, and no one could really force them to bring out that information, unfortunately.

● (1605)

Dr. Bal Gupta: If I may add, you have to keep in mind the way that terrorist organizations or terrorist individuals work. Intimidation is a very strong tool used in these groups or communities, and people are afraid to come out. Investigative hearings can be a useful tool. People, even those who know, will not come out because of fear.

And when they are not afraid.... I mean, a very good case is one of your colleagues being thrashed. The former premier of British Columbia, Ujjal Dosanjh, got beaten up by these goons for speaking out.

So that's one thing. As related to the Air India trial, this fellow went with Mr. Reyat in that famous...from mainland to island for the trial test run of the explosive device. In the trial, he never disclosed who this Mr. X was.

The RCMP, or whoever the investigative agency was, tried to get Mrs. Reyat to testify. The case ended up in the Supreme Court, and on June 23, 2004, it was held to be a constitutionally valid provision, but unfortunately it was not followed up. Maybe the trial was already too advanced, and the prosecution may have thought that the case was already sewn up.

But this can be very important in getting information. Don't forget that the Air India case is not closed. These cases are never closed. A trial may happen. They may not try the same individuals, but they can try the other individuals. This can be useful in prevention. If they catch some guy and he says, “No, I don't know anything”, that evidence cannot be used against him or her, but it can be used against others. It can be useful in investigating for the same reason, and prosecuting.

So this is very important too. And it was held to be constitutional.

Mr. Craig Scott: I don't necessarily mean this from the perspective of legal expertise or whatever, but all three of you have been thinking about this a lot. Do you think there's any danger at all of the investigative hearings being something that gets triggered too early?

I ask this because one of the clear prohibitions is that, once you have somebody in an investigative hearing, you cannot use the evidence in criminal proceedings against that person. Is that something where we just trust that the police and the crown prosecutors judge when the right time is, or is there any reason to worry about that?

Dr. Bal Gupta: Well, in Air India, obviously the prosecution dropped it. Once the legality was proved, they didn't use it. So that tells you that they will be judicious, or reasonable and rational, in their application. That's my feeling.

Both these provisions were there, and at least one was proven to be constitutional. The other one has never been used or abused, so my personal feeling—and I'm not a legal expert, as I said—is that we have to have some trust in the justice, investigative, and intelligence systems. If we don't have that trust, we are in much bigger trouble.

The Chair: Thank you very much, Doctor.

We'll now move to Ms. Findlay, please, for seven minutes.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): Thank you all very much for being here.

I certainly remember you, Ms. Basnicki, from last year when we were debating Bill C-10 before the Standing Committee on Justice and Human Rights. Being an MP from B.C., I'm very aware of the Air India tragedy.

I find it also very helpful in these deliberations that you as a panel represent terrorism that has reached out and taken Canadian lives, but actually in different ways and from different sources. We tend to hear a lot these days about militant Islamist radicals and the radicalization for jihadist reasons of some of our youth. But I think the Air India tragedy has to continue to remind us that sometimes the politics of other places in the world come home here, and there are effects here. Our heartfelt sympathies continue to go out to you all. Tragedy is something that follows one's whole life. It's not something you get over; it's something you learn to cope with.

I am interested in having a comment from all of you on this. Would you agree with me that terrorism in our world remains a threat to our national security here in Canada, that right now, in this present time, it is a continuing and present threat?

● (1610)

Ms. Maureen Basnicki: Absolutely. I never want to be a fearmonger. Terrorism's method in the past has been to use airplanes. I was a flight attendant for over 30 years. I fly, and I continue to encourage people to fly. I continue to tell people to live their lives, and to not let terrorism, or the threat of it, stop our lives. They win if we do.

But the reality is that I'm also here to remind Canadians that we do have Canadians who have been victims of terrorism, who have lost their loved ones; we do have Canadians who are terrorists; and we do have the possibility of future acts of terrorism against Canadians. Most importantly, my late husband, Ken, and myself are very proud Canadians. As a country we have global recognition, and strength, and I think we're a force to be reckoned with. I am very optimistic that my country will be a leader in the global battle against terrorism, in the global war against terrorism.

I don't want us to react and not have the imagination of...an attack like 9/11. Certainly we discounted the Air India terrorism attack, and we still have things that we have to continue in that particular act. But again, as a Canadian, I believe in my country and I will continue to encourage my country to do everything possible to not only save Canadians but also save lives, no matter their citizenship, their faith, or their country of origin.

As has mentioned many, many times, terrorists don't know borders. They really don't. They don't care what colour you are, what faith you are, or what country you come from.

So it's absolutely imperative that we as a country take every step to do what we can to deter it from happening again.

Dr. Bal Gupta: If I may add to that, the answer is yes. I think it was either in November or late October when the millennium bomber was convicted in the U.S.A. Finally he got sentencing—not convicted, but sentencing was pronounced. That's a good example; he was carrying ammunition from British Columbia to bomb planes in Los Angeles.

So the answer is yes. Imagine the picture if the Toronto 18 would have succeeded. What would be the picture?

We have to keep in mind that even the perpetrators of the Air India 182 bombing are still free. They may be preaching in their temples the same rhetoric they used in 1985 and afterwards. Some of these people have converted our places of worship into temples of doom, unfortunately. That applies to all religions, not one, whether they are Hindus, Muslims, Sikhs, or somebody else. We have to be proactive.

I will go a step further, actually. As politicians I think unknowingly...and I'm not blaming any particular party or particular politician. Unknowingly, indirectly we encourage terrorism—pardon my using the words—by associating with the events being organized by certain entities who are known to glorify terrorists, even convicted terrorists, or terrorist causes, because they can use that presence in their communities and say, listen, you know, this fellow came.

So I would suggest that you have to be careful when attending these meetings organized by such groups.

● (1615)

The Chair: Thank you very much, Doctor.

We'll now move to Ms. Sgro, please. Welcome to our committee.

Hon. Judy Sgro (York West, Lib.): Thank you very much.

I'm pleased to be here to hear more about what a terrible, terrible tragedy this was. My condolences to all three of you and your families. Your words are all very touching for all of us. It doesn't matter how many years ago this was, it's still very real to all of us, as it is to you.

Bill S-7 that's before us, you've clearly reviewed it very well. Are you satisfied with the legislation as it stands now?

Mr. Rob Alexander: In our case with Air India, the investigators and prosecutors needed something that would allow them to carry on their search for evidence and use of evidence, including witnesses. That wasn't there at the time. It could have been very helpful for us in the criminal trial.

Certainly for us, if anything happens again in the future, something needs to be available for investigators and prosecutors to be able to go through that process again. Hopefully that never has to happen in Canada ever again, but should that happen, those provisions are, in our opinion, very useful.

Dr. Bal Gupta: I agree with Rob Alexander. I think in retrospect, one of the RCMP officers in one of his interviews used the words "eureka point". The question was why these guys were not stopped; they were following the individuals, but they were not stopped. His answer was that they were not at the eureka point where they could stop them under the existing law.

So this will be useful, and as I said, we have to be proactive. Let us hope we don't have to deal after the fact. We can stop them; it doesn't matter.... Sometimes it happens that the events that are stopped before they take place are not counted in these statistics. It's almost like asking, "Why do I need insurance or a fire extinguisher if I've never had a fire?" Let us hope it happens that way, that it is not needed.

As a group, we are very satisfied with the provisions in Bill S-7 and with its procedural safeguards that it balances civil liberties against the need to protect law-abiding citizens.

● (1620)

Ms. Maureen Basnicki: The short answer is, yes, I agree to the provisions of Bill S-7, and I'm optimistic that the committee will find it's the right thing to do.

I want to be proud of my country. It seems when we talk about the economy, it's certainly the topic of concern. Canada prides itself on the fact that it took steps beforehand to lessen the impact of the economic situation, and we're very proud of ourselves, and we continue to sing our praises.

In the area of terrorism, which is also a global concern, I want the same sense of pride, so that I can say, "You know what? We took preventative steps to lessen the impact." I hope it will be an exercise in futility. We all do. Nevertheless, we have to have an exercise in reality here, and the reality is that there could be an attack, and I think this is a giant step in the right direction.

Hon. Judy Sgro: What more would you like us to do?

Ms. Maureen Basnicki: Let me consult the many legal minds that are helping C-CAT. I'm sure there are more things. I hope this is the first step. Personally I don't have the expertise in creating legislation. I'm encouraged by this piece, but I do know there are many more things that we need to look at.

We talk about balance. One thing in particular, and I'm going to direct my attention to it, is that this is about security and the safety of Canadians. We don't have a balance between the needs of the victims of terrorism, the victims of this heinous crime, and the needs of the perpetrators. I only have to use the example of a Canadian who was convicted of terrorism. His name is Omar Khadr. His name was brought up a number of times in the discussions here.

Again, I want to change the conversation. You know, victims need the tools to be reintegrated into society as well. It's not all about the perpetrators. We need psychological help, medical help, legal help. It has been a long road for all of us, and in that other area I certainly want to bring forth some more suggestions.

I think Rob mentioned that he was 15 when his father was killed. Why is the discussion always about the fact that Omar Khadr was 15 when he committed these atrocious acts? My son was 16 when his father was murdered.

Anyway, with regard to some of the objections that I heard when we got into the discussion of child soldiers and that type of thing, I'm not here to argue about that. That's a different conversation. As a mother, I have my concerns too.

But as a victim, as somebody who.... And I call myself a victim because it was horrible that my husband was killed, but I've been revictimized by politics on many, many occasions. It's not the country that I know and love. I found that Canada at the highest level didn't treat the Canadian victims of terrorism, in my case 9/11, and didn't show that sense of caring and looking after our needs, the way that the American government did.

There's one more thing. Terrorism right now is at the provincial level. It's treated at the provincial level. This is not a provincial-level matter. It is a federal issue and counterterrorism laws have to be made at the federal level. That's why we're here today. There has to be a policy for victims at the federal level as well.

The Chair: Thank you very much.

We'll come back to the official opposition now, to Mr. Scott.

We're in five-minute rounds.

● (1625)

Mr. Craig Scott: Thank you.

I'd essentially like to go in two directions, following up directly on what Ms. Basnicki was just saying and asking if there's anything further you wanted to add.

We have recently been through a bill on offender accountability around the issue of raising surcharges. There's a bit of a conflict of philosophy amongst some of us as to what extent we should be able to have robust victim services that draw on the public purse in the same way in which we would look at other social support services from the state, versus seeing primarily, or even only, the money supporting victim services to come from perpetrators.

I wonder if you have any position on that in light of your own experience. I find what you're saying extremely interesting around the need for a much more active federal role, but I honestly do not see a federally oriented victim services approach without there being literally general revenue funds as part of it.

Ms. Maureen Basnicki: I've been very proactive in that area. In fact the Justice for Victims of Terrorism Act that was recently passed was part of the omnibus bill. I agree, victims don't want to go after a federal tax purse per se. How good would it be to actually be able to litigate in civil court and get the money from the perpetrators who were the cause of it? You have to look at the Justice for Victims of Terrorism Act to see what that's all about.

There are many ways, especially in this economy, to mirror what the United States did, for example. Immediately after the attack there was a tax benefit to victims. They were forgiven their taxes. In Canada, in the response that I got.... Immediately I was told that for 2001, the year in which my husband was killed, and the year 2000 my taxes would be forgiven, as they were in the United States.

Not only were they not forgiven—there was not equality with the victims in the United States, the Canadians residing in the United States—but our government at the time came after me for taxes not paid. He paid quarterly taxes based on his salary, the amount that he was making, and he was quite a successful man.

You know, there are different areas in which you can help victims of terrorism. You can only imagine how hard it is for us to see our taxes being used for the penal system, for incarcerating the individuals, but no tax benefit for the victims.

Mr. Craig Scott: That's a very interesting perspective.

Ms. Maureen Basnicki: There are a number of ways. We have a lotto in Canada. It doesn't matter what your status is. Suddenly, if your number is up, you win the jackpot—huge amounts of money, tax-free money. But I would suggest that if for whatever horrible reason your number is not up, it's the worst day of your entire life and you lose your loved one, who in many cases is the breadwinner of the family....

You know, there are many ways.

Mr. Craig Scott: Great. Thank you.

Mr. Gupta—

The Chair: Very quickly.

Mr. Craig Scott: —I was also going to ask you a little about prevention, but....

Dr. Bal Gupta: One aspect is the other type of support, emotional and so on. With Air India we were left to float or sink on our own. Nobody from the federal level or provincial level gave us any support.

This is a sad commentary. We can spend whatever the figure is, $55,000 or $65,000 per person in a penitentiary, or maybe $100,000 —

The Chair: It's $140,000, maybe.

Dr. Bal Gupta: —but when it comes to dealing with victims of crime, the amount is a round one: zero.

That's where I have even qualms with the so-called civil liberties associations. They will be up in arms about providing facilities to the prisoners, but I have yet to find a civil libertarian to come.... At least in the Air India case, nobody ever approached us on if they could help us.

● (1630)

The Chair: Thank you very much, Doctor.

Unfortunately, that concludes our time. The hour seemed to go fairly quickly.

I don't think there's anything I can really add. I just feel for each one of you, whether it was in the eighties or in 2001, and I certainly want to thank you, on behalf of the committee, for what you have done to help remember your lost loved ones but also to make changes that would impact our country and that would prevent such acts from ever taking place again.

Thank you for appearing today.

We're going to suspend momentarily and allow you to exit and then allow our next guests to take their places.

Thanks again.

● (1630)

(Pause)

● (1630)

The Chair: I will call this meeting back to order to try to keep on time and to make certain our guests have the specified amount of time.

We're continuing our meeting this afternoon of the Standing Committee on Public Safety and National Security and our study of Bill S-7.

On this panel we will hear testimony from the Canadian Civil Liberties Association. We have Nathalie Des Rosiers, as general counsel. As well, by video conference from Vancouver—she's coming in loud and clear, and the picture is clear—we're hearing from the British Columbia Civil Liberties Association, Ms. Carmen Cheung. She is counsel for the association.

Our committee wants to thank you for agreeing to help us with our study on Bill S-7. I understand that both of you have opening statements.

We will go to Vancouver first of all, and welcome Ms. Cheung.

Ms. Carmen Cheung (Counsel, British Columbia Civil Liberties Association): Thank you very much.

Good afternoon. It is such an honour and a privilege to appear before this committee again. On behalf of the B.C. Civil Liberties Association, I wish to thank you for this opportunity to present on Bill S-7.

The BCCLA is a non-profit, non-partisan organization based in Vancouver, British Columbia. Since its incorporation in 1963 the mandate of the BCCLA has been to promote, defend, sustain, and extend civil liberties and human rights in Canada. We speak out on the principles that promote individual rights and freedoms, including due process and fundamental justice concerns in situations where individual interests are affected or engaged by the state.

Last year we appeared before this committee to express our serious concerns about the preventative detention and investigative hearing provisions in Bill C-17, the predecessor bill to the one under discussion today. At that time we highlighted our concerns that while it is far from clear that such measures would have any demonstrable effect on combatting terrorism, they would very likely result in eroding the democratic principles and ideals that all of us seek to protect.

Rather than repeat in detail those comments, I refer the committee to the BCCLA's submissions from February of last year, which are attached as an appendix to the speaking notes I have provided to the committee this morning. I would instead like to focus my remarks today on our concerns with the approaches to combatting terrorism reflected in this bill.

In the proposals to resurrect preventative detention and investigative hearings, we see an approach that looks to expand the scope and reach of state authority without accompanying expansion of accountability and oversight. In the provisions seeking to create new offences under the Criminal Code for leaving or attempting to leave Canada with the intent to take part in terrorism as it's very broadly defined already in the Criminal Code, we see an approach to national security that continues to focus primarily on criminal sanctions without sufficient consideration of rehabilitation.

Let me first address the issue of accountability and oversight. The preventative detention provision in Bill S-7 permits holding an individual without charge, or without even the intent to charge, for up to 72 hours based on mere suspicion of dangerousness. It strips an individual's liberty absent proof or even suspicion of an offence and runs counter to basic principles of fundamental justice.

The investigative hearing provision in turn transforms our courts into investigative tools of CSIS and the RCMP and is fundamentally inconsistent with the spirit of the right to silence, the right against self-incrimination.

Both of these provisions expand the power and the authority of the state to encroach on basic civil liberties. Indeed, the extraordinary nature of such proposed state powers is reflected in the fact that they, like their predecessor legislation from 2001, are accompanied by sunset clauses.

Yet, at the same time government seeks to expand the powers of our national security agencies, we see no similar efforts to ensure that accountability and oversight of the national security apparatus are any more robust.

Six years ago the Arar commission made clear that the accountability mechanisms for national security oversight had simply not kept pace with the scope and scale of national security operations. To that end, Justice O'Connor made a series of detailed recommendations directed at improving the accountability and review mechanisms for national security operations.

Chief among his recommendations, of course, was the integration of national security review across agencies and review bodies, and the creation of a national security umbrella committee, which would facilitate cross-agency accountability. It is an uncontroversial proposition that national security operations can only be effective if there is inter-agency cooperation. But what that means also is that there needs to be inter-agency review and oversight.

Six years after the close of the Arar inquiry, we are still very far from that integrated system of national security review. And to this day, notwithstanding Justice O'Connor's recommendations, there still is no mechanism for independent review of the national security activities of the CBSA, Citizenship and Immigration Canada, Transport Canada, FINTRAC, or DFAIT.

The provisions in this bill contemplate an expansion of investigative powers. They also imply increased information sharing, not only between the various national security agencies such as CSIS, the RCMP, and the CBSA, but also between these agencies and foreign partners.

● (1635)

As with all national security matters, the exercise of these powers and the extent of this information-sharing will be largely kept secret.

These characteristics of national security operations—lack of transparency, increased information-sharing, increased international cooperation—were all highlighted by Justice O'Connor in 2006 as reasons why strong and effective review and accountability mechanisms are so crucial.

This observation has equal, if not greater, force today. The level of inter-agency integration and international cooperation is even more significant now than at the time of the Arar inquiry, yet conversely, in important respects, we have less accountability and oversight. Indeed, we have grave concerns that, with respect to national security accountability, what we are currently seeing is not only a failure to keep pace, but an actual deterioration of existing oversight and review mechanisms.

In particular, we are very troubled by the elimination of the office of the Inspector General of CSIS this year, given that it was one of only two accountability mechanisms specifically provided for in the CSIS Act. Meanwhile, SIRC, which is now expected to take up the duties of the inspector general, has had no corresponding increase in its resources. Though SIRC itself has said that its mandate should be broadened to allow for a review of national security matters that involve CSIS and go beyond the strict confines of that agency, this recommendation has yet to be taken up.

Accordingly, we urge the committee to refrain from further expanding the powers of our national security agencies until appropriate and effective accountability and review mechanisms have been established. We believe that strong and robust oversight mechanisms are important not only for protecting human rights and civil liberties; they are crucial for ensuring that our national security policies and practices are effective.

We raise the issue of efficacy in national security practices because we agree—again, we agree—that terrorist activities violate fundamental human rights. We must have counterterrorism strategies that work. To that end, however, our counterterrorism efforts cannot be singularly focused on criminalizing conduct. Our criminal laws relating to terrorism as they currently exist are already quite expansive and capture a very wide range of offences and activities, yet this bill proposes to widen the net even further by creating these so-called training camp offences.

This emphasis on criminalization ignores the fact that terrorism cannot be stopped simply by making it illegal. In his testimony before the Special Senate Committee on Anti-terrorism concerning this bill, Professor Kent Roach very rightly noted that we must start talking about rehabilitation of terrorists and reconsider our policy of “once a terrorist, always a terrorist”. Rehabilitation is particularly important in the context of who would be caught up in the ambit of these training offences: likely, young people. The failure to rehabilitate and reintegrate individuals engaged in terrorism or caught up in terrorism perpetuates the cycle of marginalization, disenfranchisement, and alienation that leads to further radicalization. In the end, none of us are safer.

Therefore, we would urge you to refrain from passing this legislation. We cannot afford to grant these extraordinary powers of detention and investigation while we still suffer from deficiencies in accountability and oversight. We cannot continue to expand the reach of the criminal law without making some commitment to ensuring proper and meaningful rehabilitation of those accused or convicted of terrorism offences. Safety and freedom must go hand in hand.

Thank you again for this opportunity. I look forward to your questions.

● (1640)

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

Here in our committee room, we'll go to Ms. Des Rosiers, please, for 10 minutes.

[*Translation*]

Ms. Nathalie Des Rosiers (General Counsel, Canadian Civil Liberties Association): I will begin my presentation in French, and then continue in English.

I want to thank the committee for inviting the Canadian Civil Liberties Association. The association has existed for almost 50 years, and its mandate still consists in taking a principled stand on issues facing society.

Today, I invite you to think about two issues. A framework of analysis should support the study of certain provisions that, like those included in Bill S-7, were subject to a sunset clause. In that context, it's a matter of conducting an in-depth study of what has happened since the terrible events that left their mark on Canada and the world.

The association certainly recognizes that the duty of states to protect their citizens and nationals is well-established. We must never neglect that duty. That is a state's primary duty. Terrorism is a threat to everyone's security. Therefore, a state must deal with terrorism while respecting international law and constitutional law. The threat of terrorism has not diminished. That's not what the association's position is.

As we heard earlier, terrorist acts have real consequences on many people. The Air India terrorist bombing took place 27 years ago, and the September 11 attacks were carried out 11 years ago. Despite everything, I think this committee's duty is to develop the most effective counterterrorism approach. The question is not whether we should react to terrorism or have an anti-terrorism strategy, but rather whether the strategies included in Bill S-7 are the best and the most appropriate ones.

We should take advantage—and I think that is the goal of this exercise—of the advances in knowledge that have been made in counterterrorism over the past 11 years. Many developments have been made around the world in the assessment of the best counterterrorism practices. I will share some observations—for instance, reviews from Great Britain regarding anti-terrorism measures.

We think that the framework of analysis invites parliamentarians to take their role very seriously and to address the issue as follows, while applying the following principles.

You certainly have to take into consideration the latest developments in the fight against terrorism. Parliamentarians must also ensure that the Constitution is respected. In addition, I think that parliamentarians must make sure that the bills that are passed have no indirect effects, unintended consequences or negative impacts on certain groups of citizens.

I will now talk about the latest developments in the fight against terrorism.

● (1645)

[*English*]

I'm going to move into English, if that's okay.

The Chair: Yes, go ahead.

Ms. Nathalie Des Rosiers: I invite the committee to take into account the very wise remarks of Lord Macdonald of River Glaven, QC, from England, who was asked to review the work of the committee that had been charged with reviewing the anti-terrorism measures adopted in the U.K. I put it to you that his approach....

I mean, I think Lord Macdonald of River Glaven starts from the proposition, as I do, that certainly terrorism is a serious threat, and something must be done. What he is concerned about is whether the mechanisms that had been developed in England continued to be efficient and were the best possible.

I think he starts his remarks by saying that things must be done, but the best thing.... I'll quote him, from here: that the review rightly recognizes that “Where people are involved in terrorist activity, they must be detected and...prosecuted and locked up.”

In a way, his approach would be to look at the strategies, in particular the control orders in there, that have prevented and undermined evidence-gathering in a way that is not pursuing the objective of responding through the use of regular criminal law.

The second point he made is that all measures must be geared generally to the use of regular criminal law procedure. That has been the practice in Canada, as well, in the context of the group of 18. In that context, exceptional measures are undermining the legitimacy of the counterterrorism measure.

He goes on to say that exceptional measures are better framed in exceptional legislation and should not be normalized. A similar sentiment was evoked by the eminent jurist. The last thing, and I'll conclude with this, is that he says, the “paucity of use” of a measure —and I'll use his language, although it's difficult for me to use the British sound—“hardly speaks of pressing need”.

Eventually what he concludes is, first, what were the powers that were used by the legislation? Do they continue to be relevant? Have they had perverse effects in undermining and gathering of evidence? If they haven't been used, then he cautioned against maintaining them, with the view that indeed “paucity of use...hardly speaks of pressing need”. Therefore, as he suggests, there's always a good reason to increase state power but we must be cautious to resist the temptation, and strongly evaluate the case for increased powers.

I think Canada is now in a position to evaluate how its response will be judged on international law and on the international scene. Elsewhere in the world, as you read this morning in the paper, the state gives themselves large powers to ensure stability. It would be a mistake, in this context, for Canada to put legislation on the books by which the major claim to fame, or the major reassuring feature, has been that it's not been used and will probably not be used again. It's a mistake to put legislation on the books that is designed not to be used.

● (1650)

[*Translation*]

I will now talk about constitutionality.

[*English*]

I will make two small remarks here, which are linked solely to the fact that when you look precisely at Bill S-7 , there are ways in which it does not completely reflect the thinking of the Supreme Court when it dealt with *la question de l'audition pour investigation*, investigative hearing. In that context, it did insist that the testimony should not be used in the context of criminal proceeding. This is covered by subsection 83.28(10).

It also demanded that it not be used in the context of administrative hearings. This is not in the bill. It should be in the bill; otherwise it risks failing a constitutionality test. The point is that the right to silence, the protection against self-incrimination, exists not only in criminal proceedings but also in administrative proceedings. This is not in the bill, and it should be there.

Finally, I would caution the committee about relying on this case without reading the other cases that have assessed the counter-terrorism framework of Canada.

[*Translation*]

It is important to remember that the Supreme Court ruling preceded the first decision in *Charkaoui v. Canada*. The court assessed the mechanism and was concerned about the changing role of judges.

Clearly,

[*English*]

investigating hearings transform the role of judges, from being passive in the context of a contradictory system to a more inquisitorial system. This is alien to our judicial system and it doesn't fit well.

Indeed, I think the reason why the procedure is not used is probably that CSIS agents are far more adept than judges—and I say that with all the respect in the world to the judges—at asking pointed questions. Their training, as judges, is to listen to an exchange of ideas as opposed to being out there and pointing.... So there's danger in transforming without sufficient guarantees.

A month ago, CCLA hosted a conference on the social cost of counterterrorism. In that context, we were interested in mapping the indirect effects of the counterterrorism measures.

I will just point out—I invite the committee to actually pay attention to this—some of the conclusions that came out: discrimination against Muslim and Arab Canadians has increased; many people change their names to get jobs; many people suffer from agoraphobia. We also had an entire study that was done to identify people who were *repliés* on themselves; the communities were actually increasing their mistrust of the authorities. That may not be the way to go.

Lord Macdonald of River Glaven said, “The British are strong and free people, and their laws should reflect this”. I submit that Canadians have a free and strong nation, and their laws should reflect this as well.

Merci beaucoup.

The Chair: Thank you very much.

We'll move quickly into our first round.

We'll go to Mr. Hawn, please, for seven minutes.

Hon. Laurie Hawn (Edmonton Centre, CPC): Thank you very much, Mr. Chair.

Thank you both for being here.

Ms. Des Rosiers, you may disagree, but the minister has already addressed the issue of constitutionality. That is a part of the review process, which goes into all of this. You mentioned Lord Macdonald and his emphasis on prevention. I think we would all agree that prevention is better than reaction after an event.

You testified against Bill C-17 on February 10, 2011. You said that Bill C-17 creates “a precedent for other countries in the world who will look to and use the Canadian precedent”. I guess, not to put words in your mouth, that's perceived as a dangerous precedent.

Are you aware of what other countries are doing, such as the U.K. and Australia, for example, which have much more severe measures than what we're proposing?

● (1655)

Ms. Nathalie Des Rosiers: Yes, although what is interesting and what I was trying to point out is that the review in the U.K. was indeed to reduce the powers that had been used in this context. The report was to change the way in which control orders were being used in the—

Hon. Laurie Hawn: They're still more severe, even now.

Ms. Nathalie Des Rosiers: Yes, I think there are certainly differences in the details of the different aspects of it.

Hon. Laurie Hawn: I would agree with Lord Macdonald about strong and free. That's where we are too.

Ms. Cheung, you talked about the need to educate and rehabilitate and so on. That's a long-term process. I think you'd probably agree with that. It's not an overnight thing.

While that's going on, laudable as that is, and I don't disagree with that, do you think it's still okay to allow people—for instance, the Toronto 18, if that was the case—to travel to Afghanistan and Pakistan for terrorism training, when we know who they are and we know what they're up to? Is that allowable?

Ms. Carmen Cheung: I think the issue is that the current criminal law, as it exists, is completely capable of identifying and prosecuting these, as we saw in the Toronto prosecutions. It's unclear why we need to create further criminal offences to capture conduct that is already criminalized.

Hon. Laurie Hawn: While they're gathering evidence and tracking the Toronto 18, for example, is it okay to allow them to leave the country to go to Afghanistan or Pakistan, where we know they're going for more training? We haven't arrested them yet, because we're still building a case: should we just let them go?

Ms. Carmen Cheung: In terms of the level of proof required in this case, the *mens rea* is quite high. So to that degree, we're comforted by that. But we are very concerned that we continue to criminalize, not just with respect to these training offences but by increasing the penalties. I mean, the first half of this bill discusses increasing penalties for crimes that are already in the Criminal Code.

This focus on criminalization really neglects that we have to start having a conversation about rehabilitation and reintegration, and we are not having that conversation.

Hon. Laurie Hawn: I don't disagree with that, but in the meantime, in my view, we can't let those activities continue without taking some action.

You talked about victims issues, and I know, Ms. Des Rosiers, you —

Ms. Nathalie Des Rosiers: I'd like to respond to your question about this offence.

The Chair: Just allow Mr. Hawn to finish his question.

Hon. Laurie Hawn: You can add your response to the next one.

Previous witnesses talked about the lack of apparent concern from organizations like yours about victims issues and so on. We heard you talk about the social cost of counterterrorism. How about the social cost of terrorism?

Ms. Nathalie Des Rosiers: Sure. I personally am very concerned. My previous work was on victims defence work, so I think....

The idea that there's opposition between civil libertarians and victims is not, I think, the right reflection, because indeed nobody wants the wrong person to be caught, or the system not to work. When somebody is wrongfully charged, the victims are not that much better off. Indeed, I think we have always said that we support —and we did support—the compensation for victims of terrorism. We support compensation for victims of torture as well.

To me, the idea that we should be pitted one against the other is not appropriate. Indeed, we all want a system that works, that's not unfair, and that has legitimacy, so that people will continue to participate and cooperate to the extent that they want in a system that will ensure that it has sufficient due process.

I want to also answer this, if I may, very quickly. I think part of the issue, when you ask if we should let them leave, is that in the bill you would have to have quite a bit of evidence to be able to arrest them. What Lord Macdonald suggests is that all these control orders that were preventing the police...and the alleged terrorists for engaging into business for communicating with their co-conspirators, were indeed undermining the gathering of evidence. In the case of the Toronto 18, the fact that they had trained elsewhere was part of the evidence.

I'm not an expert in policing tactics, but I'm just saying that you should be worried about what elsewhere they have assessed...how they have assessed that some of these strategies may look good but are not used for good reasons.

● (1700)

Hon. Laurie Hawn: Thank you.

I have one more quick question, and that is with regard to the safeguards. I forget who talked about——perhaps it was Ms. Cheung—the government being able to take action without grounds. That's simply not the case, and I guess I'd ask for your comments on the safeguards. I would suggest there are more safeguards in this legislation than there are in the normal Criminal Code in terms of protecting the rights of the people that we are suspicious of.

Ms. Nathalie Des Rosiers: Well, actually, you are distorting the normal practice of the Criminal Code. In our view, the use of the regular Criminal Code is better for many reasons: police officers know how to deal with this; they are trained in this; judges know how to behave in this.

So the way in which you may respond—and nobody's saying don't do anything—is to say we need continued training, continued resources, and continued investment in gathering evidence as opposed to minimizing the need for evidence and distorting the normal processes. I think the bulk of commentary at the international level seems to say that strengthening the ability to get the evidence as opposed to transforming the process is maybe the best way.

Hon. Laurie Hawn: You appreciate that the police are in favour of this bill.

The Chair: Thank you, Mr. Hawn.

We'll move to Mr. Scott, please.

Mr. Craig Scott: Thank you, Mr. Chair.

Thank you to both of the witnesses.

I want to very briefly summarize that the deputy commissioner for the RCMP was testifying last session, and it was pretty clear that he saw a connection between the new “leaving the country” offence, where you'd leave, or attempt to leave, with the intent to commit a series of potential terrorist offences, and the new “recognizance with conditions” provisions in this bill.

Just to put you on the spot a bit, I'm wondering what would be wrong with this. When you have a system where you actually know that young people in particular are leaving, and they have this intention—you have good evidence, not intelligence evidence but evidence that can be used in court—rather than going to a prosecuting stage, with all of its implications, with the kinds of concerns we have about criminal records in terms of what good they do in the end, what we do instead is we go into a recognizance-with-conditions mode and put conditions, which might even include taking their passport away for 12 months, and we have a cooling-down period.

I'm reading between the lines in the testimony of the deputy commissioner, and I'm just wondering what you would think about that.

Ms. Nathalie Des Rosiers: Well, there are a couple of things. I think if it does not...it must be bounded by safeguards. Part of the problem with not prosecuting and simply creating risk profiles and not using the Criminal Code is that you certainly lack the public scrutiny on it. You lack the oversight that judges do.

We're not a society that says in general when the police think that someone may not be the...that we should just reduce their liberty for 12 months to give them a cooling period. That has not been the Canadian way. That has not been the way in which presumption of innocence works.

What we have invested in instead...because we are concerned that indeed mistakes may occur. People may have a tendency to restrict the liberty of people in an unfair way. What will the remedy be for these people who for 12 months will not be able to do anything...? You know, you could prevent them from travelling; there are lots of consequences. And they've never had their day in court. They will not have a day in court to justify this. The consequences there are immense.

I think the idea of investigating and trying to pursue the route that we know works and that has worked for a long time, protecting the presumption of innocence but at the same time ensuring the safety of the public, is the criminal law route. I'm not saying that we should not invest in....

Sorry; go ahead.

Mr. Craig Scott: Thank you.

Ms. Cheung, did you have a reaction to that scenario? Would you have similar concerns, or would you think that we actually should be open to that?

Ms. Carmen Cheung: I have very similar concerns to those of Nathalie. The only thing I would add to what Nathalie has already quite compellingly said is that establishing guilt is a very different thing from establishing dangerousness. By simply deeming someone as dangerous, that really just preempts the whole determination of guilt or innocence that accompanies our typical criminal proceedings. It's much harder to disprove dangerousness, especially if you're not being given the same procedural and due process safeguards that would accompany a prosecution.

● (1705)

Mr. Craig Scott: Thank you so much.

This committee in 2006, in a report on counterterrorism, actually did accept that investigative hearings might be a good idea to continue before being sunsetted, but only with respect to future acts where there's an imminent peril. The provisions we have here don't seem to make a distinction; they're past, present, future. And there's certainly by definition no imminent peril component.

Would you be supportive of a provision that is future-oriented for investigative hearings? Here we're not talking about prevention and recognizance, we're talking about investigative hearings where you're looking at an imminent peril.

Ms. Nathalie Des Rosiers: In my view, if you have an imminent peril, the investigative hearing is not going to be the way that the police officers are going to choose to go. I think because of the wait and the difficulty in managing the hearing, this will not be a useful tool.

Part of the analysis here is that I think we should be ensuring that this is not just for show; that if the provisions are being put forward, we should make sure that they are necessary, because on their face they do violate the Constitution, so the burden is to establish that they are necessary and justifiable in a free and democratic society. If they have flaws in them, I think you should insist that they be corrected. Certainly I think it's better to have only for the future...and certainly better that they be an imminent danger so that you curtail the use.

But the investigative hearing transformed the role of the judges. They moved from a system that we've used for many centuries to a more inquisitorial system. I think there is some discomfort about this, because the ethics around it are just not well thought through.

Mr. Craig Scott: Ms. Cheung, I was wondering if I could take you in another direction. You indicated that the worry about bringing back a version of the two provisions is expansion without oversight. My colleagues have talked about the fact there are more procedural safeguards in the current provisions being proposed than had been in the previous version; I think that's correct. But you went on to say your real concern is the lack of accountability mechanisms, especially with inter-agency activity.

Can you give me a short answer as to what parts of the Arar commission recommendations are needed, maybe not in this bill but coming down the road?

The Chair: You have 15 seconds.

Ms. Carmen Cheung: Basically it's the main provision, which is the creation of an inter-agency oversight mechanism, either by way of an umbrella committee or by creating the statutory gateways that Justice O'Connor referred to, which would permit the existing review agencies to look beyond the narrow borders of the particular agency that they're responsible for—that is, if SIRC is reviewing conduct by CSIS, if CSIS is interacting with the CBSA or the RCMP to be able to also look into that relationship and the work that's gone on there, rather than having to stop at an artificial border that doesn't exist in operations but still exists in how reviews are conducted.

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

We'll now move back to the government side, to Ms. Findlay, please.

Ms. Kerry-Lynne D. Findlay: Thank you, Mr. Chair.

Thank you both for being here today.

I noted in your testimony, Ms. Des Rosiers, that you said terrorism is a serious threat. I thank you for using the present tense when you said that. I think the earlier witnesses we heard today would certainly agree with you that this is a threat that is continuing and present and something we need to be vigilant about.

In your testimony, Ms. Cheung, I found you made a lot of very general references, so to be honest, I found it much less helpful. Your bringing in a world view in your comments doesn't necessarily help us with this specific legislation, including talking about this legislation eroding democracy and the ideals we all seek to protect.

For me, that highlights the fact that just today we've seen the results of a 2012 annual survey of some 97 countries by the World Justice Project. In the results of that project, Canada once again scored extremely well above average and one of the top in the world when it comes to the rule of law.

I think our systems here are not at all eroded by legislation like this, and we continue to be seen on the world stage as in fact a leader. A group of international experts released their report a couple of months ago saying that Canada was the best country in the world for women to live in, in part because of our legislative and judicial branches and the protections they afford to women and minorities in this country.

With respect to your testimony, Ms. Des Rosiers, you also talked about the reference case, which was in June 2004 and related to the Air India prosecution. Under section 83.28 of the Criminal Code, in the 2004 case, the Supreme Court of Canada upheld the constitutionality of investigative hearings.

You made mention that if one testifies before those investigative hearings, that testimony is protected, against use against them, in further criminal proceedings but not in other ways. It's my understanding, from a reading of that Supreme Court of Canada case, that in fact that protection is afforded with testimony being used against the individual in both administrative and extradition hearings.

As well, in the *Vancouver Sun* reference of the same year, the Supreme Court of Canada held that there is a presumption that those investigative hearings would be held in open court. It is true that a judge under these provisions could say that it could be held in private, and that would normally, I would think, under judicial discretion, be because of, say, the safety of the person involved. But that's certainly there and present from that decision.

● (1710)

Ms. Nathalie Des Rosiers: In our view, if you do read the decision this way, you should put it in the act, because that's the danger, actually, of transforming the....

I mean, I'm saying this—

Ms. Kerry-Lynne D. Findlay: Do you agree with me that it is in that decision?

Ms. Nathalie Des Rosiers: But the decision does not say; it implies it. It says that we will read it as though it has that protection against, which—

Ms. Kerry-Lynne D. Findlay: [*Inaudible—Editor*]...that's what that means. The Supreme Court of Canada is our highest level of court. If the Supreme Court of Canada says it will read it that way, then that's how it is read by every court under the Supreme Court of Canada and the Supreme Court of Canada itself.

Ms. Nathalie Des Rosiers: Yes, that's true, certainly. I'm saying that for the benefit of the Canadian public, I think your job as parliamentarians is to ensure that this teaching is not lost. My suggestion is that you should make sure that it's in the bill. It increases the transparency of it and—

Ms. Kerry-Lynne D. Findlay: I understand what you're saying, but it's an opinion, that it should be codified. That's your opinion, and fair enough. But in fact our law is made up of both common law and codification in Canada, and it remains the present law as stated by the Supreme Court of Canada.

Ms. Nathalie Des Rosiers: I think one of the issues would be whether the re-enactment of the provision will require judicial clarification. Why not prevent this going all the way up again?

Ms. Kerry-Lynne D. Findlay: I appreciate your opinion.

Ms. Nathalie Des Rosiers: We can agree to disagree in terms of what is the necessity here, but....

Ms. Kerry-Lynne D. Findlay: Far be it from me to tell the Supreme Court of Canada that they don't mean what they say.

Ms. Cheung, you testified on Bill C-17—a similar bill—on February 10 of 2011. You said, and I'm quoting:

> As it is currently drafted... the investigative hearing provision...leaves open room for potential misapplication of the law.

This is a new iteration of it, and when Minister Nicholson, our Minister of Justice, testified before this committee on November 19 of this year, he noted several and numerous safeguards, including: (i) that the prior consent of the Attorney General of Canada, or the attorney general or solicitor general of the province, would be needed before a peace officer could apply for an investigative hearing order; (ii) there would have to be reasonable grounds to believe that a terrorism offence has been or will be committed; (iii) the judge would have to be satisfied that reasonable attempts have been made to obtain the information by other means for both future and past terrorism offences; (iv) the bill clarifies that section 707 of the Criminal Code, which sets out the maximum period of detention for an arrested witness, applies to a person arrested with warrant and detained in order to ensure his or appearance at the investigative hearing; (v) the witness would have the right to retain and instruct counsel at any stage of the proceeding; (vi) a person could refuse to answer a question or produce anything that is protected by Canadian law relating to the non-disclosure of information or privilege; (vii) federal and provincial attorneys general would be required to report annually on any use of investigative hearings; (viii) this annual report would include an additional requirement that the Attorney General of Canada and the Minister of Public Safety provide their opinion, supported by reasons, on whether these provisions should remain in force.

In other words, there is evidence not only before the Canadian public on a continuing basis but also before Parliament on the use of this.

Do you think such safeguards are important, these ones I've listed?

● (1715)

Ms. Carmen Cheung: I think these safeguards are very important. I must confess that I think you're more familiar with my previous testimony than I am at this point, but I believe when I made that reference to the potential misapplication of the law, it was in reference to the same thing that Ms. Des Rosiers has pointed out, which is that the Supreme Court of Canada has ruled that the investigative hearing provisions were constitutional, yes, but only after reading in what was not in the legislation.

So when I said that my concern was about potential misapplication of the law, it was the misapplication, as you point out, in terms of the common law, because it has not been properly codified in this bill...[*Inaudible—Editor*]...the predecessor decision.

The Chair: Thank you very much. Time is up on that.

We'll now move to Ms. Sgro, please, for seven minutes.

Hon. Judy Sgro: Thank you very much, Mr. Chair.

Thank you both for being here. I appreciate the fact that you're trying to make sure that Bill S-7 is strong and constitutional and all the other aspects. I appreciate the fact that you're pointing these things out, which will clearly be listened to by many, and by those who have drafted the bill, to ensure that it is constitutional and all of the rest of it.

I find it interesting the work that both of you are doing, and I would ask you a bit of an odd question: has either one of you ever been affected by a tragic loss in your family?

Ms. Nathalie Des Rosiers: Yes.

Hon. Judy Sgro: Ms. Cheung?

Ms. Carmen Cheung: Yes.

Hon. Judy Sgro: Wow. It's difficult, when you listen to the people who have been affected by Air India...and issues that clearly tell us that terrorism is active in our country. As much as we like to...I think Canada continues to be naive on some fronts, and on the issues of terrorism in particular.

So I welcome this bill as another way of strengthening our country, recognizing that there are people who don't necessarily feel the same way—but I think there must be a balance between being able to ensure that the appropriate officers in Canada have the tools they need to do the job they need, and the confidence that they're not going to abuse that power. Even though we know that does happen at times, they need to have the tools they need to do the job to keep us safe.

Your comments on how to make the legislation stronger and more effective, I appreciate; but I guess it's just difficult to think that you would be more concerned with some of the issues around people who clearly had an interest in causing more terror and havoc in our country than, it seems, you care about some of the others.

I want to give you both an opportunity to respond to that. I'm sure you would want to clarify that.

Ms. Nathalie Des Rosiers: Being committed to fairness and the Constitution, and ensuring that truth is the end result—I think that is the commitment we should have to both victims and offenders. The fairness, the legitimacy, of the system—the way people will cooperate with it, in the knowledge that they will not be unfairly treated, that there is sufficient accountability and framework around it—that's what reassures me. That's the reason I work with CCLA.

I believe that indeed this opposition between victims and offenders is the wrong way to present it. I think we both have an interest in a fair, truthful, rigorous system. That's our only guarantee.

Our concern about Bill S-7 is both that, in a way, these provisions are not the most effective tools, and that they haven't been on the books for the last five years. They were used once during the first five years. My sense is that there is a stronger legitimacy, a stronger position, to use the traditional criminal law route because it's tried and true. We know what it does. We know how it delivers. People have confidence in it. That's the reason why I think this is a better route than creating exceptional measures.

Can I just add one more thing?

● (1720)

The Chair: I wanted to give Ms. Cheung an opportunity too.

Ms. Nathalie Des Rosiers: Yes, sorry; I just want to say that one of the things that are not in the accountability framework...and I share very much the BCCLA's position on this. I will be happy to provide the committee with our assessment of the RCMP bill, which, on accountability, does not completely respond to some of the questions of Maher Arar. If you ask for more power, you should have more accountability. I think that's a good way in a democracy.

Finally, you should ask not only about how it has been used, as the minister has said, but also about the effects. Has it been threatened to be used? The reality is that we know that people will be forced to talk to police officers on the...essentially that it would be threatened to be having a control order or going to an investigative hearing. So simply saying "Has it been used or not?" is the way in which policing is affected by this.

The Chair: Ms. Cheung, please.

Ms. Carmen Cheung: Having Nathalie go first means that she basically says everything I want to say, but better.

I am concerned about this dichotomy between victims and offenders and everyone in between. I don't think we're trying to make Canada less safe—far from it. We are concerned about Canadian safety. But we're also concerned about making sure that our national security policies and practices are effective. To a significant degree, we are concerned that these two provisions are not as effective as they may seem at first blush. That's why we're here today. We want to express our concerns and share what has happened in other countries that have had much more extensive experience with things like this.

The Chair: You have two minutes.

Hon. Judy Sgro: I'm fine.

The Chair: Okay, then, we'll go back to Mr. Scott.

Mr. Craig Scott: Thank you, Ms. Sgro, for giving us a little time.

I wanted to give Ms. Cheung a chance to weigh in on the conversation between Ms. Findlay and Ms. Des Rosiers. It is a legal, theoretical difference between whether you make explicit something you already know to be part of the common law or whether you trust the common law, as articulated by the Supreme Court, to be sufficient.

I'm happy to hear there's agreement that the Supreme Court has actually set parameters that we would read into this provision. It's not just limited to the explicit language of criminal proceedings. But I tend, I guess, to be more of a codifier, wanting to see that made explicit.

I'm wondering if you could add a little bit of your perspective on that.

Ms. Carmen Cheung: At the risk of being facile, I would say that if the Supreme Court has already told us what the law ought to be, then that's how we should construct our laws.

I agree with Ms. Des Rosiers that it doesn't seem terribly efficient for us to possibly have to go and relitigate this all over again in order to establish that this is how the law should be interpreted. If it's our understanding that for it to be constitutional we have to have these safeguards, then I do think it is prudent, and is the better course, to codify as opposed to having to reach for the common law as well, to use it in tandem.

Mr. Craig Scott: Okay.

Again, I think the record of our session today will be very important in the future, and it may, hopefully, prevent the need for litigation if in fact it passes as worded.

I'm grateful to Ms. Findlay for pointing out what the Supreme Court has already read into the predecessor version of this. That helps, if we don't get it made explicit.

I have another question. The Minister of Justice, Mr. Nicholson, in the Senate referred directly to the investigative hearings provision as one method of getting evidence on this new leaving-the-country offence. By implication, I think he must be talking about speaking to family, neighbours, community about maybe youth who are under surveillance or about whom there is a concern.

I'm just wondering if I could give both of you an opportunity to talk about the linkage between the investigative hearing and proof on leaving the country, because without really strong proof, my worry is that this provision will just turn into a disruption provision.

I hear the minister, in the sense that this could produce the right proof, but it would be using investigative hearings to do so.

What would you say about that?

● (1725)

Ms. Nathalie Des Rosiers: I would say a couple of things about these provisions. Number one, as you know, the definition of terrorist activities is at the Supreme Court now and being debated as to whether it's too wide or not. When you read the provisions, there is a certain ambiguity to it, a certain vagueness, that I think will create some trouble or some difficulties in proving that.

I understand that what the minister envisages is that, for instance, the mother of a young man is called in front of a judge to say what she knows about his intentions, and on the basis of that, a charge is later put. I think that is certainly one of the fears within the communities, that indeed they will be forced into things that we don't usually ask of other people in Canada. You are not obliged to speak to the police, and we trust that as being.... People do; people often do; but it's an individual case.

We've been living like this for a long time, having reached many thresholds and so on, and this changes it for only one particular community, presumably, and I think we should be concerned about that. This is a little bit the message of the social cost, not only on victims but also on the indirect victims, the people unfairly targeted and so on.

I would echo the need, if you want to continue to do prospective work...I think CBSA oversight should be part of the package deal. If the idea is to do a good job of reassuring Canadians that counterterrorism is done in the appropriate way, I think it is incumbent upon you to demand a good framework of accountability for all actors.

The Chair: Thank you very much. Our time is up there.

To end the day, we'll go to Mr. Norlock, please.

Mr. Norlock, normally you'd have five minutes. It looks like you have about three or four minutes.

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

To the witnesses, thank you for appearing.

When we get to the stage where we hear from victims, I usually need to speak to my constituents through this committee and to the victims, as well as ask the witnesses questions. I've heard from previous and current witnesses about all the rights we have as individuals in this country, but one of the primary rights we have in this country—the first right we have in this country—is the right to life. Terrorists deprive people, as we heard from the first witnesses, of the right to life. Not only do they deprive them of the right to life, but they deprive victims of the right of association with the people who are no longer on this earth.

As for what we are here discussing and talking about, constantly over the six years that I've been on this committee we have heard from various groups of civil libertarians, who have never ever, to my knowledge, agreed with the vast majority of the legislation that this government has brought in. They will placate us by saying that they agree with the fundamentals, but in particular, no, this is not quite good, they say.

But when we talk about the current witnesses, I heard very strongly from Mr. Gupta that he hears them talk about the people who have been incarcerated, at a cost to our society, he says, of $100,000 to $140,000 a year—I think he said $60,000 and someone corrected him. Yet he says that all through the Air India event he was not aware of anybody from a civil libertarian group coming to the victims. There were some 300 people killed, but the relatives left on the earth to mourn their loss never heard of civil libertarians wanting to take up the fight for their rights.

We also heard today from the witnesses that we should be concentrating on rehabilitation. Well, actually, this particular legislation offers an opportunity for rehabilitation, in that if a mother, relative, friend, or citizen sees someone who may be going to commit a terrorist offence, they can go before the hearing, and there is a recognizance built in for the people at home. There can be a rehabilitative part of the recognizance, so in actual fact, this legislation does have built into it an ability to rehabilitate.

How long do I have, Mr. Chair?

● (1730)

The Chair: You're 10 seconds over.

Mr. Rick Norlock: Thank you very much, Mr. Chair, for that 10 seconds.

The Chair: I think we'll leave it at that for today.

Thank you for attending, both via teleconference and by your attendance here today. We get different perspectives when we have legislation come forward. We look at all perspectives. Thank you for presenting yours.

We are adjourned.

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