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Chair

The Honourable John McKay

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● (0845)

[*English*]

The Chair (Hon. John McKay (Scarborough—Guildwood, Lib.)): I'm going to call the meeting to order while the witnesses assemble. We have one routine thing to do and that is to pass the budget in front of you.

Mr. Dave MacKenzie (Oxford, CPC): I so move.

(Motion agreed to)

The Chair: Now we don't have to reserve time at the end of the meeting to be able to do that very thing.

Now that most of the witnesses are assembled we'll call on them.

This is the 92nd meeting of the public safety and national security committee. We have, as our first panel of witnesses, the National Council of Canadian Muslims with Ihsaan Gardee, executive director, and Faisal Bhabha, legal adviser. Then for the No Fly List Kids, Zamir Khan, and we're awaiting Khalid Elgazzar.

Mr. Zamir Khan (Parent, No Fly List Kids): It's unlikely he'll be able to make it.

The Chair: Okay, so you'll speak for the No Fly List Kids.

Mr. Zamir Khan: I will.

The Chair: Why don't we call upon the National Council of Canadian Muslims to make their 10-minute presentation? I'll leave you, Mr. Gardee, to introduce your organization.

Mr. Ihsaan Gardee (Executive Director, National Council of Canadian Muslims): Good morning, members.

Thank you very much for your attention and time today.

My name is Ihsaan Gardee, as mentioned, and I serve as executive director of the National Council of Canadian Muslims. I am joined today by my colleague, Professor Faisal Bhabha, NCCM's legal counsel and the chair of our national security policy committee.

The NCCM was founded in 2000 as an independent, non-partisan, and non-profit grassroots organization that for over 17 years has been a leading voice for Muslim civic engagement and the promotion of human rights. The NCCM's mandate is to protect the human rights and civil liberties of Canadian Muslims, advocate for their public interests, build mutual understanding, and challenge discrimination and Islamophobia.

We work to achieve this mission through our work in four primary areas: community education and outreach, media engagement, anti-discrimination action, and public advocacy. The NCCM has a long-standing and robust public record of participating in major public inquiries, intervening in landmark cases before the Supreme Court of Canada, and providing advice to security agencies on engaging communities and promoting public safety.

In terms of our position, the NCCM has always supported the government's responsibility to ensure national security. We commend the current government for fulfilling its election promise to review Bill C-51 as its condition for supporting the bill in the first place, and to consult with Canadians. While we welcome, for instance, that Bill C-59 proposes to create a national security review agency with more oversight and review than we currently have, our general objection remains constant. This law goes too far. It virtually guarantees constitutional breach, and it offers inadequate justification. It strengthens the security establishment when the evidence available gives every indication that the institutions carrying out national security intelligence gathering and enforcement mandates are in disarray, rife with bias and bullying from the top down. Oversight of those agencies is not sufficient. Real reform is necessary.

While we share the concerns of others you have heard from, including Amnesty International and others, for the purposes of our opening statement today I'll be focusing our testimony on two major substantive concerns we have with Bill C-59. Number one is the powers given to CSIS, and number two, the failure to address systemic problems with the no-fly list.

In terms of our reasons, Canadian Muslims are just as concerned about security as other Canadians. We face the same risk of untimely death or injury at the hands of terrorists as any Canadian. In fact, globally the overwhelming majority of victims of political violence, including ideological extremist violence, have been Muslims. Being a population with global connections, Canadian Muslims are threatened and impacted by global terrorism as much, if not more, than other Canadians. We thus have a high interest in Canada developing a strong and sound national security policy with robust oversight, accountability, and redress mechanisms to guard against abuses and mistakes.

At the same time, members of Canadian Muslim communities have been victims of Canadian national security policy. Over the last 15 years we have seen three separate judicial inquiries, numerous court rulings, out-of-court settlements, and apologies that acknowledged the constitutional violations committed against innocent Muslims by national security intelligence and enforcement. Canadian Muslims are not only disproportionately affected by these errors and abuses, but we also bear the brunt of social impact when xenophobic and anti-Muslim sentiment surges.

NCCM agrees with the plurality of experts who state that more power to security agencies does not necessarily mean more security for Canadians. National security mistakes not only put innocent people at risk of suspicion and stigma, but also divert attention away from actual threats and obstruct effective action to promote safety and security. At the same time that Alexandre Bissonnette was dreaming up his murderous plot to attack a Quebec City mosque, the RCMP were “manufacturing crime”, according to the B.C. Superior Court judge in the case against John Nuttall and Amanda Korody. They were Muslim converts and recovering heroin addicts living on social assistance, whose terrorism charges were stayed last year after a court found they had been entrapped by police.

Bill C-59 strengthens the security establishment but does not address the security needs of Canadian Muslims. While the idea of prevention is laudable, any potential benefit from this approach will be negated by the incursions on charter rights that disproportionately affect members of our community, and which will continue to happen under the guise of threat reduction, information sharing, and no-fly listing.

If the government wishes to collaborate with communities on prevention, it needs to build trust and confidence first. For many young Canadian Muslims, the documented and admitted involvement of intelligence and enforcement agencies in rendition and other human rights abuses, and the complete lack of accountability and perceived impunity that have been created as a result, have bred a lack of confidence in the Canadian security establishment.

● (0850)

This past summer, a group of CSIS employees filed a civil claim against the service, alleging discrimination, harassment, bullying, and abuse of authority. They described a workplace environment within the service that is racist, Islamophobic, sexist, and homophobic, where the culture is like an old boys' club and where minority representation in management is abysmally low. The day after the claim was filed, two senior former CSIS employees were quoted in the media saying they were not surprised by the allegations.

In October 2017, CSIS released the report of an independent, third-party investigation into allegations of harassment in the Toronto region office. The findings noted an “old boys' culture”, demeaning treatment, swearing and discriminatory statements, distrust among employees towards management, and a lack of diversity among the staff.

If these kinds of reports are indicative of the overall culture that exists within these organizations toward their own employees, it does little to assuage concerns within Canadian Muslim communities about unfair profiling and error.

The Canadian Human Rights Commission conducted employment equity audits of CSIS in 2011 and 2014, and the findings are shocking for a powerful public institution operating in a 21st-century, multicultural, democratic society.

There were zero per cent visible minorities in senior management positions at a time when visible minorities were about 20% of the Canadian population. We have to infer from that not just a glass ceiling but an actual bar. The CHRC also noted an institutional culture that undervalued minorities and reproduced attitudinal barriers, which resulted in fewer hiring and advancement opportunities for minorities.

The security agency's loss of trust within Canadian Muslim communities has been exacerbated by the lack of accountability for past wrongs committed against innocent Muslims. While the government has concluded significant settlements and made apologies, no one from within those agencies has been held to account.

To the best of our knowledge, there has been no disciplinary action and no public acknowledgements. Instead of accountability, some of those involved in the well-known torture case of Maher Arar have even been promoted within the agencies.

At best, there was individual and institutional incompetence in the security agencies. At worst, it was gross negligence or bad faith. Neither is acceptable and the taxpaying Canadians who fund these agencies deserve better.

The lack of accountability projects a culture of impunity within the Canadian security agencies that reinforces the insecurity Canadian Muslims experience. The problems with CSIS will not be mitigated by Bill C-59. No amount of administrative oversight can cure the systemic ills. These agencies need reform.

We do not see any attention given in this proposed legislation to the real impact that bias in national security has in producing insecurity and harm within our communities. Without a clear statutory mandate and direction from our government, we do not believe that civil society alone can change the culture within CSIS and other security agencies.

We are willing to help, but that burden cannot fall only upon us.

I'll now pass it over to my colleague, Professor Bhabha, to conclude with our recommendations.

● (0855)

Mr. Faisal Bhabha (Legal Adviser, National Council of Canadian Muslims): Let me use these last remaining moments to take you to our recommendations. We have two.

First, we are asking that the no-fly list, formerly known as the passenger protect program, be ended. We found that it continues to cause serious damage to Canadian families and fails to provide effective remedy or recourse, as you're going to hear from our colleague beside me.

The NCCM continues to receive reports from individuals affected by the no-fly list, people who have had difficulty travelling for months or years, both domestically and internationally. While immediate relief is necessary for those currently listed for erroneous or invalid reasons, we expressly endorse the recommendations that the No Fly List Kids coalition is going to bring.

Our view remains that no amount of tinkering can solve the underlying problem, which is that the no-fly list is one of the most damaging instruments of racial and religious profiling currently in place in this country. It is the national security analogue to carding in the urban policing context. Since its implementation, it has caused so much damage without any proven or demonstrable benefit that we simply cannot justify it in our rule of law democracy. It was an interesting experiment, but its time has come to an end.

What Canada needs is not a list of banned flyers, but rather stronger investigative and intelligence work so that people who present actual risks or who have committed actual crimes are dealt with through the criminal justice system. Anything beyond that is dangerous profiling with proven harm to members of our community and others.

The second recommendation is to reform CSIS. With respect to CSIS, we hold that it cannot be given additional powers, given the current lack of faith and trust in the institution on the part of many Canadians. There's simply too much evidence of systemic bias and discrimination to ask Canadian Muslims and our fellow citizens to trust that any new powers will not be exercised improperly and discriminatorily. In fact, all of the evidence suggests that any new powers will be exercised improperly and discriminatorily.

As has been mentioned, abuses in national security disproportionately affect Canadian Muslims, though not only Canadian Muslims, and this is not a coincidence. What is needed is a thorough culture shift within the national security agencies before Canadians can trust that bias and stereotypes are not driving investigations and will not shape the way the proposed new powers to disrupt are deployed.

The Chair: Have you finished?

Mr. Faisal Bhabha: Yes. The last point is simply diversity—

The Chair: You will have to work your other point in. It's over time.

I encourage witnesses to take a look at the chair towards the end of their time. Otherwise, I'm making all kinds of hand gestures and getting no response.

Mr. Faisal Bhabha: I'm used to being interrupted by judges.

The Chair: Yes. Any lawyer worth his salt has been interrupted many times.

Mr. Khan.

Mr. Zamir Khan: Thank you.

Before I start, I want to apologize to the committee that my colleague, Khalid, can't be here. I'm going to be wearing two hats today, one as a parent and one as a makeshift legal adviser.

Thank you for the opportunity to testify before you today on Bill C-59. My name is Zamir Khan and I am one of the parent founders of No Fly List Kids. We represent the hundreds of families and thousands of citizens adversely affected by Canada's passenger protect program. The scope of our knowledge, and accordingly our testimony, is limited to the passenger protect program, such as amendments the Secure Air Travel Act.

I am not a legislative expert or a security expert. I am simply a Canadian citizen and a father, here to testify to the harmful impact that can be enabled by gaps in legislation and when intelligence gathered by our own security agencies is applied in a haphazard manner. As you are likely aware, the passenger protect program, also known as Canada's no-fly list, was implemented in 2007 with a design that included, in the words of our current Minister of Public Safety and Emergency Preparedness, “a fundamental mistake.”

That flaw, which persists today, is that verifying whether passengers are potentially listed persons is delegated to airlines and done solely based on their name, and this is despite both booking information and the Secure Air Travel Act watch-list containing additional identifiers such as date of birth. Any innocent traveller caught in this web is subjected, at a minimum, to extra delays and additional security scrutiny to prove their identity. They are then stuck in a perpetually revolving door to repeat the process every time they fly.

We are often asked how many Canadians are affected by this problem. Statistics about the program and its effectiveness have not been shared since its inception in 2007 when the transport minister disclosed that there were up to 2,000 names on the list. Our group has been contacted by over 100 affected families, representing the tip of the iceberg. The vast majority of encumbered travellers are unaware of the source of their difficulties by virtue of the Secure Air Travel Act explicitly prohibiting the disclosing of any information related to a listed person. However, based on the names of the falsely flagged individuals we know of, and the number of Canadians who share those names, we conservatively estimate that over 100,000 Canadians are potential false positives when they fly. The methodology and rationale behind this estimate will be detailed in our upcoming written submission.

I am personally involved in this issue. My three-year-old son, Sebastian, has been treated as a potentially listed person since his birth. That means, for the first two years of his life, Sebastian was young enough, in the eyes of travel regulations, to be considered a "lap-held infant" who didn't require a seat on the flight, but old enough to be flagged as a possible security threat.

For families with flagged infants, the associated delays further complicate an already challenging travel schedule. As these children grow older, they become aware that they are the reason for the ever-present waiting and security scrutiny. That stigmatization has been described by the minister as a traumatizing experience for them and their families. When the children grow into teenagers and young adults, particularly young men, their innocence becomes less obvious. As our group has heard, their delays become longer and the scrutiny more intense. This has meant that some families have missed flights and the kids shy away from air travel for fear of stigmatization. This is not a future I want for my son.

The Secure Air Travel Act permits the minister to enter into agreements with foreign nations to disclose our watch-list to them. For example, a working group was established in 2016 to share our no-fly list with the United States. The prospect of this data being shared internationally is troubling to our families, who have experienced frightening ordeals of being detained and questioned or having passports confiscated while travelling abroad. Indeed, my wife and I are concerned about the treatment that awaits our family should we travel outside of Canada, given what already happens domestically. A watch-list that places undue suspicion on us is being shared internationally by our government, yet the burden to prove our innocence is being placed entirely on our shoulders.

All of this is to illustrate that the impact here runs much deeper than mere inconvenience. It is stigmatizing, inescapable, arguably a violation of charter rights, and as this committee has previously recommended, it is eminently solvable.

● (0900)

No Fly List Kids has been advocating for a fix to this flawed system for two years, and thus far the government has responded in two ways. In January 2016, the minister emphasized to airlines that children under the age of 18 did not require additional screening. However, as was reported by CBC, the result was Air Canada reiterating to their employees that all matches to the list must have their identities verified in person regardless of age.

In June 2016, the government announced the passenger protect inquiries office, or PPIO, designed to assist travellers who have experienced difficulties related to aviation security lists. Our group is not aware of a single family for whom the PPIO has been able to resolve their case. To the average Canadian, a resolution would mean permanently clearing someone who is falsely flagged. The PPIO considers recommending signing up your child for an airline rewards program or applying to the U.S. Department of Homeland Security's redress system as a resolution.

For those flagged by the Canadian list like my son, a U.S. redress number does not help. Airline rewards programs are an inconsistent and flawed band-aid that the minister has called a stopgap measure. It's not good enough.

Earlier this year, the committee authored the report entitled "Protecting Canadians and their Rights: A New Road Map for Canada's National Security". No Fly List Kids agrees with your recommendation 35 that the only solution for Canadians is an expeditious redress system to assist travellers erroneously identified as a person on the specified persons list.

In lieu of our legal adviser Khalid, I will now articulate our views on Bill C-59 and how, while it provides some initial framing, it falls short of ensuring a timely implementation of a redress system.

I will briefly touch on the following points: one, that the pressing need for a redress system has been established; two, that Bill C-59 does not go far enough in the establishment of a redress system; and three, time permitting, that the technology required for a redress system already exists and is being employed by our allies.

Let's start with the good news. Over the past few years, law-abiding Canadians from coast to coast have recounted their personal stories of delay, frustration, humiliation, and frankly, consternation in their encounters with the no-fly list regime. Those stories took on a new urgency when the No Fly List Kids group came together a little less than two years ago to bring to light how the list was affecting their children, including infants.

It appears that the message has gotten through. The group has secured letters from 202 members of Parliament, constituting two-thirds of the House of Commons, all calling for the swift establishment of a redress system. There appears to be all-party support for getting this done, but that brings me to the bad news.

On reading the proposed amendments to the Secure Air Travel Act contained in Bill C-59 it is apparent that, although the bill takes a small step toward the establishment of a redress system, it falls short of actually establishing the system. Bill C-59 includes a section that permits the minister to collect personal information for the purpose of issuing a unique identifier to travellers. It's a small step forward, but it's not where we need to go.

To illustrate by way of example, section 16 of the act currently provides an appeal mechanism for individuals who are denied boarding. There's also a section for administrative recourse.

Contrast that with Bill C-59, which does not come close to setting out the details of a redress system for people who are falsely flagged by the list.

My final point is that we are not asking the government to reinvent the wheel. We need to look no further than our closest neighbour, the United States. We have attached screenshots of booking information for the same passenger travelling from Canada to Halifax and New York, with a Canadian airline, Air Canada. As you can see, the technology is already there for the passenger to input their redress number when travelling to the United States and be cleared at the time of booking.

Thank you to the committee.

● (0905)

The Chair: Thank you, Mr. Khan.

Ms. Damoff, you have seven minutes, please.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): Thank you, Chair.

Thank you to all the witnesses for being here. It's nice to see you again, Mr. Khan.

I'm going to start with the no-fly list. I questioned officials quite extensively when they were here. I shared it with No Fly List Kids, so I hope you saw it. If you didn't, you can watch it.

Mr. Zamir Khan: Thank you.

Ms. Pam Damoff: As you know, I have a constituent whose son's name matches a name on the no-fly list. Just to clarify, it's not just Muslims who are on the no-fly list. They're not. They may be predominantly, I don't know, but certainly it affects many Canadians, regardless of religion.

Some of the concerns that I know are addressed in Bill C-59, and I think you probably share them.... Maybe you can clarify. One was that she had no capacity to find out if, in fact, her son was on the no-fly list. Bill C-59 will give a parent or guardian the ability to find out if that name is on the list. That didn't exist before. I'm not sure if you were aware of that or not.

● (0910)

Mr. Zamir Khan: I am aware of that. I wonder about that amendment because while it gives the minister permission to let families know that their child is on the no-fly list, it's not clear to me how the family would know to ask the minister because it's still prohibited under the act for airlines to disclose any information related to a listed person to families who are travelling.

I experienced this personally. It was only on the fifth flight with my son that we were told the true reason for our delays. Before that, we were always blamed as having made a booking error with regard to my son. I didn't know until somebody, I guess—I just found out—possibly committed a federal offence to tell me that my son was on the list.

I would then go to the minister to get that confirmation, but I don't know how families are supposed to know that.

Ms. Pam Damoff: That's another change that's being made. The list is going to be maintained by the government and not by the airlines. The officials also told us that this is a Canadian list. It's not one that's shared with other countries, so each country maintains its own list.

I know she has had success with the American redress system in terms of getting a number. I think you said that as well, that the American system actually is working for people whose names are a match.

Mr. Zamir Khan: He's a match on the American list. I have a letter right here from the U.S. redress system for my son. It does not help, and furthermore, I can't input that number when I travel with my son in Canada.

Ms. Pam Damoff: But it helps if you're travelling in the States. That's what she told me. If you were flying from New York City to Los Angeles on American Airlines, it would help in the United States, just not with the Canadian airlines.

Mr. Zamir Khan: I haven't left Canada with my son.

Ms. Pam Damoff: Okay, fair enough. I'm sure it's very difficult to travel with a young one.

Mr. Zamir Khan: Yes, it's difficult.

Ms. Pam Damoff: As you mentioned, the list was put in place in 2007. One of the challenges was the way the previous government set it up. Instead of going the course that the Americans did, ours was done differently. As a result, officials, when they were here last week, said that it's going to be difficult and likely more costly to try to switch over now. Having said that, I think that in Bill C-59 we have the framework in place to start putting all of this in place.

I'm going to switch over to our other witnesses, though, because you think we should just get rid of it altogether. Is that what you were testifying? You don't think a redress system is something that we should pursue.

Mr. Faisal Bhabha: We think the redress system is definitely something you should pursue for the reasons you've heard from No Fly List Kids, but we're urging evidence-based policy-making. So far, the only evidence we've seen is evidence of harm. There is no real evidence that the no-fly list works.

In 2001 or 2002, there were different considerations at play. Experiments, attempts at increasing airline security in particular, were necessary. There's no reason to continue to take those assumptions as true in the face of experience and in the face of other options.

We haven't done the research. We're not here with answers. We're simply saying that, in looking at the evidence, we don't see how the benefit outweighs the harm.

Ms. Pam Damoff: There are two concerns. One is that people whose names are on the list are there because there's a concern about security. What we're hearing about from No Fly List Kids is that there is not a concern with their security. They are not on the list. It's their names that are a match with the list, correct?

Mr. Faisal Bhabha: There's the problem of false positives or mistaken identity, and then there's the problem of erroneous listing. You're hearing that it's difficult to know if you're even on the list. Figuring out whether your name sounds like someone else's, whether you have the same name as someone else who should properly be named a threat, or whether your name is just there because of some false information or a false association is virtually impossible to know without digging deeper.

Certainly, at a theoretical level, those two are different—the case of mistaken identity and the case of being wrongly named—but the result is the same.

● (0915)

Mr. Zamir Khan: If I may—

Ms. Pam Damoff: Yes.

Mr. Zamir Khan: —one interesting thing is that if you are a listed person, one of those 2,000 people or more on the list, you have a recourse path that is legislated. It's mandated in the Secure Air Travel Act. That's what we're saying here. For the many thousands more who are false positives, who have nothing to do with this list, that process is not legislated. Even with the amendments of Bill C-59, it's not guaranteed that a redress system would be implemented.

Ms. Pam Damoff: Right, but you wouldn't legislate the funding into a bill.

Mr. Zamir Khan: No, not the funding but the process of redress.

Ms. Pam Damoff: What the minister has said, though, is that Bill C-59 gives us the legislative framework to build the regulations, and then the funding is required. This is the first step in making sure that this happens.

I have only five seconds left, so thank you.

The Chair: We'll have to leave it there.

Monsieur Paul-Hus, you have seven minutes, please.

[*Translation*]

Mr. Pierre Paul-Hus (Charlesbourg—Haute-Saint-Charles, CPC): Good morning, gentlemen. Thank you for being here.

Mr. Gardee, at the beginning of your testimony, you took some time to level some quite serious charges against CSIS and CSE. You say that your organization, the National Council of Canadian Muslims, does not trust our intelligence services.

Could you be specific about what could shed some light on that subject? Personally, I trust our services. Could you be more specific?

[*English*]

Mr. Ihsaan Gardee: Thank you, Mr. Chair.

Just to clarify, we were discussing CSIS, the Canadian Security Intelligence Service, not the Communications Security Establishment, although our concerns are shared across different security agencies regarding their operation.

We have seen through a number of different public inquiries high-profile cases of innocent individuals who have been implicated in national security investigations that have in certain cases led to individuals being rendered to torture overseas or picked up, when information is shared with foreign intelligence agencies, and held for extended periods of time. In some cases, they are subjected to torture and mistreatment, as has been discovered through public inquiries through Justice Dennis O'Connor and Justice Frank Iacobucci, looking at the cases of Maher Arar, Abdullah Almalki, Ahmad Abou-Elmaati, Muayyed Nureddin.

We are aware, as well, of other cases of individuals who were abroad, alleging similar treatment, including Abousfian Abdelrazik who was held in Sudan for a number of years. We have other Canadians who are still detained abroad and on whose behalf we are still advocating for their return. These kinds of incidents and these kinds of high-profile cases certainly shine a light on some of our significant concerns.

As my colleague, Professor Bhabha, mentioned as well, we—

● (0920)

[*Translation*]

Mr. Pierre Paul-Hus: That answers my question, thank you. As I do not have a lot of time, I would like to continue with my questions to you.

When you testified about Bill C-51, you mentioned that members of the community want to help with deradicalization, but they are afraid of being accused of being extremists.

Do you think that Bill C-59 solves that problem?

[*English*]

Mr. Ihsaan Gardee: In terms of our testimony on Bill C-51, obviously there is a concern regarding the stigma that is associated with being identified as somebody who has been connected in any way to violent extremism or the ideology that supports and underpins it. There is a concern that exists there in terms of that stigma being applied to not just the individual but more broadly to the community at large when looking at national security and ensuring our shared security.

To be clear, Canadian Muslims are as concerned about violent extremism and the ideologies that underpin it, and we are equally concerned about all forms of violent extremism.

[*Translation*]

Mr. Pierre Paul-Hus: I am not sure whether you are aware, but a bill has been introduced, Bill C-371, An Act respecting the prevention of radicalization through foreign funding and making related amendments to the Income Tax Act, to deal with what is called “covert channels”. What is your opinion about that bill?

[*English*]

Mr. Faisal Bhabha: We haven't looked at that bill. We haven't come prepared—

The Chair: I would say we are going into an area that you may or may not be prepared for, so—

[*Translation*]

Mr. Pierre Paul-Hus: I ask the question openly, to find out whether you are aware that the bill exists. If you are not, that's fine.

It is a bill that was introduced in October to counter funding from outside the country, the so-called “covert channels”. This is money from other countries or foreign organizations. I know that the Muslim community testified on the matter previously. Some imams have told us that they oppose this kind of funding and that they support our position.

I just wanted to know whether you were aware of the existence of the bill, but there is no problem if you are not.

[*English*]

The Chair: If you don't feel comfortable answering the question, you can say so and submit to the committee a more formal response. In fact, that would be a way of handling this surprise question, shall we say.

[*Translation*]

Mr. Pierre Paul-Hus: Okay.

I would like to go back to the no-fly list.

I am one of the MPs who signed a letter that has been sent to the Minister asking him for action.

Bill C-59 provides for the possibility of issuing a unique identifier to people, but do you feel that using biometric data could be something to add in order to make it easier to identify people?

[*English*]

Mr. Zamir Khan: I don't know specifically about biometric information, but I do agree that using additional identifiers makes a lot of sense. For example, if we mandated that the date of birth be used in addition to the name, we calculated that would reduce the number of false positives by a factor of 30,000, just based on the odds of two people having the same birthday. That simple addition to the system could reduce the number of false positives drastically, and then we could have redress for those few remaining individuals who still have trouble when they travel.

[*Translation*]

Mr. Pierre Paul-Hus: That's all from me. Thank you.

The Chair: Mr. Dubé, you have the floor for seven minutes.

Mr. Matthew Dubé (Beloeil—Chambly, NDP): Thank you, Mr. Chair.

[*English*]

Mr. Gardee and Professor Bhabha, I think this is what my colleague was getting at concerning what was said with regard to Bill C-51, and we heard this during the national security framework review that this committee undertook.

One of the concerns that were raised with the changes to the Criminal Code, the offences related to the promotion of terrorism.... Some families, for example, in terms of reporting to the proper authorities certain actions in hopes of rehabilitating a member of their family or their community, because those offences were so wide and general and vague, remained silent in order to not implicate a member of their family or their community.

Are the changes proposed to the Criminal Code in Bill C-59 related to that specific issue sufficient as far as you and your organization are concerned?

● (0925)

Mr. Faisal Bhabha: Not likely, and that's because of the lack of trust that we've spoken about.

Again, I draw the analogy to urban policing and African Canadians. We hear that a lack of co-operation with police is a symptom of a lack of trust between communities and police. This is precisely the problem we have in the realm of national security, and we encourage greater community relationships with law enforcement. We encourage that, but we as an organization do not feel confident to recommend to Canadian Muslims to open their hearts and the doors of their homes and their centres to national security officials who have proven time and again to be duplicitous and untrustworthy.

We're looking for accountability first, and from that trust will flow, we hope.

Mr. Matthew Dubé: Going back to the issue of information sharing, certainly you've explained the concerns you have with that. There's a new piece in the bill with regard to the collection of datasets and things like that. One of the concerns with these wider and wider nets that are being cast is the targeting of specific individuals. In the cases you've outlined that are, tragically, very possible, things like profiling and so forth, there is the potential of casting such a wide net that it reaches many people.

What are your concerns with regard to the collection of datasets and the impact it can have on your community given the state of affairs you've outlined?

Mr. Ihsaan Gardee: I think the concerns that were outlined regarding information sharing are very well documented as well in the report by Justice O'Connor looking into the case of Maher Arar. There is an amplification of this lack of trust with national security agencies when we don't have any sense of accountability, as I mentioned, for any of these errors that have occurred in the past.

We have what is perceived to be a culture of impunity, where individuals are not just not disciplined—or we don't hear about any disciplinary action—but they're, in fact, promoted within the service. It creates a sense within the communities at large that there is no accountability within the security agencies at present and that leads to a lack of trust.

Mr. Matthew Dubé: Speaking of trust, we talked about the workplace culture issues that have been raised and the lawsuit going ahead against CSIS. One of the reasons I've asked the minister to investigate this is not just because of what's happening internally. I think you're saying the same things, but I just want to, perhaps, seek clarity there. It's not just what's happening internally but also what that might mean for how work is being done. In other words, if we're asking CSIS to engage with certain communities and this is the behaviour that's being seen internally, we have a reason to wonder whether this is what's happening outwardly.

Would that be a fair assessment of the comments you're making?

Mr. Faisal Bhabha: That's exactly what we're submitting to you. If you read the statement of claim filed in Federal Court in July of this year, just a few months ago, and read the released investigation report, the third-party investigation report released in October of 2017—we're talking about very recent glimpses into the agency—what you will read there are very serious allegations about the culture.

We infer from this that if the culture inside is as bad as those individuals say it is...and this isn't us saying it is. This is what employees of the agency and an investigator said when looking at it. If it's that bad inside, how can we not assume that those same biases are informing the activities of the agency in its actual work? It would make no sense if it were any other way.

In terms of information sharing, that's deeply concerning because, as you heard, if those agencies are directing the no-fly list and other security designations and then sharing that with other countries around the world, we could potentially have lots of innocent Canadians having their reputations and freedoms severely damaged by their own government in relations with the rest of the world.

Mr. Matthew Dubé: Thank you.

My time is limited, so I just want to come to you, Mr. Khan, and first thank your organization for all the advocacy you do. As I've said to some of the other parents, it's hard enough to do that kind of advocacy, but I think it's even more challenging when it relates to a matter that affects your family and children, so thank you for that.

Mr. Zamir Khan: Thank you.

Mr. Matthew Dubé: I have two questions I wanted to hear you on. The first is related to a notion that was raised in the press conference here on the Hill from one of the kids, who's not really much of a kid any longer. His name escapes me. Unfortunately, I don't have it in front of me at the moment. He was mentioning the issue for some of these children, when they become older, of potentially getting caught in this web of.... It's one thing when you have an infant, but if it's an 18- or 20-year-old man, then suddenly a false positive can become much more dangerous in terms of the consequences. I want to hear you on that first.

Secondly, what are your organization's concerns with what seems to be a very inflated number as to what the actual costs would be of implementing the redress system?

● (0930)

The Chair: Please answer in a little less than 30 seconds.

Mr. Zamir Khan: Thank you.

On the first point, that was Yusuf Ahmed who spoke to that. Yes, it's reasonable to expect that as these young men become older, verifying the identity of a three-year-old is much different than verifying the identity of a 20-year-old, especially considering the profiles that are contained on these lists. These young men experience longer waits and greater scrutiny.

On the second point, I would state that we've already seen this program implemented south of the border. The U.S. didn't start with a redress system. They didn't start with a centralized government system. They started by delegating to airlines just like Canada did when the no-fly list was created. In 2007 they started the secure flight program, which is essentially what we're asking Canada to create. Their costs show to be very similar to what the government is projecting for this redress system.

Mr. Matthew Dubé: Okay.

The Chair: Thank you, Mr. Dubé.

Welcome to the committee, Mr. Elgazzar.

Mr. Khalid Elgazzar (Lawyer, No Fly List Kids): Thank you.

The Chair: Mr. Spengemann, you have seven minutes, please.

Mr. Sven Spengemann (Mississauga—Lakeshore, Lib.): Thank you very much, Mr. Chair.

As–salaam alaikum, and welcome to the committee, Mr. Gardee.

It's great to see you again, Professor Bhabha.

I want to join my colleague Mr. Dubé in thanking Mr. Khan, in particular, who comes to us not only in the role of an advocate but also as a parent of a child who is directly impacted by the no-fly list.

Thank you, all four of you, for your advocacy, for your voices and for pushing us on issues that will ultimately result in better legislation and better institutions. I think it's quite clear to the committee that, from your perspectives, the status quo is not good enough, and I think, from my personal perspective—and I speak for others on the committee, I'm sure—we need to make changes. If we continue to go along the track that we are on right now, it is not working, and it is not the best Canadian answer that we can develop.

I want to seek some clarity from you, because in the beginning, there was some perception that there were differences in terms of what you'd like to achieve, and Professor Bhabha said we should just scrap the PPP altogether. If we had the U.S. equivalent, one for one, in front of us tomorrow, and it was operational, would that meet your concerns, and if so, to what extent?

We heard from other witnesses, from other members of the Muslim community but also other communities, that the U.S. redress system, stigmatizing as it may be, is at least functional. Do you agree with that?

Mr. Faisal Bhabha: Are you asking us?

Mr. Sven Spengemann: I'm asking whoever would like to answer.

Mr. Zamir Khan: I would say, if we had the U.S. redress system here today, it would be a definite improvement over, as you said, the status quo that we have. I don't think anyone thinks that it is a perfect system, but it would definitely be a massive improvement over what exists today.

Mr. Sven Spengemann: Mr. Gardee or Professor Bhabha...?

Mr. Faisal Bhabha: We would welcome any changes to improve what we currently have, but as you know, the stigmatizing effect of the list still needs to be weighed against the benefits of the list, and we await evidence of benefits.

Mr. Sven Spengemann: When I alluded to the issues of culture change, I think it's important that you hear that you're making us feel at some level, within the limits of our time together here this morning, the stigma that you're exposed to day after day, and I thank you for that.

Bill C-59 is one building block, as departmental officials and the minister have testified recently, in a three-step series to getting us where we would want to be with respect to an equivalent of the U.S. system. It provides the legal basis. There's a budgetary basis, as well, and ultimately, there's the construction of an IT-based system that would operate the redress system. The committee received testimony from the department that this is a complex exercise.

I appreciate your point, Mr. Khan, that there is software available that may well serve in some way in terms of solutions being integrated into the Canadian system ultimately, but there are complexities and there's not just one department involved. This is an exercise that cannot be undertaken and completed tomorrow.

It's also important, because there are youth involved and privacy issues, that data needs to be protected and that this is done in the right way. Would you agree that, if those are the right parameters to getting us to where we want to be, there isn't really, from a government side, an intermediate quick fix that would satisfactorily answer the concerns you bring us today?

● (0935)

Mr. Zamir Khan: I would agree that it will take time to build the redress system, that it is complex. I will agree with that. What I don't see is that the framework in Bill C-59 ensures that a redress system will ever be built. I would like to see in the legislation, just as the administrative process is outlined, that a watch-list cannot continue without redress. I don't see that currently.

Mr. Sven Spengemann: I think the committee would appreciate it —and I think you've alluded to it—if you would get us precise recommendations on the no-fly list in the form of actual language that you would want to see inserted into the bill, and that you provide it to us. I personally am confident that this government is committed and that the parameters are there. Through your advocacy efforts, I think you have the cross-party commitment that the budgetary component of that will be put into place to construct that system.

In the remaining couple minutes, I'd like to delegate some of my time to my colleague, Ms. Young. I would like to ask you about Canadian youth and the vulnerability of Canadian youth.

My colleague Mr. Paul-Hus referred to terrorist financing. The other source of energy for a terrorist organization is recruitment. Canadian youth are vulnerable—and not just Muslim youth but Canadian youth generally—to organizations like al Shabaab, Abu Sayyaf, and ISIS through recruitment.

Bill C-59 brings the Youth Criminal Justice Act into play through section 159, which basically says that, in the context of detention, as a preventative mechanism, young offender considerations have to be taken into account in counterterrorism work. Are there any other components to this bill that you want to raise or highlight with respect to the protection of Canadian youth, and could you comment very briefly on the importance of working with our Canadian youth to prevent radicalization?

You have about a minute or so.

Mr. Ihsaan Gardee: I will try to address that quickly and then I think my colleague, Professor Bhabha, would also like to jump in.

As we alluded to, in terms of the culture shift that's required to address some of these issues, part of the solution is looking at things like large-scale recruitment, training, and the promotion of minorities, including Muslims, within CSIS on an urgent basis. Another part of the solution is a thorough program of internal training, including audits to check progress, with the aim of implementing this culture shift within the service.

As it goes to the issue of recruitment, obviously, that is a significant concern. It's amplified by the fact that we have online recruitment and the rise of online hate as well.

Mr. Sven Spengemann: It's fair to say then that is a concern for all four of you.

Mr. Faisal Bhabha: It's a concern, but the question is why Canadian youth are vulnerable. At the core, we think there are social problems that produce that vulnerability. It's not just Canadian Muslim youth that are vulnerable to extremism, as we saw in Quebec City earlier this year. We'd like to see greater focus on all forms of extremism affecting and targeting Canadian youth.

Mr. Sven Spengemann: Thank you very much, Mr. Chair.

I'd like to pass the final 45 seconds to my colleague, Ms. Young, for a brief question.

Ms. Kate Young (London West, Lib.): Thank you.

Mr. Khan, I want to thank you for your advocacy. As one of my constituents, I'm pleased about what you have accomplished over the past two years. I was one of the first to sign on to that letter and happy to do so.

I did want to quickly ask about the airlines. If the power is taken away from the airlines, is that a step in the right direction?

Mr. Zamir Khan: Certainly. Yes.

This list is maintained by the government. It should be enforced by the government. If the list is in the hands of the airlines, we see inconsistent application. We see families getting their babies to sign up for rewards programs to get through, so yes, it is absolutely a step in the right direction.

The Chair: Thank you, Ms. Young and for Mr. Spengemann's great generosity.

Go ahead, Mr. Motz.

Mr. Glen Motz (Medicine Hat—Cardston—Warner, CPC): Thank you, Mr. Chair, and thank you to the witnesses for being here today.

I appreciate the comments that were made earlier, with respect to the concern that you have about all forms of violent extremism. Given the attack that happened in New York, I'm sure your organization has already or will be condemning the actions that occurred in that circumstance.

You indicate that there has been an historical lack of accountability within CSIS. It goes back many years. In 2015, Bill C-51 was brought in to address this and now Bill C-59 takes that review and accountability even further. However, from your testimony today, I'm hearing that there remains a lack of confidence in addressing the concerns within CSIS.

What do you propose is the solution?

● (0940)

Mr. Ihsaan Gardee: Thank you very much.

I did mention briefly before that part of the solution would be looking at diversifying the force. We have that lack of diversity that exists within top management, as I indicated in my opening statement. That sends a message. It's an important element, but it's not the only element.

We believe other aspects that will be necessary are large-scale recruitment and training of minorities, including Muslims, within CSIS and other security agencies on an urgent basis. To augment that we would also recommend internal training, including audits to measure progress.

Mr. Glen Motz: All right.

One of the things that one of you gentlemen mentioned was that you encourage community engagement with law enforcement and security. What specifically is your organization doing in your communities to encourage that engagement?

Mr. Ihsaan Gardee: We regularly meet with different community members and provide workshops on a variety of different topics, including what we call a "know your rights and responsibilities" workshop. We talk about the rights that are imbued with Canadian citizenship and equally the responsibilities of active and engaged citizenship. That includes the responsibility to ensure our shared and collective safety. If individuals have knowledge of criminal actions, they should report those to law enforcement.

Mr. Glen Motz: Thank you very much.

I want to go to the no-fly list. I appreciate the advocacy you and your organization have done.

Welcome to the committee today.

Mr. Khalid Elgazzar: Thank you.

Mr. Glen Motz: There have been all sorts of solutions offered. I would ask you this question, given your background. Are there any potential technological solutions you see that would address this issue with the no-fly list right at the moment?

Mr. Khalid Elgazzar: I think the easy starting point is to look at what our allies are doing. There's no easier ally to look to than the United States. It has had its redress system in place since 2007. As I think my friend, Mr. Khan, has already stated in the remarks that I was going to give earlier, that system that was implemented in 2007 has actually had the opportunity to be challenged in court in terms of its constitutionality. It was essentially scrapped and re-enacted with constitutional protections in place.

Obviously, the technology exists. There is a handout I believe Mr. Khan might have shown you earlier that shows the difference between a Canadian traveller booking a flight from Canada to a Canadian destination, and that same Canadian traveller booking a flight on the same airline to an American destination. With regard to the latter, there is an additional field where the traveller can enter the redress number, so obviously the technology does exist.

Mr. Glen Motz: Now, in an ideal world, if you had a chance—and I'm sure you've been asked by my colleague across the way to provide to the committee any recommendations you have—what changes would you like to see that aren't already included in this Bill C-59 on the whole issue of the no-fly list?

Mr. Khalid Elgazzar: I think it would be any provisions that actually establish the redress system. For example, who is going to administer the system? What might it be called? What are the procedures? What are the parameters? Is there an appeal process involved? This is similar to what is currently at section 16 of the Secure Air Travel Act in terms of appeals, which I understand is being beefed up under Bill C-59.

Essentially, I would just like to see the establishment of a redress system, whatever is required to establish it. You may give it a name. I know in the United States they've given it a name: the traveller redress inquiry program. I would have thought at the very least that under section 32 of SATA, the regulations section of the act, the government might have included something that states that the government can make regulations with regard to a redress system. Even that would be just a small indication that this is something that's going to happen.

Frankly, our position is that the government should take this opportunity to catch up to our allies, including the United States, and bring about the entire system. This, again, isn't something where we're asking the government to reinvent the wheel.

The Chair: Thank you, Mr. Elgazzar.

I'm down to about a minute or two, Mr. Fragiskatos. You're welcome to take that minute or two, or not.

Mr. Peter Fragiskatos (London North Centre, Lib.): Thank you very much, Mr. Chair.

With a minute or two, I can't help but join my colleague, Kate, in thanking you very much, Mr. Khan, for all the work that you've done. You live in the community of London West. Your parents live in London North Centre. I remember very well the meeting we had in the constituency office, where you articulated what you articulated here in front of us: the stigma, in particular, that this causes, the harm that is done, and the impact that it's had on you and your family. Thank you for personalizing the story. That can't be easy.

I did want to ask about the evolution of the American approach to the no-fly list. I think we've heard a bit about that, but from everything I've heard from you, Mr. Khan, and now from you, Mr. Elgazzar, you would agree that a no-fly list can be put into place, can be maintained, and can advance security so long as it's done well and so long as we learn from the best practices of other countries, such as the United States. You would agree with that position, I assume. That's what I'm hearing from you.

● (0945)

Mr. Zamir Khan: Yes. I would agree that there would be an improvement in terms of reduction of harm from that list. As my colleagues here testified, there has been no evidence provided of the effectiveness of the list, so I can't testify that the list keeps us safe or is effective. I would love to see those statistics.

However, in the absence of those, yes, reducing the number of false positives and giving them a path towards redress would be an improvement.

The Chair: Thank you, Mr. Fragiskatos.

Mr. Peter Fragiskatos: Thank you very much.

The Chair: On behalf of the committee, I want to thank each and every one of you for your efforts to be here, particularly on a day like today.

With that, we'll suspend and re-empanel in a couple of minutes.

Mr. Paul-Hus will begin to chair the second half. I have to report Bill C-66 to the House.

We are suspended.

● (0945)

(Pause)

● (0950)

[*Translation*]

The Vice-Chair (Mr. Pierre Paul-Hus): Good morning, Mr. Roach and Mr. Fogel.

My name is Pierre Paul-Hus, the vice chair of the committee. I am taking the chair's place at the moment as he has gone to the House of Commons to report on a bill.

Let us start with you, Mr. Fogel. You have a statement for us.

[*English*]

Mr. Shimon Fogel (Chief Executive Officer, Centre for Israel and Jewish Affairs): Thank you, Chair, for the opportunity to present to the members of this committee on behalf of the Centre for Israel and Jewish Affairs, the advocacy agent for the Jewish Federations of Canada.

We are a national, non-partisan, non-profit organization representing more than 150,000 Jewish Canadians affiliated through local federations across the country. We believe in Canada's foundational values of freedom, democracy, and equality, and are committed to working with government, Parliament, and all like-minded groups to ensure that Canada remains a country where we all enjoy equal protections and opportunities.

In March 2015, I appeared as a witness before the Standing Committee on Public Safety and National Security as it studied Bill C-51. Our testimony began with a statement of fact, “Jews are consistently targeted by hate and bias-related crimes in Canada at a rate higher than any other identifiable group.” Those words are, unfortunately, as true today as they were then.

Statistics Canada recently released its report on 2016 hate crimes, and once again Jews were targeted more than any other religious minority, with 221 incidents. We must, however, keep this in perspective. Canada is a very safe place for identifiable groups and one of the greatest places in the world in which to live as a minority. However, we must also remain vigilant. A single hate crime is one too many.

Whether considering the attack on a synagogue in Jerusalem, a gay nightclub in Orlando, an African American church in Charleston, or a mosque in Quebec City, extreme hate continues to precipitate extreme violence. Jews are often primary targets for terrorist attacks throughout the world: Belgium, Argentina, France, India, Bulgaria, Israel, Denmark, the United States. Understandably, Jewish Canadians are not just concerned about what threats might meet them abroad, but what could happen here at home.

Public Safety Canada's “2016 Public Report on the Terrorist Threat to Canada” notes that Hezbollah, the listed terrorist entity widely believed to have carried out the bombing of a Jewish community centre in Buenos Aires, has networks operating here in Canada. The notorious 2004 firebombing of a Jewish school in Montreal still looms large in our collective memory.

Our community, therefore, takes a keen interest in the government's approach to counterterrorism. We appreciate the opportunity we were afforded to engage in the consultations on Canada's national security framework, both before this committee and with the Department of Public Safety and Emergency Preparedness. I hope that our recommendations will prove helpful and constructive for the committee.

We'll speak on the expanded oversight for CSIS, but before going there let me just address a couple of considerations with respect to advocacy or promotion of terrorism offences in general.

In the context of the former Bill C-51, CIJA was supportive of measures to empower security officials to criminalize the advocacy and promotion of terrorism and seize terrorist propaganda. CIJA supported these measures as a means of denying those intent on inspiring, radicalizing, or recruiting Canadians to commit acts of terror the legal leeway to be clever but dangerous with their words.

Bill C-59 seeks to change the law's articulation of this offence from “advocating or promoting” to “counselling” a terrorism offence. This doesn't necessarily undermine the intended function of the provision. Justice Canada's background information on the advocacy and promotion offence states, “The offence is modelled on existing offences of counselling and the relevant jurisprudence. It extended the concept of counselling to cases where no specific terrorism offence is being counselled, but it is evident nonetheless that terrorism offences are being counselled.”

The same intended outcome seems to be achieved in Bill C-59, which adds the caveat that the counselling offence “may be committed...whether or not...the person counsels the commission of a specific terrorism offence.” If, as Minister Goodale indicated in his recent testimony before this committee, this change empowers authorities to enforce the law with greater impact, it would seem a reasonable shift. However, we believe there is an oversight in the proposed new language that could narrow the scope of the provision, weakening it substantially.

The existing offence applies to “Every person who, by communicating statements, knowingly advocates or promotes the commission of terrorism offences in general”. Swapping out the advocacy and promotion language, this should become something like “Every person who counsels the commission of a terrorism offence”, but it doesn't. Instead, Bill C-59 reads, “Every person who counsels another person to commit a terrorism offence”. With this wording, it appears that the offence could apply only to a specific individual counselling another specific individual.

● (0955)

When it comes to the offence of instructing a terrorist activity, the Criminal Code is explicit. The offence is committed whether or not the accused instructs a particular person to carry out the activity or even knows the identity of the person instructed to carry out the activity. The same standard should apply to the counselling offence. The change of “advocacy and promotion” to “counselling” also impacts on the definition of terrorism propaganda.

Bill C-59 would remove “advocacy and promotion of terrorism offences in general” from the definition, consistent with the change proposed for the counselling offence I've just discussed. However, the all-important caveat that a specific terrorism offence need not be counselled, which is included in the new counselling offence, is lacking here. This should be adjusted for the sake of consistency.

I'll turn to expanded oversight for CSIS.

In our testimony on Bill C-51, CIJA supported the expansion of CSIS's role and responsibilities to include disruption of potential terrorist attacks. While we believed the new mandate was justified, we maintained that enhanced oversight was required to prevent abuse. Just as Canadians stand to benefit from a more robust approach to counterterrorism that emphasizes prevention, we argued that a concurrent increase in the review of CSIS's activities would be beneficial.

Measures to enhance SIRC's ability to provide adequate review are long overdue and are all the more imperative with CSIS's expanded mandate. We supported the refinements to CSIS's expanded mandate that Bill C-59 would put in place and the establishment of a national security and intelligence review agency. Both should help to ensure greater balance in protecting the security and civil rights of Canadians.

In the context of Bill C-51, we proposed several concrete reforms to enhance oversight and accountability for CSIS. The new oversight agency will fulfill our first and perhaps most important recommendation's objective of enabling a review of security and intelligence activities across all government agencies and departments. However, we believe the following three recommendations regarding the structure and composition of the new agency would help ensure it is set up to be as impactful as possible.

First, the chair of the new agency should be someone with experience in intelligence and national security, and should occupy the position on a full-time basis to ensure consistent, professional leadership.

Unfortunately, Bill C-59 states, “The Chair and Vice-chair may be designated to hold office on a full-time or part-time basis”. The bill also states, “Every member of the Review Agency who is not designated as the Chair or Vice-chair holds office on a part-time basis”.

We suggest this be changed to provide the option of other members being brought on full time without requiring a legislative amendment. Given that the workload of the new agency is likely to be significantly greater than that of SIRC, this could conceivably require full-time engagement from all members.

Second, we recommend that the chair of the new agency be designated an officer of Parliament required to provide regular reports directly to Parliament. This mirrors the recommendation we made in the context of Bill C-51 with regard to the chair of SIRC.

The requirement enshrined in Bill C-59 that public reports from the new agency be tabled in Parliament is beneficial, but this reporting is still mediated through the Prime Minister and other ministers. Designating the chair of SIRC an officer of Parliament with a mandate for regular reporting directly to Parliament would send a clear signal that the work of the new agency is independent from the government of the day.

Third, we believe Parliament should have a greater voice in the appointment of members of the new agency.

We welcome the consultation provisions included in Bill C-59 but believe the appointments should also be subject to approval by resolution of the Senate and the House of Commons. This small addition, which is already standard practice in the appointment of officers of Parliament, would further enhance the credibility of the appointments process.

Although this may be more appropriate for your colleagues at the finance committee, it's also important to stress that the national security and intelligence review agency will require the allocation of significant resources, both professional and financial, if it is to be given a chance to succeed in fulfilling its important mandate.

● (1000)

CIJA's testimony in 2015 concluded with a plea for committee members to support a private member's bill that sought to extend hate crime penalties beyond houses of worship to schools and community centres. That initiative failed but was revived in this Parliament in Bill C-305, which passed third reading in the Senate in October.

I am pleased to conclude my remarks today, Mr. Chair, with sincere thanks to each of you for coming together in unanimous support for Bill C-305, a clear example of how elected officials can work together and make a practical difference to protect Canadians.

I hope committee members will consider my remarks today in that same constructive spirit, and I'm grateful for the opportunity to join with you.

Thank you.

[*Translation*]

The Vice-Chair (Mr. Pierre Paul-Hus): Thank you, Mr. Fogel.

The floor now goes to Mr. Roach.

[*English*]

Professor Kent Roach (Professor, Faculty of Law, University of Toronto, As an Individual): Thank you very much for inviting me to appear before the committee.

My colleague Craig Forcese has already addressed you and has focused on parts 2, 3, and 4 of the bill. I will focus on the other parts of Bill C-59.

Part 1 providing for a government-wide super-SIRC has been widely praised. In my view, it implements the important principle, if not the precise details, that animated the Arar commission's report; namely, that review should expand with the state's national security activities and that review strengthens rather than weakens security.

Improvements can still be made. I recommend that the new and very much welcome super-SIRC be somewhat supersized. In my view, it should contain a minimum of five members and up to eight members. Amnesty International has endorsed this recommendation, and you've heard some very interesting proposals about strengthening the new super-SIRC both from Professor Wark and Mr. Fogel.

We should think about having more diversity in appointments and not simply focusing on the consultation with leaders of political parties, which is very much a holdover from the original 1984 Cold War era CSIS Act. We could also include people with expertise in privacy, as you heard from the Privacy Commissioner. I think it is also important that there be representation where possible from communities that may be disproportionately affected by national security activities.

The mandate of the new review agency needs to be better defined. On my reading, the reference to "department" or "corporation", which is incorporated in the new act, does not include the RCMP. This should be very clearly spelled out. It should be clear that the new committee can review the national security activities of the RCMP, hear complaints about the national security activities of the RCMP, and have full access to classified information that the RCMP has on the same basis that it will have access to classified information that CSIS, CSE, and other agencies involved in national security have.

Moving to part 5, I remain of the view that the SCISA part of Bill C-59 remains the weakest part of the bill. I would advocate that the definition of threats to national security in section 2 of the CSIS Act be the default trigger for information sharing, subject to carefully tailored and justified additions in cases where that may be inadequate. The novel Bill C-51 definition of activities that undermine the security of Canada was grossly overbroad. Even after the amendments in this bill, it would remain overbroad.

When I talk about overbreadth, and I know that some members of this committee have read the Air India commission report, I refer to overbreadth not only from a civil liberties perspective but frankly from a security perspective. If everything is a security threat, effectively nothing is a security threat. I think we really should tighten the definition with respect to information sharing.

On the subject of Air India—and here I'm going just a touch beyond Bill C-59—I must again reiterate my objections to the CSIS human source privilege that was enacted in the Protection of Canada from Terrorists Act. If it is not repealed, at least I would recommend that, as an urgent matter, there be a study of whether CSIS's practice of granting anonymity to witnesses is hindering terrorism prosecutions.

The Privacy Commissioner has made a strong case to you that the standard for receiving agencies under SCISA should be raised to "necessity". I agree. I would also not be troubled by having that same standard with respect to sending agencies. The Privacy Commissioner raised the issue that sending agencies may not have experience with security, but they also maybe don't have the same incentive that receiving agencies may have to keep, perhaps unnecessarily, the information that they receive.

● (1005)

In this regard, a critical feature of the new review agency is that it will be able to examine the legally privileged material that is the basis on which receiving agencies will make decisions, perhaps wrongly, to retain any information.

Moving to part 6, the committee is well aware of the problems of a no-fly list. The reforms in C-59 strike me as minimal. Four months is a long time to be a wrongfully listed person, even if the default has been changed. Special advocates should have a role in appeals, and Bill C-51's restriction on the information that these security-cleared advocates can see in security certificate cases should also be repealed. More fundamentally, however, perhaps the new committee that has access to classified information should review whether the costs of the no-fly list, both financial and human—in terms of false positives—are actually worth its benefits.

Moving to part 7 of the bill, I note that the CCLA submitted to you that the reference to terrorism offences in the counselling offence is not defined. That's not my reading. I would read the reference to terrorism offences as referring to the definition of terrorism offences contained in section 2 of the Criminal Code, but this is a matter that needs to be clarified.

The changes to the preventive arrest provisions are difficult to evaluate, but I would favour further amendments to clarify limits on questioning of people who may be detained for up to seven days. I would also advocate that there be some response to the Driver case in Manitoba, which held that at least one part of the peace bond provisions relating to treatment programs violated the charter. I would also recommend that we look at something like section 10 of the U.K. Terrorism Act, 2000, which would allow people to challenge listing as terrorist groups without that very act of challenge being the basis for a terrorism offence.

I applaud the government for repealing investigative hearings, a technique that has never been successfully used and, if used, could hinder terrorism prosecutions.

Finally, this is important and complex legislation that was made necessary by Bill C-51. I would propose that given the comprehensive, if not radical, nature of C-51 and the important proactives of this bill, that the review of this bill be commenced within the fourth year of its enactment, not the sixth year as contemplated in part 9. I would also propose that the review be undertaken by a special joint committee of the Commons and the Senate, which could include one to two members of the new National Security and Intelligence Committee of Parliamentarians.

In addition to my previously submitted brief, which I hope you have and has been translated, those are my submissions.

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

● (1010)

[*Translation*]

The Vice-Chair (Mr. Pierre Paul-Hus): Thank you very much, Mr. Roach.

We now start the first series of questions.

Mr. Picard, you have seven minutes.

[*English*]

Mr. Shimon Fogel: I think there's always a tension when you have competing imperatives. As you noted, on the one hand, we all want to ensure maximum freedom and individual rights. However, on the other hand, we recognize that there's an equally important imperative to ensure the collective safety of all Canadians from the threats that have emerged and manifest themselves, not just abroad, but assert themselves here in Canada.

I think one of the ways to achieve that balance is the way that this legislation attempts to provide the kind of qualitative oversight by a review board that is one step removed from the front lines.

I suspect that one of the challenges, for those who are directly involved in the challenge of tracking and interdicting terrorist threats, is that they become very focused on the mission, without necessarily always appreciating the context.

Having a review committee that's able to assess whether the approach is properly calibrated is a way, both retroactively, but also proactively, to ensure that we have achieved the right balance.

Having an additional layer of reporting to Parliament, so that elected officials, who have a direct relationship with those in the community who are being directly affected by these kinds of measures, ensures that there is not just the accountability but also the responsiveness to what the experience in the community is.

I think that this legislation does properly capture the spirt of being able to balance the need for security against the need to protect individual freedoms.

● (1015)

[*Translation*]

Mr. Michel Picard: What is your opinion, Mr. Roach?

[*English*]

Prof. Kent Roach: I agree with what Mr. Fogel said. I think the issue is not so much stronger security powers, but smarter security powers. I think the review process contributes to this, but I would also say that the ongoing “intelligence to evidence” consultation that the government is conducting is very important. Professor Forcese and I have commented that Canada seems to lag behind our allies, even on a per capita basis, in being able to conduct terrorism prosecutions. There have been improvements, but I think there can still be improvements.

Now, I come back to SCISA. I don't think we make Canadians safer by having the broadest possible definition of security threats in SCISA. In fact, I think that not only threatens rights by making potentially environmental groups, indigenous groups, and diaspora groups the target of security information sharing, but we make Canadians less safe by potentially drowning departments with information.

I would say the threat of terrorism is real. We've never denied it. It is going to be here for the foreseeable future and we have to be smarter about the way we respond to and target these threats and not simply attempt to reassure the public by enacting legislation that is as broad or as tough as possible.

[*Translation*]

Mr. Michel Picard: Speaking of SCISA, that brings me to my second question.

You are proposing a stricter definition of information sharing. But you understand that, in the current situation, the organization providing the information and the one receiving it do not necessarily see eye to eye about the information that needs to be shared.

Given that the criteria that determine which information needs to be shared are always different from organization to organization, would a stricter definition not get in the way of the information sharing?

[*English*]

Prof. Kent Roach: Necessity is, as the Privacy Commissioner said, a very well-regarded and internationally accepted standard, so I would start with that. If the sending agency is insufficiently attuned to possible security implications, then someone should make sure that they know about that and are in a position to administer whatever standard it is, whether it is necessity or whether it is relevance.

One of the recommendations of the Air India commission, and I should mention that I was the research director of legal studies for that commission, was that we needed a more proactive role at the centre to make sure all the agencies involved in national security worked together.

I don't think you can fix this problem simply by having a fairly low standard for the sending agency. It seems to me that if something is necessary for security reasons, then whether you're in the agricultural department, the CBSA, or wherever, you should have appropriate training and awareness, and appropriate intelligence briefings, so that you will be able to make that call correctly.

The Chair: Thank you, Mr. Picard.

Mr. MacKenzie, you have seven minutes, please.

Mr. Dave MacKenzie (Oxford, CPC): Thank you, Chair, and thank you to the panel members for being here today.

Mr. Fogel, I found it interesting that you should mention that the Jewish community has been the major focus of terrorists or actions against your group. I believe, if I'm not mistaken, perhaps the Catholic Church was fairly high in that whole hierarchy.

In terms of one of the ironies, I was here for the introduction of Bill C-51, and both the Conservatives and the Liberals supported that bill. It was a first step, obviously, and I see this as perhaps being the next step of a living document. There are good suggestions that we should review this document before too many years pass. However, what I did note too, and my colleague mentioned the apologies and the compensation paid to four individuals, is that it all occurred way before Bill C-51 was brought in, so maybe it did have some things in there that brought the intelligence agencies and the security agencies a bit to heel, although much later in the whole process. Those were incidents that all occurred before 2004, so I see this as the next step.

When we talk about the no-fly list, for instance, and we look at the American list as being a far better system, would you also say that we should look at some of the other American rules with respect to terrorism and anti-terrorism? Particularly, I noticed yesterday in the incident in the New York City subway, the commentators talked about not allowing him his Miranda rights. That seems foreign to Canadians, but the Americans obviously have some view on that.

Mr. Fogel, do you have any comments on that?

● (1020)

Mr. Shimon Fogel: I'm not entirely familiar with that particular aspect of the case. It is good practice, and I believe, frankly, that Canada already undertakes consultation with all its like-minded allies on a routine and regular basis looking for best practices, those that we can share with others, and those where we can benefit from the experience of other nation-states.

I'm encouraged when I look at the process of Bills C-51 and C-59 and the commitment to periodically review, both to refine on the basis of experience but also to be able to be responsive to changing circumstances on the ground. That's exactly the right approach that we should be taking. I'm encouraged that we do consult with our allies in order to benefit from their experience in areas where we have less.

Mr. Dave MacKenzie: Thank you.

Mr. Roach.

Prof. Kent Roach: Mr. MacKenzie, could I also address the Miranda point?

Mr. Dave MacKenzie: Sure. Please do.

Prof. Kent Roach: This is exactly where I was coming from on the CSIS informer point. If you don't read someone their paragraph 10(b) rights under the charter, you're going to make it more difficult to prosecute them. One of my concerns about that, and one of my concerns about the CSIS informer privilege, is that we may actually be making it more difficult to prosecute people. I actually think that we don't want to go the American route, where you have people who are essentially impossible to prosecute because of the way you violated their rights. Terrorism is violence, and if someone is planning violence or someone has committed violence, the appropriate response is with a prosecution. This is why I did not understand why the previous government gave CSIS this privilege, which is triggered any time they promise a human source confidentiality.

I can tell you, in the Air India investigation, which we spent four years examining, that sort of practice would have made it impossible even to have brought a prosecution because all of the witnesses were first, as perhaps they should be, CSIS sources, but then they had to be turned over to the RCMP to facilitate a prosecution.

Again, this is the importance of evidence-based policy-making. I don't know what the rationale was, except maybe to reverse a Supreme Court decision in Harkat, but I actually genuinely feel that we may be placing Canadians' safety and terrorism prosecutions at risk because of a decision that was made by Parliament in 2015 to give CSIS human sources an absolute privilege from any identifying information being disclosed or used in a terrorism prosecution.

Mr. Dave MacKenzie: I appreciate that. I wasn't suggesting that we go to the American system. I was just trying to point out that there is a difference when we look from one to the other. They all have differences.

To that end, I wonder if both witnesses could tell us if they've looked at similar legislation by our allies, the Five Eyes. Is there something more we can learn from adopting some of their practices that we don't already have? Perhaps we'll start with Mr. Roach.

● (1025)

Prof. Kent Roach: Professor Forcese has addressed the intelligence commissioner, but I do think that follows from the U. K. We shouldn't follow the U.K. blindly, but certainly U.K. terrorism legislation has had a huge impact on Canadian legislation. I think that's a good step.

I agree with Professor Carvin, though, and Professor Forcese, that we should have that intelligence commissioner issuing reports about what he or she does. Part of review is, frankly, educating the public about national security activities. We're following in British footsteps there, and I think that's probably a positive development.

The Chair: Mr. Fogel, you have 30 seconds.

Mr. Shimon Fogel: I have nothing to add.

The Chair: Okay.

With that, Monsieur Dubé, you have seven minutes, please.

Mr. Matthew Dubé: Thank you, Chair.

Professor Roach, I just want to come back to the intelligence commissioner. I had a few questions about that. First of all, in terms of the idea of its being a retired Federal Court judge, and as well the five-year mandate with the possibility of renewal, I'm wondering how it affects the independence of the office, and if you have any thoughts on that.

Prof. Kent Roach: Certainly, perhaps, removing the renewal might help the independence. I certainly realize that we're using retired judges more and more, but like with the review agency, I would actually urge Parliament to be a little more creative and perhaps expansive about the terms of appointments. I'm in no way denigrating retired federally appointed judges—they're extremely talented and diligent people—but there may be others out there.

On your independence point, I think that, especially if you're dealing with a retired person, five years may be sufficient.

Mr. Matthew Dubé: Great. Thank you.

The other piece about the intelligence commissioner, because it's being put out there as the first real form of oversight, as opposed to review, that exists, there is some question about the specificity of that oversight. In other words, we're approving general operational notions without some of the specifics, and in particular, when it comes to collecting datasets and some of the new powers in there for CSE. I just want to hear you a little bit on that.

Is there some way to drill down to a little more specificity so that we're getting the most robust oversight possible, or is it better to stay general, given that this is a new office?

Prof. Kent Roach: That's a very good question, and it's a tough question because the danger of oversight is that if you approve something in generalities, you might feel committed to something that happens, even if it was unanticipated.

I tend to think of these things more in terms of review and that where the oversight comes in our parliamentary system is with the minister. Reports to the minister are a lot of what SIRC and the CSE commissioner do. I'm aware that we don't see most of those reports. That's something that the new National Security and Intelligence Committee of Parliamentarians has to do, basically to call to account the minister if he or she fails to oversee what is going on.

Again, Professor Carvin raised the issue that the Department of Public Safety is a gargantuan ministry, and perhaps sometime in the future we need to look at splitting that up to take things such as corrections out of it and to have a more narrowly focused security ministry where the minister has a fair chance of keeping on top of everything that he or she is ultimately responsible for.

Mr. Matthew Dubé: Speaking of ministerial responsibility, though, that being one of the forms of accountability, going back to the intelligence commissioner, some have raised the concern that there's a chicken-and-egg thing as to who is approving whose actions. In that context, does that create a problem as well, that the intelligence commissioner is basically rubber-stamping the minister's decisions and not the other way around, where necessary?

● (1030)

Prof. Kent Roach: Yes, although having a quasi-judicial official review ministerial authorizations is a gain. The general trend, as we see in Britain, is to move away from simple ministerial authorizations. It is checks and balances, but we need to get the new committee of parliamentarians in. No slight to your committee, but the vast majority of these reports, frankly, you and I have never seen.

Mr. Matthew Dubé: Great. Thank you.

The last question I have about review and oversight is the issue of Global Affairs Canada being omitted from the investigative complaints component of the new body. Is that something that should be fixed?

Prof. Kent Roach: Yes, absolutely, and that goes back to the Arar commission report, which really shed a lot of light on the very important role of what is now Global Affairs Canada when we're talking about security activities that are, inherently today, transnational.

Mr. Matthew Dubé: Great, thank you.

Mr. Fogel, we were talking about the rise in hate crimes and anti-Semitism in particular, which top some of these sad lists and rankings. When we look at the issue of radicalization, which while not necessarily part of the bill in a substantive way is a related issue in terms of how we tackle some of these issues, it was part of the debate on Bill C-51 as well.

Given that radicalization is not just one group, it's obviously many hate groups, and many of these groups are sadly targeting your community and others, I want to get your thoughts on the direction in which the government is going with its counter-radicalization efforts and just hear more generally your thoughts on that issue.

Mr. Shimon Fogel: Counter-radicalization is a very tough nut to crack, because by definition you're targeting groups that are almost inherently suspicious of and resistant to efforts of outreach by any agents or elements of government. Just the very issue of building up a level of trust is something that impedes the process of proactive counter- or anti-radicalization processes.

It is in some way related to this legislation, in that, as I mentioned earlier, the distinction of how you categorize the counselling or the promotion of hatred and radicalization is an important element there, because it would be a mistake for us to think of one-on-one dynamics, that there's somebody fomenting radicalization and that individual has a specific target. Very often it's a wide net that is cast out, and the individual seeks to reel in whoever is caught in the net, so we have to be sensitive to that point.

I'm still of the view that the most effective effort is proactively putting in place the tone and environment within specific communities that will allow them to take ownership of the process of creating space between those who would aim to radicalize elements or segments of the community and those who are offering a meaningful alternative.

The Chair: Thank you, Mr. Fogel.

Mr. Dubé, you certainly exercised your last 30 seconds.

Mr. Fragiskatos, you have seven minutes.

Mr. Peter Fragiskatos: Thank you very much, Mr. Chair.

Mr. Roach, the first question is going to you.

We're talking about security matters here, and when you look at Bill C-59 and see the repeal of investigative hearings, which you're very much in favour of, I think some Canadians might sit back and read about that in an article, or hear political parties that are not in favour of it, and feel less safe.

Can you speak about investigative hearings in general terms? You called them an “unwieldy concept” in a piece with Craig Forcese, for Policy Options. An ineffective approach is basically what it comes down to, but can you expand on that?

● (1035)

Prof. Kent Roach: Sure. Investigative hearings were one of the more draconian provisions in the first Anti-terrorism Act. I also testified against investigative hearings there, so I've been consistent on that. They were upheld by the Supreme Court as constitutional in 2004, but subject to a presumption that they be held in open court and that the rules of evidence apply.

My concern is that because of the requirements of the charter and the Criminal Code, anything that a person is required or forced to say in an investigative hearing is not usable in a terrorism prosecution.

You're right that the public might be anxious, but that's, frankly, a lack of knowledge. It goes back to needing to be smarter about our security powers and needing to have security powers that are usable. If you have something like an investigative hearing, which essentially has not been used and, if used, could render a terrorism prosecution, if not impossible, at least more difficult—and they're already extremely difficult—then that's something we should get rid of.

On the no-fly list, one of my recommendations would be maybe the new parliamentary committee needs to look at the costs and benefits of the no-fly list, because I'm aware that much of this requires access to classified information that neither you nor I have. Maybe Canada can be a world leader and say, “Look, we don't need this, because we want everyone on a plane to be safe”. I don't know that it's the case now, but that's the sort of thing....

We have to trust the public that, yes, we're scared about terrorism because it is in the news every day for legitimate reasons, but that means we have to be smarter, not simply going as far as the charter allows.

Mr. Peter Fragiskatos: Thank you very much.

In your presentation, you mentioned in passing some concerns about the process through which terrorist groups are listed, and you spoke about the U.K. experience. I know elsewhere you have expressed concerns around fairness and issues that might arise that cause problems for organizations that feel they have been wrongly listed. I wonder if you can expand on that.

Prof. Kent Roach: Yes, I mean that the proposal taken from section 10 of the U.K. Terrorism Act 2000 is simply to allow a group that thinks it is wrongly listed to be able to challenge that without the very act of challenge being the subject of a charge of, say, financing a terrorist group.

More generally, listing is something we haven't really relied upon because most of the terrorism prosecutions we've had have not been affiliated with al Qaeda or Daesh central, but have been a bunch of guys, and a bunch of guys—under our Criminal Code—can themselves be proven beyond a reasonable doubt in appropriate cases to be their own terrorist group.

Again, the threat environment rapidly changes. This is why we need ongoing reviews of these laws. This is why I recommended moving up the six-year review of this act to at least a four-year review, because we need to figure out what terrorism tools we need, including new terrorism tools, and maybe what old terrorism tools are unnecessary, in part because of the changing threat environment.

Mr. Peter Fragiskatos: Thank you very much.

As you know—this is a bit beyond Bill C-59 but does fit into the discussion because we are talking about security—in late September, Minister Goodale issued a ministerial directive on information obtained by torture. For the purposes of the record, the new rules ban the use of information that was probably obtained through torture, except when it's necessary to save lives or to prevent against major personal injuries.

For example, last week I asked Professor Forcese if it would be more effective to enact that directive and the principles on which it is based in legislation—

● (1040)

Prof. Kent Roach: No.

Mr. Peter Fragiskatos: —rather than keeping it as a directive, because, for obvious reasons, any future government would have a much more difficult time changing legislation as opposed to a directive.

I wonder if you have any thoughts on that.

Prof. Kent Roach: I agree with my colleague that I would favour putting that in legislation.

I would just add that part of our concerns about Bill C-51 is that there is a need not only to be fair but to be seen to be fair so that very important and legitimate national security activities are not delegitimized by, perhaps, erroneous claims of involvement with complicity of torture.

I think the transparency with the new ministerial directive, if that was taken as the next step into legislation, would actually be good. With the review agency here and measures like that, Canada can start becoming an international leader on these issues.

I think we, frankly, have to realize that perceptions—rightly or wrongly—of unfairness, of profiling, of false positives, are some of the things that seem to be motivating people who are regrettably turning to violence.

The Chair: Thank you, Mr. Fragiskatos.

Mr. Motz has the final five minutes of 2017.

Mr. Glen Motz: Thank you, Mr. Chair. I feel so privileged.

I thank both witnesses for being here and for your testimony.

I'm intrigued by your testimony, specifically about the language. I want both of you to weigh in on this if you could, please.

Changing “counselling” of terrorism to the “promotion” of terrorism, how does that change the context of Bill C-59 and what CSIS and other agencies need to do? Are we still going to be as effective with that term change?

Mr. Fogel, could you go first, please?

Mr. Shimon Fogel: Mindful of the time, I'll be very brief.

It is, I think, the reverse. “Counselling” is the new language that's introduced in Bill C-59.

For me, it's less about the language that's used as it is about establishing who it's directed toward. Bill C-59 requires a direct link between someone who is promoting or counselling terrorist activity and the one who's going to act upon it, without recognizing that an individual promoting it may have the intention of creating a certain environment that will be attractive to as yet unknown or unidentified individuals, so you can't establish that direct chain.

If we were to tweak it in a way that makes it more consistent with other legislation but doesn't require that direct link on specific acts, I think it would strengthen the legislation.

Mr. Glen Motz: Mr. Roach, go ahead.

Prof. Kent Roach: I think the important thing is to get rid of terrorism offences in general, which was a very problematic part of C-51. I think Mr. Fogel may have a point that perhaps it should read, “every person who counsels any terrorism offence is guilty of an indictable offence”.

I also think we should make clear that “terrorism offence” meets the definition in section 2 of the Criminal Code in order to avoid the problem that we have in C-51 of undefined offences. Again, the benefit of “counselling” is that there's literally 100 years of experience in the jurisprudence about what counselling is. I think that traditional criminal law has a lot of resources for us to reach for in dealing with these new and real threats of terrorism.

Mr. Glen Motz: In the minute or minute and a half that I have left, although you may not both be in the same position to answer the question....

Mr. Roach, you mentioned several times the need to not jeopardize Canada's ability to prosecute those who should be prosecuted. I'm going to go out on a limb here. The returning ISIS terrorists, should they face criminal proceedings?

● (1045)

Prof. Kent Roach: I think with all criminal proceedings, there's a public interest component. I think we have to rely upon security officials to make informed decisions about, first, whether there's sufficient evidence and, second, whether it is in the public interest to prosecute.

I don't think that kind of “cut and dried” rule that everyone who comes back.... It might, frankly, be a misallocation of resources in some cases. In other cases, it may be very warranted. Again, I go back to the intelligence, to evidence consultation, and to the need, as the Air India commission urged, to strengthen our ability to do terrorism prosecutions when necessary, not in every case. Life isn't that simple.

The Chair: Thank you.

You have half a minute, Mr. Fogel.

Mr. Shimon Fogel: It's my Christmas gift to you.

Mr. Glen Motz: Actually, I'll take the half minute to ask one other....

If you were to change one thing in Bill C-59, Mr. Fogel, that you think is absolutely critical for public safety and balancing the need for rights and privacy, what would it be?

Mr. Shimon Fogel: It would be my first point about the language and counselling as I expressed in my testimony, ensuring that there is an ability to not limit it to a very specific dialogue, instruction, or relationship between a promoter and a recipient, but rather to recognize that the promoter of it has a larger responsibility and onus.

The Chair: Thank you, Mr. Motz.

Thank you to the witnesses. I want to thank both of you for your contribution to this very important study.

I think I would be remiss if I didn't, on behalf of the committee, thank all of the people who have made this committee work: our clerk, our analysts, and the people who make all the technology work...most of the time.

For those of you who celebrate Christmas, merry Christmas. For those of you who don't, happy holidays, and for all of you, happy new year.

Thank you very much. The meeting is adjourned.