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THE SPECIAL SENATE COMMITTEE ON BILL C-36

EVIDENCE

OTTAWA, Wednesday, December 5, 2001

The Special Senate Committee on Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities, in order to combat terrorism, met this day at 9:30 a.m. to give consideration to the bill.

Senator Joyce Fairbairn (*Chairman*) in the Chair.

The Chairman: Good morning. For those who may be watching these proceedings, we are into our third day of hearings on Bill C-36, which is the legislation involving our anti-terrorist measures brought forward by the federal government pass a result of the events which occurred in the United States on September 11.

Our special committee of the Senate on anti-terrorism and on the bill was asked by the government to do an advance look and bring forward our suggestions and our concerns, which we did in a report which was sent to the government, the House of Commons, and the House of Commons Committee on Justice and Human Rights.

The bill we have before us, for the first time this week actually in its amended form, reflects some of our serious concerns. Other concerns were not addressed, and those are under discussion with a wide variety of witnesses this week.

We have heard from the Privacy Commissioner George Radwanski, from the bar of Quebec, from the Canadian Police Association and police chiefs' association. We heard yesterday from the Minister of Justice and the Attorney General of Canada, Anne McLellan, and from the Solicitor General of Canada, Lawrence MacAulay.

Today we begin with series of witnesses who will come from the academic perspective and from the legal perspective. We have two very distinguished gentlemen with us this morning, Dr. Errol P. Mendes, from the University of Ottawa, and Professor Don Fleming, from the University of New Brunswick.

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We are delighted that you are here, gentlemen. Please proceed.

(French follows--Mr. Mendes up in full--)

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circulate her testimony on that very point of how she fulfils her role to help Parliament implement its responsibility in the field of human rights? It is the testimony she gave last week. Senators Andreychuk and Beaudoin were there when that happened.

The Chairman: Certainly, at the very least, Senator Joyal, we will ensure that it is circulated to all the committee members.

Senator Andreychuk: Madam chair, you will hear more about that from the committee in its upcoming report from the Human Rights Committee. That is a bit of an advertisement for the committee.

The Chairman: Senator Andreychuk is the Chair of our Human Rights Committee.

Thank you very much, Professor Fleming and Dr. Mendes. It is a pleasure to have you here. It has been a very good discussion. We wanted to have you during our pre-study, but both of you were in China at the time. As a result, we were unable to do it then. We are ever more delighted you were able to come today. Thank you very much.

We will now move to our second set of witnesses. We have with us two groups from whom we are anxious to hear. The first is from the Coalition of Muslim Organizations and the second is from the Urban Alliance on Race Relations.

Please begin.

Mr. Julian Falconer, Senior Counsel, Urban Alliance on Race Relations: Honourable senators, we are honoured to be before you today. The work you are engaged in is obviously of tremendous significance to Canadians across the country and is historic in its nature. Many will ask whether the horse has left the barn and whether all of us are staring, with great respect, at the rear end of the mare.

As the Senate, you are not ineffective in your work. You are not impotent to Canadian democracy. You have a role to play. That role comes to a head when legislation of this nature, legislation that is potentially more significant than any act passed in the past 50 years in this country, is being considered. I urge you to recommend to the Senate key amendments to this legislation in order to ensure that balance is its hallmark which, as we indicate at page 16 our submission, is governed by a schedule determined, in great respect, by murderers.

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Unfortunately, you are in a climate that is rife with panic more than reason; rife with fear, more than any other climate we have faced in decades.

I ask you to consider that the Attorney General of Canada, the Honourable Anne McLellan, repeatedly noted that if we do not stop the terrorists getting on the planes, it is too late. With great respect to the Attorney General, these are not the words of rational, slow, and cautious legislative officers. These are words of panic.

She may well be right. Indeed, I think that she probably is right. However, tempering our legitimate security concerns with rational acts is key to this legislation.

You should have our materials before you. It is the submission to you with an attached submission to the House of Commons. I will be speaking for another two minutes or three minutes, and then Ms Goossen, President of the Urban Alliance on Race Relations, will be addressing you.

There are two key weaknesses in the legislation that we believe should be brought to your attention. Specifically, we refer to the definition of terrorist activity and the usage of the notion of political, religious and ideological motivations.

That which is most extraordinary about this definition is that it not only invites, it actually mandates any prosecution to engage into an inquiry into the religious, ideological, or political beliefs of Canadians. It does that not in a public trial, which we all envisage and may have seen. It does that in secret hearings. It smacks plainly of a form of McCarthyism that should cause as much fear as the people getting on the planes should cause.

I invite you to consider the following because it is precisely in the mandate of the legislation as presently drafted. People would be summons into a secret court. They would be brought in to give evidence because they have material information about terrorist activity. There would be no charge to confine the investigation. There would be no charge against a specific person outlining what that person has done.

There would be an investigation about activity. In the course of the investigative hearing, as part of his or her mandate, the prosecutor would be required to examine the witnesses on their religious beliefs as the targets of the investigation. Prosecutors would be required to do that.

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I ask, "why?" Why does it matter? We have an expert here, Professor Watkins. He has given generously of his time to attend Question Period in the House. I encourage you to rely upon him for information. There are true realities about the economic vulnerability of Canada today. The unique expertise of Professor Watkins enabled him to address that topic under tab B of our presentation.

Interestingly enough, while we remain tremendously vulnerable to the U.S., they have not seen fit to create the definition of importing religious ideological motivations. A review of the U.S. legislation makes it clear that they do not see it necessary to put their citizens' religious beliefs on trial, but we do.

The only model in which you will find that definition is the United Kingdom model. I do not say to you that that is irrelevant and that we should not seek to learn from all of our allies. However, I do find it striking that the reference to the need to fall in lockstep with the U.S. seems to have been lost on the issue of sunset clause, and now with the issue of putting peoples' values on trial. We do not have to it. It is not necessary.

Let me close with some comments for your consideration of this issue. People quite rightly say to you, that the kind of activity we kind of activity that causes fear for our families and ourselves is one that is motivated by religion or ideology. Is not the terrorist activity of which we speak motivated ideologically? Should we not be realistic and not artificial and say it like it is. That is the kind of activity that we are discussing, but the mere fact that there is a component of a particular crime that you are targeting, does not mean that you make the component an element of the offence.

Let me give you an example. On the charge of murder, over 90 per cent of murder cases are domestic. They involve a family member of one type or another. That does not mean that as an element of the offence we take that common component and inject that into murder so that the Crown is required as a matter of duty to inquire about family relationships. We do not do it because it does not make sense. It is not necessary. It is not essential.

I ask you to consider whether it is essential that religious beliefs be on trial. It was not essential for the U.S. Patriots Act. It is not essential for any of the investigation that is have occurred to date.

I ask you to re-consider this. As we get closer and closer to the abyss of this legislation becoming law, we must appreciate that it will be well night impossible to roll back mistakes that we make. I ask you as a committee, to take the steps

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necessary to protect not only the security of the country, but also the key civil liberties under which we live.

I have a six-year-old son and a 19-month old son. When my six-year-old is 16 years or 17 years of age, I will be encouraging him to engage in democratic debate. He might ask me where was I when this law was passed that allows people to be summoned to a secret room to be asked about their religious beliefs, I want to be able to say proudly that I was trying to call the attention of the country to the problem.

I think that you, with great respect, ought to be saying the same things to yourselves. This is wrong. It is not necessary. If it is not necessary, it ought not to happen.

Ms Tam Goossen, Chair, Urban Alliance on Race Relations: Thank you, Madame Chair. Thank you senators for allowing us to appear before you.

I would like to point out again that in our submission there is material on the legislative oversight issue, as well as the role of the Senate. There is a quote in our submission from a book written by the Honourable Maryka Omatsu. The title of the book is entitled *Bittersweet Passage*. In that book, she gives great detail of the internment of Japanese Canadians in World War II, including the experience of her family and friends. She writes:

In a cruel sort of way, the treatment of Japanese Canadians during the 1940s should not have come as any great surprise. For Japanese Canadians the legal losses had really begun as early as 1903, when the English Privy Council upheld the 1895 BC Elections Act, which had legitimized our second-class status and reinforced all the other discriminatory laws that followed against Asians. Over the decades, statutes maintaining racial apartheid were customarily passed without discussion or debate. The decision taken in 1942 to imprison only Canada's Asian 'enemy aliens' – and not the German and Italian communities – slipped by almost unnoticed.

I quote that because we are really upset that there has been very little public discussion of this bill leading up to its passage in the House of Commons. I do not know if any of the Members of Parliament had actively conducted discussions in their constituency.

The Urban Alliance on Race Relations tried to do our job of convening a public forum. We invited a MP in the downtown area to come. He did not show up.