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Chair

Mr. Kevin Sorenson

Standing Committee on Public Safety and National Security

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● (1600)

[*English*]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Good afternoon, everyone. This is meeting number 63 of the Standing Committee on Public Safety and National Security, on Monday, December 3, 2012. This afternoon 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.

From the Canadian Security Intelligence Service we have Jeff Yaworski, the assistant director of operations. As well, we have Monik Beauregard, director of the Integrated Terrorism Assessment Centre. Welcome, and welcome back.

We apologize for starting this meeting half an hour late because of votes that were held in the House. My intent, if it's possible for you folks to stay 15 minutes longer than originally requested, is to run two sessions of 45 minutes. First, it will be you folks for 45 minutes. Then it will be the Canadian Bar Association and the International Civil Liberties Monitoring Group for 45 minutes. If that's all right with the committee, we will proceed.

We invite you to give your opening statements, and then we will move into questions from our committee members.

Mr. Yaworski.

Mr. Jeff Yaworski (Assistant Director, Operations, Canadian Security Intelligence Service): Mr. Chair and members of the committee, good afternoon. I am pleased to be here as part of the committee's discussion on matters related to Bill S-7, the combating terrorism act.

Last week, the CSIS deputy director of operations, Mr. Michel Coulombe, gave comprehensive opening remarks to this committee on the subject. Given that they are on record and still valid, I will keep my opening remarks very brief.

As Mr. Coulombe stated before the committee, the service does not have a law enforcement mandate, so we would not directly have recourse to the provisions envisioned by this bill. That said, as a member of the broader national security community, we are certainly supportive of any additional tools that will help our law enforcement partners better confront terrorism. When Mr. Coulombe was here last week, he provided an overview of the current threat environment that Bill S-7 seeks to address. Mr. Chair, I would like to briefly summarize his main points for the committee.

The greatest threat to Canada and Canadian interests continues to be terrorism, particularly that emanating from Sunni Islamist extremism. While a large and diverse global movement, it is best represented globally by al Qaeda and its affiliate organizations. Recent events in North Africa and the Middle East have unfortunately provided new opportunities for these groups.

With respect to domestic threats to Canada, CSIS continues to investigate hundreds of persons involved in terrorism-related activity that threatens Canada and our allies, including Canadians who travel overseas to conflict zones, such as Somalia, the Afghanistan-Pakistan tribal areas, Syria, and Yemen, in order to participate in terrorist activities. That these individuals may return to Canada further radicalized and with combat training and experience, highlights the increasing nexus between the domestic and international threat environments.

During his opening remarks, Mr. Coulombe shared with this committee some conclusions from a recent CSIS study on radicalization in Canada. Of significance, the study did not uncover a predictable or linear pattern for radicalization. It did, however, identify common drivers of radicalization, including profound feelings of injustice toward western governments, societies, and ways of life, as well as a sense that the Muslim world is under attack and requires defending through the use of violent jihad.

Mr. Chair, I will end my statement here, and would be pleased to answer your questions.

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

We will now move to Mrs. Beauregard.

Mrs. Monik Beauregard (Director, Integrated Terrorism Assessment Centre): Mr. Chair and members of the committee, I am pleased to be invited back to appear before this committee to continue the discussions on matters related to Bill S-7, the combating terrorism act, and to have another opportunity to talk about the role and mandate of the Integrated Terrorism Assessment Centre, or as we call it, ITAC.

Mr. Chair, my opening remarks from the November 21 hearing of this committee are a matter of record. However, I would like to underline some points that I think are worth mentioning again.

ITAC was created in the wake of the events of 9/11 as an organization that would bridge some of the institutional gaps in the Government of Canada following a realization about the need for greater cooperation and information sharing. This sentiment was echoed in the United States, as mentioned in the 9/11 commission report.

[*Translation*]

Like CSIS, the Integrated Terrorism Assessment Centre—or ITAC—is not a law enforcement organization. I want to clarify that ITAC has no independent ability to collect intelligence. Unlike CSIS, we have no intelligence officers in the field.

The primary objective of ITAC is rather to provide comprehensive and timely terrorist threat assessments to all federal departments and organizations and to all other levels of government with security responsibilities.

Our workforce is made up of analysts seconded from across government, thereby representing a wide variety of skill sets and knowledge bases.

[*English*]

As such, ITAC threat assessments use intelligence and information from various sources and employ various methods. Turning to the threats themselves, I would simply reiterate that the most serious terrorist threat to Canada remains that of violent Islamist extremism. Specifically, al Qaeda and its affiliates continue to represent the greatest threat from this perspective. That said, it should be noted that violent extremist elements can be found in a multiplicity of ideologies, religions, or groups.

Mr. Chair, this concludes my remarks.

The Chair: Thank you very much for your testimony, both of you. We'll now move in to the first round of questioning. We'll welcome Ms. Kerry-Lynne Findlay.

● (1605)

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): Thank you, Mr. Chair, and thank you both for being here.

Mr. Yaworski, in listening to your comments, you stated that you believe the greatest threat to Canada and Canadian interests continues to be terrorism, particularly that emanating from Islamist extremism. I also noted that you said it is best represented globally by al Qaeda and its affiliate organizations. You mentioned recent events in North Africa and the Middle East that have provided new opportunities to these groups. Is it necessary to reinvigorate the provisions we're dealing with, and if so, why? Do you agree with me at the outset that this is a continuing and present threat?

Mr. Jeff Yaworski: It is indeed a continuing and present threat. Al Qaeda has been around for a while now. Their leadership has suffered some losses, but the message that al Qaeda delivers resonates increasingly in the west, in Canada in particular.

We've seen an increase in individuals who have expressed an interest in al Qaeda. Some have followed through by travelling to parts of the Middle East to participate in what they describe as jihad, or war against the west, against the non-believers. The number of individuals who have travelled to participate in jihad has certainly increased. I think the legislation aims to provide law enforcement with an opportunity to engage those individuals before they get a chance to arrive at their destination.

Ms. Kerry-Lynne D. Findlay: I would like to explore that with you a bit more. Is CSIS aware of any Canadians who have travelled, or attempted to travel, from Canada to other countries such as Afghanistan, Pakistan, Yemen, or Somalia to join terrorist organizations or engage in terrorist activities?

Mr. Jeff Yaworski: We're aware of at least 45 instances, possibly as many as 60, where individuals from Canada have travelled to the countries you've identified to participate in training or in terrorist acts.

Ms. Kerry-Lynne D. Findlay: Would you say that emanates from activities here in Canada that attempt to radicalize certain people to these purposes?

Mr. Jeff Yaworski: I'd suggest the numbers are on the rise for exactly the reasons you've articulated. The opportunities for radicalization have been many. Some have arisen from charismatic leaders who may work with various groups within Canada, but even more opportunities have come through technological advancements. The Internet has proven to be a very valuable tool in recruiting and radicalizing individuals in Canada and elsewhere around the world. I would suggest there is definitely a link between developments in technology, the Internet in particular, and the increased rise in Canadians travelling to participate in these activities.

Ms. Kerry-Lynne D. Findlay: Just to make sure I understand you correctly, you're saying this participation is largely Canadian to Canadian, but may also involve Canadians dialoguing with radicals internationally. They have a much easier time connecting than they once did because of the Internet.

Mr. Jeff Yaworski: Yes, I would agree with that statement absolutely. It has been taking place both in Canada, where we can try to influence it, and directly over the Internet through the likes of Anwar al-Aulaqi.

Anwar al-Aulaqi was a former American citizen—he's now deceased—who was featured quite regularly in *Inspire* magazine, an al Qaeda publication. His speeches are still available over the Internet, and they're radicalizing a whole new generation of individuals to the cause. While he may no longer be available, unfortunately the message of hatred that he's delivering is still out there.

Ms. Kerry-Lynne D. Findlay: The message of hatred lives on, in other words.

It is already illegal, of course, to knowingly participate in the activities of a terrorist group for the purpose of enhancing the ability of a terrorist group to carry out an act of terrorism. Such activities might include receiving or providing training at a terrorist training camp. It should be noted that in 2008 Mr. Khawaja was convicted of the offence of receiving training in Pakistan. Our government has decided to create new offences of leaving Canada for the purposes of committing a terrorism offence.

Do you support those new offences?

Mr. Jeff Yaworski: I do indeed.

Ms. Kerry-Lynne D. Findlay: Why?

● (1610)

Mr. Jeff Yaworski: As I said in my opening comments, it does give law enforcement another tool to prevent terrorist activities from taking place. I think that's fundamental in this regard.

The Government of Canada's counterterrorism strategy does emphasize the prevention aspect. I think what we're doing here, or what was intended by this law, is enabling law enforcement to engage individuals before they travel to those faraway lands and prevent them from engaging in what would be described as terrorist activity, or what you described as occasions for training and that sort of activity.

Ms. Kerry-Lynne D. Findlay: Would you agree with me that the interruption or disruption of people at an earlier point in time as they head into terrorist activity or wish to join it makes sense and is reasonable?

Mr. Jeff Yaworski: I would certainly agree with that as you have articulated it.

I think prevention and disruption are slightly different things. When you are referring to prevention, perhaps you are addressing the root causes of radicalization, but you can also suggest that when that individual arrives at the airport intending to travel to faraway lands to engage in jihad activity, you are certainly preventing him from doing that as well.

The Chair: Thank you very much.

We will now move to the official opposition.

Mr. Scott, go ahead, please, for seven minutes.

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

Thank you, witnesses, for coming.

I am wondering if I can follow up on something that became fairly clear in the testimony of the representative of the RCMP. He clearly saw a link between the provisions regarding leaving the country, the provisions of the new offence, and the resurrection of the section on preventative detention and recognizance with conditions.

The only way I can really make the connection is that there is an emphasis on the preventative focus. The notion is that you actually bring somebody in for a recognizance hearing and impose some kind of conditions that would basically prevent them from leaving the country.

Is that part of your understanding of how these supervisions would work together?

Mr. Jeff Yaworski: I guess you've heard from the experts on that, Mr. Scott. I read the testimony of assistant commissioner Malizia in that regard, and I would agree with his assessment that it's important to have the ability to question individuals who might not otherwise be cooperative with the government or law enforcement with regard to potential attack or the opportunity for terrorist training. It will allow law enforcement to question those individuals and seek their cooperation in that regard, as I understand it.

Mr. Craig Scott: Okay.

You've brought up another dimension. You've helped to clarify that recognizance with conditions seems to be part of the picture.

One of the other resurrected provisions deals with investigative hearings. Do you envisage that part of preventing individuals concerned from leaving the country would trigger the investigative hearing provisions in order to bring in say, family members, neighbours, or community members to get more of a sense of what somebody is planning, in order to have enough evidence to trigger the recognizance with conditions provision?

Mr. Jeff Yaworski: Again, the experts would be in justice or in law enforcement. I can offer my own opinion based on what I have read of the legislation. I would suggest to you that doing that is not the intent. I would think it is to be used very rarely and under very specific circumstances, to question individuals who would have a direct knowledge of threat-related activity.

Mr. Craig Scott: Okay, thank you.

Director Fadden, in his testimony before the Senate committee—and I know you've been reading the testimony so I won't go into it in detail, and you know I've asked about this a couple of times—referred to the fact that Canada has no system for controlling exits. He hinted at the need for protocols to be developed and hinted that possibly some kind of exit control system might be under consideration.

I'm wondering if you can help us. Do you know anything at all about the advanced passenger record information system? Do you know whether or not there's active discussion about moving up in time the receipt of information in that system so that, for example, CBSA officials could notify the RCMP and airports well before the wheels are up, so to speak? We could change the current system from one in which the plane is gone to one in which it could be used as tool to find out if somebody is on the flight so that there could be some sort of an exit control system. Is that something that makes sense? Do you think it is something that is in the works?

● (1615)

Mr. Jeff Yaworski: I'm not privy to that information, Mr. Scott, unfortunately, but I can tell you that, from a service perspective, we would be very interested in an exit information system. I chose that word rather carefully. It's not control we're after, it's information on individuals who have left the country, because as it stands now—and I believe you heard the testimony from Mr. Leckey at CBSA—we're only seeing one-half of that picture. We're only seeing them when they return to Canada. We're not getting information on exits—

Mr. Craig Scott: —except eventually from the U.S. under the new system.

Mr. Jeff Yaworski: Under the new system, as I understand it, but you're absolutely right that it would be U.S. to Canada and vice versa.

Mr. Craig Scott: Thank you.

The investigative hearing provisions, which I don't have in front of me, are triggered by a peace officer making the application for the investigative hearing. When Mr. Fadden refers to the need for protocols, which makes sense as there will be a need, do you see some kind of a requirement for consultation between the peace officers who can trigger the investigative hearing and intelligence agencies like CSIS?

I can just imagine any number of ways in which an investigative hearing could mess up an intelligence operation or budding operation. Do you foresee that a peace officer, in the context of many of these kinds of terrorist offenders leaving the country, will be required to check with intelligence before making that request for an investigative hearing?

Mr. Jeff Yaworski: I'd suggest to you that it probably wouldn't be as direct as a requirement. I would suggest it would probably make very good common sense in most instances. We work very closely with our RCMP colleagues, who have the authority to enforce this law. We speak about a variety of different issues all the time, including direct investigations where we may run our own parallel investigation to theirs.

Deconfliction, if you will, is an important part of that communication. I would agree there would be occasions when we would need to talk with our law enforcement colleagues and vice versa.

Mr. Craig Scott: This is just to make sure I go over some ground on which I know you are probably going to have to give the same answers as Mr. Fadden, but on the no-fly list, he did comment in his testimony:

> The current structure of the no-fly list program is such that you have to be a threat to aviation....My understanding is that officials are preparing a series of proposals for ministers to try to make this list a little more subtle, but I do not know where they are on it.

He's obviously aware of some process going on. Can you share any details with us about what's being considered? What does it mean to make it “a little more subtle” in that context?

Mr. Jeff Yaworski: I guess you would have to ask Mr. Fadden what his thinking was on that particular one.

Mr. Craig Scott: We did ask him to come to the committee, but unfortunately, he isn't here.

Mr. Jeff Yaworski: I'm all you have, I guess, at this particular point.

I guess, in responding to that, if there's latitude for expanding the no-fly list, or the specified persons list, as it's known more appropriately, that's a policy question for government.

We will react to whatever the government decides on issues like that, and we will adjust our own operational protocols accordingly.

The Chair: Thank you very much.

Thank you, Mr. Scott.

We'll move back to Ms. Bergen, please.

Ms. Candice Bergen (Portage—Lisgar, CPC): Thank you very much, Mr. Chair. Thank you to both witnesses for being here.

I want to clarify something with regard to Mr. Scott's questions, and if you have some comments to make on this it would be appreciated.

With regard to the exit and entry strategy and agreement that we have under the beyond the border framework with the U.S., it is very important that we're clear that this is a stand-alone measure. It's sharing information; it's not collecting new information. It's sharing information with our U.S. counterparts. At this point it's only occurring at four land crossings. It's not happening when people, obviously, are flying to other parts of the world. When someone leaves our country, we share that information with the U.S., which becomes their entrance, or it is vice versa, when someone comes into our country, it becomes their exit information.

Is that how you understand it to be? Have I explained it in the correct terms?

● (1620)

Mr. Jeff Yaworski: That is exactly how I understand it. I did read the testimony of Mr. Leckey from CBSA and that is exactly as he has articulated it. Our exit becomes their entry, and vice versa. As I understand it, it is only a trial exercise at this point. It hasn't been fully implemented across the board.

Ms. Candice Bergen: Correct.

When we talk about the investigative hearings or the recognizance with conditions, there are a number of safeguards that have been built into the legislation and into these provisions. The very first one is that the consent of the Attorney General, or a provincial attorney general, would have to be given, which obviously is one of the main ones here. There are a number of other safeguards within it. I'm wondering if the safeguards that are built in give you the satisfaction that, for example, people's privacy, legal rights, and basic rights will still be protected under both of these provisions?

Mr. Jeff Yaworski: I'm probably not the best person to answer that question. As I said, not being a peace officer, I would not be directly involved in executing the provisions of the act as they are proposed right now.

Again, people from Justice have been before you. I believe they commented with respect to their perception of the potential vulnerabilities with this legislation. I would have to defer to their comments in that regard.

Ms. Candice Bergen: That's fine. Thank you.

Let me go to something which I think you will probably have a little more information you will be willing to talk to us about. Can you describe to us the danger of Canadians, certainly legislators, beginning to have a laissez-faire attitude thinking we haven't had any major attacks recently? It seems that we're on top of the whole terrorist file because we're all fairly safe. Is there a danger of being complacent and not taking the threat as seriously as we should? Do you see evidence of that in Canada?

Mr. Jeff Yaworski: That's a very good question. It's a difficult job. We're a victim of our success sometimes. I would only point to the Toronto 18 case as an example of individuals who were radicalized in this country and were looking to commit a significant terrorist act in this country.

Canada is not immune to the threat of terrorism. Al Qaeda has referenced Canada as a potential target. The world is not a warm and friendly place, necessarily. I'm not intending to be superficial or suggest things that you are not already aware of as parliamentarians. Your point is an accurate one. The fact there has not been a terrorist attack on Canadian soil in recent years does not mean we should let our guard down. We should do everything we can in our power to ensure that Canada and Canadians are safe. That is a fundamental mandate of the service.

Ms. Candice Bergen: One of the provisions within this piece of legislation is the recognizance with conditions. Ms. Beauregard, you might want to comment because of the work you do with terrorist assessment, and you as well, Mr. Yaworski.

Some of the individuals who are working aiding and abetting terrorist activity are not working directly with the terrorists. They may not necessarily even have knowledge of what the end result of their actions might be. I know it's going to assist with their cause, but whether it's purchasing something, raising money, or making connections, they may not even know exactly what the work they do or the actions they take might result in. Yet they are, for all intents and purposes, contributing to a terrorist activity.

Am I correct in that? If I am, would you be able to share with us why it's important to make sure these individuals can have conditions placed on them to stop activity which to all of us would not necessarily be an illegal activity? Whether it's being on the Internet, placing a call, or raising money for a cause, it's not their specific actions that need to be stopped; it's because of the result their actions will have.

Mrs. Monik Beauregard: Let me begin by saying that in ITAC, we do support the provisions of Bill S-7. That being said, we are an assessment organization. We do not collect any information. The application of the provisions would be done by law enforcement. Obviously we would provide our assessments. If we had information to share with law enforcement, we would do so, but the ultimate decisions would be made by law enforcement.

● (1625)

Ms. Candice Bergen: What I am trying to ask you is if you could connect the dots for all of us.

If people who are doing things that are contributing to terrorist activity, those activities need to be stopped. Yet they are not actually going and blowing someone up or killing someone, but they are still contributing via their actions. Are you able to give us some examples in the work you do?

Mrs. Monik Beauregard: Not in the kind of work we do at ITAC. I apologize. For national security considerations, I wouldn't want to provide any such examples. I apologize.

Mr. Jeff Yaworski: Perhaps I could jump in here, but not with any concrete examples because we can't go there.

I think what you are alluding to are things such as purchasing a cellphone that's disposable, and providing that to an individual upon arrival if that individual is here in Canada to do nefarious things; or fundraising, as you suggested, for a cause that perhaps is openly a viable and useful charity, when in fact some of those funds may be routed to other purposes.

In cases like that, I think we have to be very careful whether, from a charity perspective, fundraising for a charity would fall within the legislation as you are reporting it. With respect to purchasing a cellphone or something of that nature where there is a direct applicability to an ongoing investigation, those are situations where law enforcement might want to call on that individual and determine whether the activities he or she has been involved in are done knowingly, or whether the individual is an innocent bystander. It's not suggesting there would be an arrest. It's more a matter of seeking additional information to help the investigation.

The Chair: Thank you very much for that testimony.

We'll go to Mr. Scarpaleggia, please.

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

We all know that so far there hasn't been use of investigative hearings. That point has been made over and over. Based on your assessment of the growing number of people who may be disenchanted with western governments, this government, for example—I don't mean this government in terms of a political stripe, but simply the state of Canada—would you be fairly confident in predicting that at some point the investigative hearing will be used? If the trend is toward growing disenchantment in certain quarters, one would think that the probabilities are we will have recourse to investigative hearings at some point. Would you agree with that? Even though they haven't been used to date, would you say most likely they will be at some point?

Mr. Jeff Yaworski: I would suggest that's a logical conclusion, certainly.

Mr. Francis Scarpaleggia: Okay.

There's one part of the bill that we haven't really talked about too much, at least I don't think we have. It's in regard to changes to the Canada Evidence Act. Are you familiar with that part? From what I understand, more information that is gathered for the purpose of a hearing will have to be made public. Have you come across that part of the bill?

Mr. Jeff Yaworski: I have.

Mr. Francis Scarpaleggia: Up until now, the idea has been that it should remain undisclosed on the grounds of a specific public interest, or because it relates to or would be potentially injurious to international relations, national defence, or national security. I believe the Federal Court has found this approach to be a little too restrictive. The bill amends part of the Canada Evidence Act to institute a presumption of more transparency.

I was wondering if you've looked at those aspects of the bill, because I'm having trouble understanding them. For example, we talk about disclosure risk, that agencies such as yours will now face greater disclosure risk. I was wondering if you could speak to what that really means.

Mr. Jeff Yaworski: In responding to that question, when CSIS was created I don't think the occasion to disclose classified information in an open forum was originally envisioned. We've had to move down toward that reality. At the same time, the federal courts that usually deal with open information are struggling with dealing with classified information, which in an intelligence organization, by definition, the intelligence is secret. Moving into an open forum has been difficult for us, but not something we have failed to do. The success we've had in some of the counterterrorist investigations, working with the RCMP, is to find ways to transpose what we call intelligence and move it more into the evidentiary sphere. It has been done, but it hasn't been easy.

I think the clauses you're referring to provide an opportunity for certain hearings to be done in secret and others, the predominant number, to be done in an open forum, if I'm correct, Mr. Scarpaleggia. For our purposes, obviously, it allows us to divulge more information of a classified nature if it's in a secure environment. If it's in an open forum, it's very difficult for us because we have to ensure the protection of our service sources, their identities in particular.

We often have to protect allied information that comes to us. Canada is a net receiver of intelligence from allied agencies. They share that information under the expectation that it will remain secret. The information that we receive from our allies, from our human sources, helps protect Canadians and Canadian interests, so having an opportunity to present that information in a secret forum is a good thing, from our perspective.

● (1630)

Mr. Francis Scarpaleggia: I'm trying to understand the process. An investigative hearing would be, of course, a closed hearing, would it not? It's not going to be out in the open, I presume. Am I correct in assuming that? An investigative hearing is always behind closed doors; it's simply that the information will have to be made public at some point. Is that what we're talking about?

Mr. Jeff Yaworski: I think there are two options in that regard, but the Justice officials would probably be better to ask.

Mr. Francis Scarpaleggia: Okay.

So you've had to change the way you operate because of the fact that there's a greater presumption now of transparency. You said that you've had to turn intelligence into evidentiary information. Could you expand on that?

Mr. Jeff Yaworski: I think the issue is around disclosure. Certainly, we can disclose to law enforcement. We can provide investigative leads. It does get complicated when we're trying to protect our human sources from identification. Obviously, in a counterterrorism investigation where we have human sources, their lives are at risk if we have them identified in a public forum. Also, depending on the organization we've targeted against, we want to use those individuals on a repeat basis, not in a one-off case.

Where we've changed our activity is in terms of the eventual leads we've provided to the RCMP. We try to make them as fulsome as possible, but with the intent that the RCMP will then initiate their own law enforcement investigation, we will continue down a parallel track in an intelligence investigation.

Mr. Francis Scarpaleggia: You're basically going to point them in a certain direction.

Mr. Jeff Yaworski: That's correct.

Mr. Francis Scarpaleggia: Without giving up your sources and saying that you've heard this and you've heard that, you find the answer for yourself and build up a case for yourself.

Mr. Jeff Yaworski: That's a fair assessment. Obviously, there have been other occasions where we've provided them with our human source who they've turned into a government agent, for court purposes, but those situations are rare. Our preference is that they will engage in their own investigative process.

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

We'll now move back to Mr. Scott.

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

The Chair: It's a five-minute round.

Mr. Craig Scott: Thank you.

I was just wondering, Ms. Beauregard, if you could confirm that CATSA at the moment is not part of ITAC. Is that correct?

Mrs. Monik Beauregard: No, it's not.

Mr. Craig Scott: Are there any discussions about it becoming involved, especially because we're talking so much about exit issues around this leaving the country offence?

Mrs. Monik Beauregard: That's a good point, but there aren't at the moment, no.

Mr. Craig Scott: Okay, thank you.

I was wondering if both of you, but in particular, Mr. Yaworski could comment a little on oversight.

I think you know that a certain set of recommendations came out of the Arar commission from Justice O'Connor, about the need for more integrated oversight mechanisms, partly because of the nature of cooperation.

With this bill, we're getting into all sorts of insights about the world of cooperation you guys live in. It's not in this bill and it certainly isn't in any other bill we have before us to have that kind of oversight mechanism.

What if we were to suggest that for the provisions in question that are being resurrected to be sunsetted there has to be a fulsome report to Parliament on where the system is with those Arar commission recommendations and to provide justification if the system hasn't yet implemented those recommendations? What would you think of that as a condition to sunsetting?

● (1635)

Mr. Jeff Yaworski: Well, from a CSIS perspective, I would suggest to you that the Security Intelligence Review Committee can see everything that we are engaged in.

Mr. Craig Scott: It can see what you are engaged in, but not necessarily others?

Mr. Jeff Yaworski: Exactly.

I don't want to get drawn down the path of what other agencies may or may not require in terms of oversight. Certainly, that's not something within my expertise, nor do I think it is appropriate that we should comment on it. However, I can emphasize that the Security Intelligence Review Committee would see everything, both historically and moving forward. If there is a change in the legislation, it would obviously have access to everything to do with our involvement in that.

Mr. Craig Scott: Do I take it from the way you've answered that you feel the loss of the inspector general function, with the direct advisory role to the minister, is no loss at all, that SIRC can do everything needed?

Mr. Jeff Yaworski: I think the specialized functions of the inspector general have now been inherited by the Security Intelligence Review Committee. At the same time, the government has managed to save $1 million of taxpayers' money. I think overall it's been a very good thing. From our perspective, it's eliminated duplication.

Mr. Craig Scott: Okay, thank you.

You brought up the example of phones. I'm just going through the process of association. I read the business section of either *The Globe and Mail* or the *National Post* today, and they were talking about a company called Roam Mobility, which has now started to market burner phones into the U.S. For the reason of not being able to strike deals with telecoms yet, they're not yet here in Canada in this extended fashion. Do you see the existence of burner phones as a big problem in the world that we currently live in?

Mr. Jeff Yaworski: I'm not familiar with burner phones, Mr. Scott, but I can tell you the technology is changing on a daily basis, and it's very difficult for us to keep up.

Our targets have access to technology. In some cases our targets are using cutting-edge technology that we don't have the ability to access ourselves. We are trying to improve our capacity to intercept technology in general in certain situations, but I'm not familiar with that specific case.

I would suggest to you that the use of disposable means of communication have been around for a long time. If that's the nature of that phone, it would increase our difficulty and that of law enforcement in intercepting that technology.

Mr. Craig Scott: Yes, it's not just disposable. It's untraceable.

Mr. Jeff Yaworski: It would provide us difficulties, no doubt.

The Chair: You have 40 seconds.

Mr. Craig Scott: Either through the assessment research end or operations end, are you familiar with control orders in the U.K. context, preventing people from leaving the country, taking away their passport, and putting them under a prohibition?

Mr. Jeff Yaworski: I know the British system is similar to our own in many cases, and in many cases it's different. I'm not familiar with those specific orders.

Mr. Craig Scott: Thank you.

The Chair: Thank you very much.

We'll go to Ms. Bergen and Mr. Leef.

Ms. Candice Bergen: Thank you. I'm going to start, and if I have some time left, Mr. Leef will take it.

Ms. Beauregard, could you describe what your organization does, the kind of information you deal with, and how you assess a threat?

Mrs. Monik Beauregard: Thanks for the opportunity to talk about my organization.

We're essentially an analysis shop. As I mentioned in my opening remarks, we don't collect any information. We receive information from all our government partners. At the end of the day we're only as good as the information that is shared with us.

We have 13 government partners and we receive information from all of them. We also receive information from our allies. The role of the analysts, at the end of the day, is to look at all that information we've received—it's all information related to terrorism threats—and to sift through it to assess the credibility and the reliability of the information, and to make judgments on the potential threats to Canada, whether at home or abroad. Essentially, in a nutshell, that's what we do.

● (1640)

Ms. Candice Bergen: Initially another department has looked at the information you get and determined that yes, this is terrorism-related information, and they're going to send it off to you. As you said, you're counting on that information to be accurate and fulsome.

Mrs. Monik Beauregard: We're even better positioned than that because they don't send it to us. We have all the databases physically located in ITAC.

Ms. Candice Bergen: Oh, I see, so you're not gathering information, yet in a sense you are pulling it out and assessing it.

Mrs. Monik Beauregard: We're pulling it together, exactly. That's the beauty of the integrated nature of ITAC. We have direct hands-on access to all the information that's been created by others.

Ms. Candice Bergen: Then you could probably comment on my next question, which I was going to ask Mr. Yaworski, about radicalization of youth that leads to violence. You would be looking at that same information generally and making assessments based on it.

I'm not sure how long both of you have been involved in this, but from what you've seen, has there been an increase, even in the last five to ten years, in young people who were born and raised in Canada? Their parents are first generation Canadians, but they were born here and this is their home, and yet they are being radicalized. What do you see as the major causes?

Mrs. Monik Beauregard: It's the million dollar question, if we knew.

Ms. Candice Bergen: Would you mind commenting on the change, if there has been one?

Mrs. Monik Beauregard: As my colleague pointed out in his opening remarks, CSIS conducted a wide-ranging study of radicalization here in Canada, and it concluded at the end of the day that there's not a specific set of drivers for any one group in Canada.

We have seen an augmentation. Of particular concern to us is the appeal that some youth have to travelling abroad and joining theatres of jihad abroad. That is of great concern to us, not only because of their potential travel outside Canada to join a theatre of jihad and then potentially getting involved in terrorism-related activity, but their eventual return, if they do return to Canada. What would they do once they return? Would they be a vector for additional radicalization here in Canada if they returned with the aura they would have as a foreign fighter? Those are the issues we are very much concerned with.

As for having a specific trajectory to radicalization, we're very much continuing to study that because we've found no specific path to radicalization.

Mr. Jeff Yaworski: Yes, the only thing I would add to that is to emphasize the point Monik has made.

It's a very personal thing, the radicalization. What radicalizes one will not necessarily radicalize others. In some cases it's a personal connection to an individual, and in other cases it may be peer pressure. But what we've seen is that the trend is certainly increasing.

As I indicated with one of your earlier questions, I believe, there's the role of the Internet, the ability to recruit over the Internet and make jihad in some cases appear romantic, for lack of a better term. I'm sure many of these young Canadians are arriving and are completely taken aback by the reality of the situation they now find themselves in.

I would suggest that the Internet has been a principal driver, but as Monik has suggested, there's not one mould that will fit the radicalization process for everyone.

The Chair: Thank you very much. We'll go back to the official opposition.

Mr. Scott or Mr. Garrison.

Mr. Craig Scott: I realize we're up against time, so I just want to ask one question, and my colleague Mr. Garrison might have something to add.

Ms. Bergen did a good job of taking you through the point that you might be a victim of your own success. The way you've been phrasing it all along, and we've heard this before, and this is completely understandable, is that the resurrected provisions are useful tools. However, we've not heard any testimony...and we're hearing arguments to the effect that this still doesn't prove there is a pressing need, a necessity, for these two mechanisms.

I can understand why they would be useful. The time might come when having another tool just would be helpful, but can you tell us anything at all about why you would feel that at this time there is a pressing need?

● (1645)

Mr. Jeff Yaworski: I would suggest to you that the numbers speak for themselves.

I did comment earlier that anywhere from 45 to 60 Canadians are overseas right now involved in terrorism-related activity. Canada has an obligation to the international community and to Canadian citizens. We have to keep control of these individuals. We have to deter this sort of activity. Having Canadians involved in terrorism, whether here or overseas, is a problem that we have to address, and I think this legislation allows us to do that.

The Chair: Thank you very much.

I see our time is up. We've been looking forward to hearing both of you today. All parties were anxious that we might not get to hear your testimony because of the votes, but thank you for coming and for having patience with us until we showed up.

We're going to suspend momentarily to allow you to exit and allow our other guests to come to the table, please.

Thank you.

We're going to continue meeting 63 of the Standing Committee on Public Safety and National Security, and our study of Bill S-7, An Act to amend the Criminal Code, the Canada Evidence Act and the Security of Information Act.

On this panel we will hear testimony from the Canadian Bar Association, Paul Calarco, a member from the national criminal justice section, and Marilou Reeve, the staff lawyer. Welcome.

We have also Denis Barrette, a spokesperson for the International Civil Liberties Monitoring Group.

Our committee thanks this panel for agreeing to help us with our study on Bill S-7. I understand that each group has a brief opening statement. We want to apologize for starting a little late. We will go right until 5:30 p.m., and then we will conclude today's meeting. We have had some votes in the House of Commons, and they've taken away from our committee time.

Without further ado, welcome. We will begin with the Canadian Bar Association, Marilou Reeve.

Ms. Reeve.

Mrs. Marilou Reeve (Staff Lawyer, Canadian Bar Association): I'll provide a brief introduction.

Mr. Chair, and honourable members, good afternoon. Thank you, on behalf of the Canadian Bar Association, for the invitation to appear before the committee today.

The Canadian Bar Association is a national association representing approximately 37,000 jurists across Canada. Among the association's primary objectives are the seeking of improvement in the law and the administration of justice. It is with these objectives in mind that we address you today.

CBA's written submission, which you have all received, was prepared by members of the national criminal justice section. The section members are criminal law experts, including a balance of prosecutors and defence lawyers from across Canada.

I will now introduce our spokesperson, Mr. Paul Calarco.

Mr. Calarco brings a personal perspective to today's proceedings that encompasses his experience as both a defence lawyer and a prosecutor. He is a practising defence lawyer in Toronto, but has also served as a part-time assistant crown attorney for Ontario, as well as serving as a standing agent for the Attorney General of Canada for six years, prosecuting drug cases in both the provincial and superior courts.

Before I turn things over to Mr. Calarco, I will note that the CBA first commented on Canada's legislative response to terrorism in 2001. Since that time, the CBA has welcomed the opportunity to make submissions on various anti-terrorism initiatives and related topics.

Thank you for your attention.

● (1650)

The Chair: Thank you, Ms. Reeve.

Mr. Calarco, go ahead.

Mr. Paul Calarco (Member, National Criminal Justice Section, Canadian Bar Association): I would like to thank the committee for the opportunity to present the views of the Canadian Bar Association on this very important legislation.

There is no question that the prevention of terrorist action is vital to preserving our society. This requires effective legislation, but also legislation that respects the traditions of our democracy. Unfortunately, this bill fails to achieve either goal.

I will first deal with the effectiveness of the proposals. I wish to make three points in regard to the amendments proposed to the Criminal Code.

First, investigative hearings have been used once, in relation to the Air India case. Although the constitutionality of the now-lapsed provisions were upheld, there is no evidence that these were effective in detecting, preventing, or assisting in the prosecution of terrorism. Nor from an analysis of the proposals can one expect them to have any positive effect.

Does anyone believe that a person who is uncooperative with investigative authorities and desires to protect those who would commit terrorist acts will suddenly become cooperative and reveal useful information in an investigative hearing before a judge? That is inherently unlikely. That person is likely to maintain silence or lie. Under either scenario, the investigation is not advanced.

Moreover, the subject of the investigative hearing is now fully aware of his or her status as a person of interest and can glean from the interrogation what the authorities may know about possible action. This person, if indeed disposed towards criminal acts, can then relate all this information to confederates and allow them to plan their actions anew so as to avoid detection.

Instead of ineffective legislation, what is needed to conduct effective counterterrorism investigations will be well-trained, properly funded investigators. The use of wiretaps, surveillance, informants, investigation, and other common police techniques are what stop intended crimes. This legislation does nothing of the sort.

Second, the creation of offences of leaving the country to commit terrorist acts or harbouring a person who has committed such an act simply duplicates already existing offences and provisions of the Criminal Code, such as conspiracy to commit an offence, attempting to commit an offence, being a party to an offence, or being an accessory after the fact. The legislation adds nothing to these provisions.

Third, the recognizance to prevent a terrorist offence is nothing other than a peace bond. Does anyone believe that a person bent on committing a terrible crime is going to be deterred by a provincial judge's order that he or she keep the peace on pain of losing the monetary value of the bond? That is illusory. This point was made clear by Mr. Coulombe, the CSIS representative who testified on November 21, 2012. He stated that criminal penalties will not deter those committed to terrorist acts. How much more so must this be in the case of the peace bond?

I would also state that the concept of investigative hearings is contrary to our traditions of not requiring a person to provide evidence against another, except in an open court where a party has the benefit of a fair and public hearing. This is not to be lightly tossed aside.

The standards employed in the legislation are low and would allow it to be used even though any information that could conceivably be gleaned is of little value, and the chance of obtaining information is speculative and based on suspicion of a single peace officer. This is too low a standard upon which to compromise our legal traditions.

As well, a comprehensive and independent mechanism for monitoring the use of such legislation must be in place if it is enacted. This legislation does make some effort to respect the open court principle as dealt with by Chief Justice Lutfy in Toronto Star Newspapers Ltd. v. Canada, and that is a positive development. However, the recommendations of prior committees of both the Commons and the Senate have not been acted upon fully. These should be re-studied.

My final opening comment is that steps must be taken to ensure that information withheld under the Security of Information Act could reasonably endanger security, international relations, or similar situations.

● (1655)

I stress that this is an objective standard. It must not be used as a screen through which any government, whatever may be its political disposition, can conceal information that it may find politically inconvenient for the public to know.

With this, I thank the members of the committee and would be pleased to answer any questions members may have.

The Chair: Thank you, Mr. Calarco.

We'll now move to Mr. Barrette, please.

[*Translation*]

Mr. Denis Barrette (Spokesperson, International Civil Liberties Monitoring Group): Good afternoon. I am joined by Roch Tassé, coordinator at the ICLMG, an organization for which I am a spokesperson.

Thank you for having me. I will introduce myself. I am Denis Barrette, member of the Ligue des droits et libertés. I represent the International Civil Liberties Monitoring Group. Presentation-related documents in both languages have been distributed to you.

Certain provisions of Bill S-7 introduce a new offence for attempting to leave Canada in order to commit a terrorism offence, which is already forbidden and prohibited under sections 7, 21 and 24 of the Criminal Code.

We will mainly focus on the two provisions that were abandoned in 2007 owing to sunset clauses. I am talking about investigative hearings and preventive arrests used to physically and judicially monitor individuals. That's covered under sections 83.28 and 83.3 of the Criminal Code. In our opinion—and we have already said so before committees—those two provisions are dangerous and misleading.

Debate in Parliament on these issues must draw on a rational and enlightened review of the Anti-terrorism Act, which was rushed through Parliament following the events of September 2001. It must be reiterated that the two provisions discussed here rely on very broad definitions of terrorist activity and participation in a terrorist activity. They enable law-enforcement authorities to carry out preventive arrests and to compel individuals to testify for challenging authority and engaging in dissent, when such activities have nothing to do with what is normally considered to be terrorism.

Such a broad definition encourages the profiling of individuals labelled as “persons of interest”, on religious, political or ideological grounds. In its November 2005 report on Canada, the United Nations Human Rights Committee noted its serious concerns with respect to the excessively broad definition of terrorist activity in the Anti-terrorism Act. The committee stated the following:

> The State party should adopt a more precise definition of terrorist offences, so as to ensure that individuals will not be targeted on political, religious or ideological grounds, in connection with measures of prevention, investigation and detention.

Today, in 2012, what is the real objective need for these two provisions?

From the time of their introduction in 2001 until their repeal in 2007, the only time they were used was in relation to the unfortunate Air India case, and we know what a police and legal fiasco that turned into—including the needless use of investigative hearings.

Since 2007, police investigations have successfully dismantled terrorist conspiracies using neither of the provisions we are talking about today. Furthermore, since 2001—in other words, in the last 11 years—none of the investigations that resulted in charges or convictions required the use of these provisions—whether we're talking about the Khawaja affair, the Toronto 18 or the group of four in Ontario.

The first provision compels individuals to appear before a judge and testify when the judge has reasonable grounds to believe that the individual has information about a terrorist act that has been or will be committed. A refusal to co-operate may result in an arrest and a one-year imprisonment.

This provision introduces the notion of inquisitorial justice into Canada's criminal law. That changes the paradigm between the state, the police, the judiciary and citizens. We know that, in Canada, as in all common law countries, criminal law is founded on the adversarial system. That is not the case in France, for instance, where an inquisitorial process is used. Our concern is that this new concept could be introduced in the near future into other Criminal Code provisions and applied to other types of crimes. This means that, in the medium term, principles of fundamental justice—such as the presumption of innocence—could be affected.

We also believe that investigative hearings may bring the principle of judicial independence, and thereby, Canada's justice system itself, into disrepute.

With judicial investigative hearings, the entire concept of adversarial debate disappears. I invite you to carefully read the dissenting opinion of judges Fish and LeBel in the debate on section 83.28 of the Criminal Code. The two judges concluded their ruling as follows:

● (1700)

> The implementation of s. 83.28, which is the source of this perception that there is no separation of powers, could therefore lead to a loss of public confidence in Canada's justice system. The tension and fears resulting from the rise in terrorist activity do not justify such an alliance. It is important that the criminal law be enforced firmly and that the necessary investigative and punitive measures be taken, but this must be done in accordance with the fundamental values of our political system. The preservation of our courts' institutional independence belongs to those fundamental values.

Should this provision go into effect, it is to be expected that the Supreme Court will have to consider the constitutionality of section 83.28 again, especially, as noted by judges LeBel and Binnie, because it will give rise to much abuse and a number of irregularities.

Finally, we want to point out that, throughout these two provisions, the notion of suspicion as warranting retaliation against citizens is reinforced again.

With respect to the provision relating to the concern that a person might commit a terrorist act, it seems that legislators have forgotten the existence of subsection 810.01(1) of the Criminal Code, which states the following:

> A person who fears on reasonable grounds that another person will commit an offence under section 423.1, a criminal organization offence or a terrorism offence may, with the consent of the Attorney General, lay an information before a provincial court judge.

That provision currently allows authorities to impose very onerous conditions on an individual suspected of participating in a terrorist activity.

In addition, the provision of Bill S-7 will also become an indirect way to collect and record information on innocent people under the Identification of Criminals Act, which specifically includes section 83.3 of the Criminal Code as grounds for fingerprinting.

I want to highlight a few specific problems. In the investigation on the mistreatment of Almalki, Elmaati and Nureddin, Judge Iacobucci wrote that the RCMP's lack of concern regarding the use of information obtained through torture was troubling. Once again, those who agree with information being obtained through torture, also agree with unreliable, suspicious and dangerous information.

We want to remind you of the need to establish some means of monitoring the activities of the state with respect to national security, as recommended by the Arar commission, in 2006. Six years later, we are still waiting. The absence of independent and effective mechanisms for national security can only increase the danger of applying these two provisions.

Finally, we want to highlight the fact that these provisions will become a worrisome tool of intimidation, even though they are not being directly enforced in the judicial system. For instance—and this is not a fictitious example—an officer of the RCMP or CSIS could very well tell an individual reluctant to answer the officer's questions that their failure to co-operate could result in them being detained and brought before a court. As occurred with McCarthyism, the fear of seeing one's reputation tarnished through such a process, being detained for 72 hours and then brought before a judge to answer questions masterminded by the police amounts to a powerful denunciation process.

And, when you're talking about denunciation through coercion, without the free and voluntary process imposed by our criminal law, you are also talking about unreliable, biased and false information. Every lawyer knows how unreliable reluctant witnesses can be. In addition, these provisions could be highly injurious, and their impact will not be trivial, even if the individuals concerned are not compelled to appear before a court of law. If the provisions are used, they will result in people being labelled, even though they have never been charged.

We know—since the Arar commission of inquiry and Judge Iacobucci's investigation—that a simple inquiry can lead to torture, and destroy the life, reputation, career and future of an innocent individual who has not even been charged. We know that these provisions could, as we see it, be abused. I am thinking here of the Air India case.

We believe that Canadians will be better served and protected under the usual provisions of the Criminal Code. Reliance on arbitrary powers and a lower standard of evidence can never replace good, effective police work. On the contrary, these powers open the door to a denial of justice and a greater probability that the reputation of innocent individuals—such as Maher Arar—will be tarnished.

● (1705)

Therefore, we call for a true rational analysis of these provisions. That is your responsibility as parliamentarians. On the one hand, these provisions are not necessary or even really useful. On the other hand, it is highly likely that they ultimately target innocent individuals, lead to violations of rights and freedoms and bring into disrepute the administration of justice. We have everything to gain by doing away with repressive measures that are unnecessary and everything to lose by adopting them.

[*English*]

The Chair: Thank you very much, Monsieur Barrette.

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

Mr. Ryan Leef (Yukon, CPC): Thank you to our witnesses for joining us today.

On the front page of the testimony you submitted, you noted that the CBA does not believe Bill S-7 would actually provide any new tools to combat terrorism offences. Certainly, that's not what we've heard from any single law enforcement agency or intelligence-gathering group that have been here. It's always interesting to me, as a new member of Parliament, to hear one whole group of witnesses involved in that business articulate how valuable something would be for them and another group not directly involved in the enforcement application or information-gathering application of the legislation completely suggest that it wouldn't be good for them.

I'll give you an opportunity to correct me if I've misread you here, but I see the act as being a tool in an integrated network of enforcement application and information-gathering and not as a solution in and of itself. I was reading into this that the comments that were made were looking at this act as the sole solution to combatting terrorism. Certainly, I can see how there might be a negative vein if you thought this were the only thing at all being used to deal with what all our other witnesses have said is one of the single biggest threats to Canadian safety and security today.

I think it was Mr. Calarco who noted there's no real evidence that investigative hearings have worked, but he then correctly pointed out that it has only been utilized once or twice. It would only stand to reason that we wouldn't have evidence that it's worked or not worked since it has only been utilized once or twice.

I'm not 100% sure I agree with the idea that anybody wouldn't believe that a person would fail to participate in these hearings and would simply lie, and in the same vein with the recognizance aspect, does anyone believe that anyone would be deterred by a recognizance. If we were to take that approach with this, we could ask exactly the same question of any aspect of the Criminal Code and any aspect of a judicial hearing. Why do we enter into recognizance with anybody? Why do we even have trials where we compel witnesses and subpoena people to attend. They could be as equally compelled to lie and not tell the truth and look out for their own personal interests, I think, in the judicial system.

I'm certain you must agree that provides a venue and an opportunity for people to address their side of the story, air in a public forum what their beliefs and experiences are, not simply as a venue to showcase or save their bacon. If we take that approach, then that casts a really dark shadow across our entire judicial system, not only in respect to this bill.

By way of Mr. Barrette's remarks that we need a rational and clear-headed approach to this, on the opposite side it would mean he's inferring that it was created by irrational and foggy-headed people. I'm not sure I would concur with that, either.

We heard a fair bit of testimony about the need for it in 2012, being that we are not prepared to wait for it to happen again and then say there's a need and that we should engage this again. We're working on a preventative system of information gathering in law enforcement, which I think is reasonable and responsible.

The one thing I really can agree with in your statement is that the powers that are circumscribed need to be accompanied equally by a rigorous and independent oversight. I would look to the judiciary to be that independent oversight. One thing we tend to focus a little too much on, as Mr. Calarco mentioned, is the single peace officer idea, which slightly undermines the complexity of information gathering and intelligence gathering. It would give Canadians the image that one police officer simply drives along in his car, pulls somebody over, and then engages in this judicial review application and recognizance issuance. There's a lot more complexity, obviously, to these investigations and information sharing that won't befall the authority of one lone police officer in Canada.

I'm really encouraged. Let's go back quickly to that equal and independent oversight that you talk about.

● (1710)

This bill requires prior consent of the Attorney General of Canada or the solicitor general of a province before they can move ahead. There have to be reasonable grounds, obviously; it's standard application in criminal law. 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. The bill clarifies. It sets out maximum periods of detention.

In fact, many of the provisions laid out in this bill I see as a little more intense than the Criminal Code provisions for standard defences. I say that being a past member of the Royal Canadian Mounted Police and being familiar with the working operations of it.

The independent oversight that you're talking about is covered in great detail, in comparison with what we have with the standard Criminal Code. I'd like a comment on that aspect of it, because I think we've tried to meet that goal.

In relation to trying to achieve either goal with this bill, I would say that the investigative and enforcement arm brings evidence forward to a judicial panel and it then falls to counsel to ensure the success of these things. It's certainly not the law enforcement folks who are up there trying to draw out testimony from the witnesses to make sure that they're not lying or trying to save their bacon. If there's failure, this is all part of an integrated team setting, in which counsel has a duty and obligation to make sure they take the investigative and information gathering work that has been done and draw the information out in these investigative hearings for the benefit and safety of Canadians.

I'd ask you to comment on one or all of those things, or maybe Mr. Rafferty would like to.

The Chair: Mr. Leef, you've left them two seconds. Thank you for your seven-minute speech, but we'll now move to the official opposition.

We'll go to Mr. Scott, please.

Mr. Craig Scott: I'm sure we all appreciated Mr. Leef's testimony.

Ms. Candice Bergen: Yes, we did. He has a lot more expertise.

Mr. Craig Scott: He's not the witness.

The Chair: Order.

Mr. Leef has the time, and it's seven minutes. He can decide.

Mr. Craig Scott: Yes, he has the time to be disrespectful to the witnesses.

If you would like to respond to anything that you heard, please do. Otherwise, I will have some questions.

Mr. Paul Calarco: I could make a number of comments in response to Mr. Leef. I'll try to do it quickly, Mr. Scott, so that I don't take up much of your time.

First of all, my purpose, from the Canadian Bar Association, is to analyze this legislation. We have tools. We have the Criminal Code. We have, for example, wiretap legislation. We have intelligence-sharing among police forces and between CSIS and other international agencies. In no way do we look at this bill as being the only tool or the total solution to what is unquestionably a great problem. To suggest that we looked at this bill as the only tool is simply not accurate.

Yes, investigative hearings were used once, but it should also be noted—and I believe it was Mr. Gilmour from the Department of Justice who gave evidence before you on November 19 following the minister—that the information the crown was trying to get in that case was never obtained from the person who was the subject of that proceeding. The crown got it from another source. In fact, three members of the Supreme Court said that the way the crown was using the provision was an abuse.

With respect to oversight, there has to be oversight, and we've suggested that. Perhaps something like the Security Intelligence Review Committee would be able to have that oversight, rather than simply have the Attorney General or a provincial attorney general report to their respective legislatures.

The standards set out in the proposed section, under proposed subparagraph 83.28(4)(b)(ii), are very low. For example, information concerning the offence, not substantive information, but information "that may reveal", which can be quite speculative, the whereabouts of a person suspected by a peace officer, those are very low standards, and a very low standard can be used in a way that fundamentally differs from our traditions.

The Canadian Bar Association is very supportive of effective legislation. We do not believe this legislation is effective or that it adds anything new. That's what our position is.

I hope that assisted with some of Mr. Leef's comments.

● (1715)

Mr. Craig Scott: Thank you.

[*Translation*]

Mr. Barrette, do you have anything to add?

Mr. Denis Barrette: Yes, and I will try to do so quickly.

Regarding the tools the member talked about, a distinction should be made between a useful tool and a necessary tool. Just because a tool is useful in the hands of a police officer, it does not mean that it is absolutely necessary. Many tools can be useful. Police officers could even monitor and enter homes. That could be useful. However, the first question we should ask ourselves, before even wondering whether a tool is consistent with rights and freedoms, is whether it is necessary.

When he testified before the Senate committee, Mr. Fadden, of CSIS—and this is on page 2:11 of the record of proceedings—said that these provisions "might be useful".

Even though they might be useful, they are not necessary. We agree in saying that these are two extraordinary provisions that cannot be adopted simply because they might eventually be useful.

The issue of judicial independence should also be considered. The obligation to answer a question is not the only thing that matters. We should wonder who is asking the question. Forgive me for using this image, but in the case of judicial investigative hearings, the judge sort of becomes the police officer's ventriloquist. That is what this is about, and judicial independence is being threatened. In fact, the executive branch tells the judge to ask an individual questions, and we know how that has turned out.

As for oversight organizations, I will not share all the conclusions from phase 2 of the Arar commission, but Judge O'Connor consulted the biggest world experts regarding that. He conducted a lengthy study, but this oversight commission on national security has still not been established.

[*English*]

Mr. Craig Scott: Also, I thank the CBA for having referred to the Eminent Jurists Panel from the International Commission of Jurists as part of your background, especially on this day. The chair of that panel, Arthur Chaskalson, was buried today in South Africa.

We have other sources concerning why some of these provisions might be problematic.

There's one thing, Mr. Calarco, that I didn't quite understand. I think Mr. Leef might also have wondered whether you overstated it. You said the recognizance with conditions is "nothing more than a peace bond". Can you explain that?

● (1720)

Mr. Paul Calarco: As a practising lawyer, I see that peace bonds are often used as a way to get rid of criminal charges and that they are not enforced. They are of very limited value. There isn't a real follow-up.

A peace bond may be quite useful in dealing with a minor offence, or in the case of a person who, for example, got into trouble because of a drinking problem, just as an example.

Do we believe that a person who has committed the most horrible of crimes is going to be deterred by a peace bond? No. That is simply not going to happen. It is not an effective method to prevent a terrorist act from taking place.

Mr. Craig Scott: Is that the case even in the way it's intended to work? it's very clear that some law enforcement officers see the leaving the country offence recognizance with conditions as a means to prevent people from leaving without having to charge them. Do you not think that system would work?

Mr. Paul Calarco: I don't believe that's going to be effective, sir.

The Chair: Thank you.

We'll come back to Ms. Findlay.

Ms. Kerry-Lynne D. Findlay: There are so many things I would like to say.

First is with respect to peace bonds. I guess you are a defence criminal lawyer, but I practised family law for 30 years, and I can tell you that peace bonds are very effective in our society. They protect very vulnerable people all the time. They deter violence against the people they're meant to deter violence against. To suggest that our system of peace bonds is ineffective and doesn't help anyone is really quite shocking to me.

I found your remarks very interesting, Monsieur Barrette, about whether it is useful or it is necessary, and I agree with you those are both valid questions.

However, we have been asking that question of many witnesses who have appeared before us. The answer we have been getting is that it is absolutely necessary because terrorism remains the greatest threat to Canada's national security, and it is a continuing and present threat.

I note that when, for example, Professor Martin Rudner testified on this bill before the Senate in April of this year, he noted that at this time various terrorist organizations see it necessary to reach out to get human resources for the struggle for the downfall of what they call the apostolic regimes, and to prepare in fact for the next stage, which is declaration of caliphate to be followed by the total confrontation with the infidels, which they see us and our society, in the main, as being.

They see themselves reaching out to citizens of western countries in particular, in part to gain passports to travel freely, in part to get knowledge and networks, and in part to get skills.

The kind of people that they target, and many witnesses have talked about the radicalization of our own Canadian youth, are young, single, physically fit people who have savvy in terms of science and technology, and a higher education. They reach out to them through the Internet, through charismatic leaders, through other information channels, perhaps through religious channels, and try to bring them over to commit to a jihadist theology.

We are told by many witnesses that we have this threat that is continuing and present.

As to your suggestion that somehow our judges might be turned into ventriloquists for law enforcement, I can say again, in my many years of practice at the bar, the judges I have ever appeared before resist ever being put in a position of doing so. In fact, that is one of the beauties of our system that we have judicial independence.

I would suggest that the opposition members are often in fact finding themselves in the position of telling us that we should never be fettering the independence of our judiciary because judicial discretion is what our system is built on.

I was pleased, Mr. Calarco, that you mentioned the 2004 reference on the Air India prosecution to the Supreme Court of Canada, and that you did acknowledge that the Supreme Court of Canada has found investigative hearings to be constitutional.

I will also note that in a companion case of the same year regarding the *The Vancouver Sun*, the Supreme Court held that there is a presumption that investigative hearings would be public. In this proposed bill before us, that is part of the bill, that those investigative hearings would be public, unless a judge, in his or her judicial discretion, determined that privacy would be needed. I am assuming that would be in cases where someone's safety is perhaps at risk.

In your submissions before us, you talk about the need for commensurate safeguards if we are bringing in extra powers. My colleague, Mr. Leef, talked about many of the safeguards that are built into this legislation under investigative hearings. In addition to those, there is always the right to retain counsel and have counsel appear at any stage of the proceedings. A person can refuse, of course, to answer a question or produce anything that is protected by Canadian law relating to non-disclosure of information or privilege.

Their testimony cannot be used against them—we had this dialogue with another witness—not just in other criminal proceedings, but also because in that 2004 case, the Supreme Court of Canada said it extended to administrative tribunals or to other such proceedings, immigration hearings, for instance.

● (1725)

We have federal and provincial attorneys general required to report annually on any use of these hearings. There is an additional requirement. If it's the AG of Canada or the federal Minister of Public Safety, they have to provide an opinion supported by reasons on whether these provisions should remain in force.

Would you agree with me that at least those safeguards I've outlined are important to have? I'm directing this question to Mr. Calarco.

Mr. Paul Calarco: It's very important to have safeguards, but I would suggest that a better system of safeguards, rather than the Attorney General of Canada, for example, reporting to Parliament, would be an independent supervisory body such as the Security Intelligence Review Committee.

An attorney general reporting to Parliament is a safeguard, and I do agree it is some safeguard. The question is, is it the best safeguard? I'm suggesting that a greater safeguard exists and would easily be put into the legislation if the legislation proceeds. It's not a question of, is something some protection? The question is, can it provide the best protection, or is there better protection available than what is written here? I believe there is.

Ms. Kerry-Lynne D. Findlay: You're suggesting, for instance, that those protections are good, but the Security Intelligence Review Committee—we heard testimony on that today—has absorbed the inspector general role. It's working well and working better, in fact, and that committee is hard at work.

I think I've used my time.

The Chair: Thank you, Ms. Findlay.

We just have a couple of minutes.

Mr. Scarpaleggia, you may have a quick question or two, and I apologize that our time is almost up.

Mr. Francis Scarpaleggia: I have a couple of questions.

In your opinion, right now, would the law prevent police from charging someone with going overseas to a training camp?

Mr. Paul Calarco: The law could easily do that.

Mr. Francis Scarpaleggia: It can or....

Mr. Paul Calarco: Yes, by using present provisions of the code.

Mr. Francis Scarpaleggia: Sorry, I don't mean to interrupt, but I have so little time.

A previous witness said that you might need a higher standard of proof that the person was about to commit some kind of terrorist act, as opposed to just going to a training camp, maybe for a research project.

Mr. Paul Calarco: I would think it highly unlikely that a person would go to a training camp for a research project. They're there to commit crimes and learn how to commit crimes. They don't just show up there. There has been an organization and an agreement to have the person received. That could be dealt with under present conspiracy law because they have agreed with another party to train to commit an offence, which has some effect or some basis in Canada. Also, a terrorist organization is by definition a criminal organization. The criminal organization law is quite wide in this country. Doing something which benefits or assists a criminal organization is an offence in Canada. There is plenty of legislation there right now, sir.

● (1730)

The Chair: Thank you, Mr. Scarpaleggia, and thank you to our guests for appearing today. Unfortunately, our time is up and we're confined by the agenda to end right at 5:30 p.m.

I want to thank you for coming, and again, we do apologize. I know that when we give seven minutes to one side, it's their seven minutes to decide how they deal with it, and it's been shortened today because of the votes. Thank you for being here, for giving your testimony, and for answering the questions.

The meeting is adjourned.

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