



Department of Justice  
Canada

Ministère de la Justice  
Canada

**THE VIEWS OF  
CANADIAN SCHOLARS ON  
THE IMPACT OF THE  
ANTI-TERRORISM ACT**

**Department of Justice Canada**



The Views of Canadian Scholars on the  
Impact of the *Anti-Terrorism Act*

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*The views expressed in this report are those of the  
author and do not necessarily represent the views  
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# Table of Contents

Foreword.....	iii
Acknowledgements.....	iv
1.0 Introduction.....	1
2.0 Methodology.....	4
3.0 The Impact of the <i>Anti-Terrorism Act</i> .....	6
3.1 Impediments to Assessing the <i>Act</i> 's Impact.....	6
3.2 Deterrent effects, Enhanced Intelligence, and Added Leverage in Prosecutions.....	6
3.3 Symbolic Benefits of the <i>Act</i> .....	7
3.4 Issues Relating to the Definition of Terrorism and the Scope of the <i>Act</i> .....	8
3.5 The Impact of the <i>Act</i> on Civil Liberties and Canadian Values.....	9
3.6 The Impact of the <i>Act</i> on Specific Groups and Organizations.....	10
3.7 Issues of Accountability and Oversight.....	11
3.8 Other Comments.....	11
4.0 Emerging Trends in Terrorism and Threats Faced by Canada.....	12
4.1 The Abandonment of Restraint in Terrorist Attacks.....	12
4.2 The Transformation of Terrorist Groups.....	12
4.3 Level of Threat to Canada.....	14
4.4 Factors Contributing to Canada's Vulnerability.....	14
4.5 The Nature of Threats and Specific Targets in Canada.....	15
5.0 Canada's Response to Terrorism.....	16
5.1 Adopting a Multi-Faceted and Measured Response.....	16
5.2 Intelligence and Intelligence Sharing.....	17
5.3 Working with Communities at Risk and Profiling.....	18
5.4 The Role of the Criminal Law in Combating Terrorism.....	18
5.5 The Role of Foreign Policy and of the Military.....	18
5.6 Target Hardening and Improved Emergency Response.....	20
5.7 Accountability Mechanisms and Civil Liberties.....	20
5.8 Generating the Public's Buy-in and Confidence in Counter-Terrorism Measures.....	20
5.9 The North American Perimeter and Border Security.....	21
5.10 Concluding Comments.....	21
6.0 Conclusions.....	23
6.1 The Impact of the <i>Anti-Terrorism Act</i> .....	23
6.2 Emerging Trends in Terrorism and Threats Faced by Canada.....	24
6.3 Canada's Response to Terrorism.....	24

Postscript.....	27
Appendices.....	28
1. Rex Brynen, Department of Political Science, McGill University.....	29
2. David Charters, Centre for Conflict Studies, University of New Brunswick.....	33
3. Stuart Farson, Institute for Governance Studies, Simon Fraser University.....	39
4. Robert Martyn, Department of History, Queen’s University.....	47
5. Kent Roach, Faculty of Law, University of Toronto.....	53
6. Martin Rudner, Paterson School of International Affairs, Carleton University.....	59
7. Lorne Sossin, Faculty of Law, University of Toronto.....	69
8. James Stribopoulos, Faculty of Law, University of Alberta.....	73
9. Don Stuart, Faculty of Law, Queen’s University.....	81
10. Wesley K. Wark, Department of History/International Studies, University of Toronto.....	83
11. Reg Whitaker, Department of Political Science, University of Victoria.....	91



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## Foreword

Measuring the impact of terrorism and the *Anti-terrorism Act* is a complicated and challenging undertaking. Some may even argue that social scientists and legal scholars do not currently possess an instrument precise enough to measure the impact that such events have on Canadian society. Regardless of the challenges, attempts to develop an instrument or method must be made. The Research and Statistics Division (RSD) has implemented a program of qualitative and quantitative research that will inform the Parliamentary review of the *Anti-terrorism Act*, which is to begin within three years after the legislation received royal assent. As part of this program of research, the RSD has completed a number of quantitative and qualitative studies to gauge the impact of the *Act*, including monitoring national and foreign public opinion poll results and commissioning focus groups across Canada.

In October 2003, during the launch of Research Week, the RSD hosted a panel on the findings of a focus group study concerning the views of minorities and the *Anti-terrorism Act*. At the launch, Deputy Minister Morris Rosenberg commented that research is the foundation upon which informed, evidence-based policy and legislation are developed and supported. The present report, entitled *The Views of Canadian Scholars on the Impact of the Anti-Terrorism Act*, is a timely example of that type of quality research. The study used an innovative approach to mine the expertise of recognized scholars on terrorism issues. Implementing this approach and completing the report would not have been possible without the timely replies from the participating scholars and the work of Professor Gabor who compiled and summarised the individual papers.

This report and the individual unedited papers, which were included as an appendix, demonstrate the Research and Statistics Division's commitment to providing policy makers and Canadians with objective and relevant information.

Damir Kukec  
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## 1.0 Introduction

Following the events of September 11, 2001, the Government of Canada introduced Bill C-36, the *Anti-Terrorism Act*, an omnibus bill designed to combat terrorism at various levels. The Act provides for:

- Amendments to the *Criminal Code* designed to disable terrorist groups and their supporters, by defining “terrorist activity”; by creating a process for listing an entity that, on listing, becomes defined as a terrorist group; by creating new powers – the use of investigative hearings and of a recognizance with conditions – in order to prevent acts of terrorism; and by creating new terrorism offences that include collecting property for the purpose of carrying out a terrorist activity, facilitating a terrorist activity, instructing someone to carry out a terrorist activity, and harbouring or concealing a person known to have carried out or who is likely to carry out a terrorist activity;
- Stronger laws against hate crimes and propaganda;
- New investigative tools available to security and law enforcement agencies by expanding the use of electronic surveillance and permitting the interception of communications of foreign targets abroad;
- Amendments to the *Official Secrets Act* (now the *Security of Information Act*) to counter intelligence-gathering activities by foreign powers and terrorist groups, to address the intimidation or coercion of communities in Canada, as well as to prohibit the unauthorized disclosure of special operational information by individuals bound to secrecy; and,
- Amendments to the *Proceeds of Crime (Money Laundering) Act* to authorize the Financial Transactions and Reports Analysis Centre (FINTRAC) to detect financial transactions that may constitute threats to Canada’s security and to notify the Canadian Security Intelligence Service.

There is a mandated Parliamentary review of the *Anti-Terrorism Act* to be undertaken within three years of its receiving Royal Assent on December 18, 2001. Generally, the report resulting from the review must be completed within a year after the review is undertaken. The present project is intended to assist the Department of Justice to prepare for the review.

The principal substantive aim of this project was to ascertain the major effects of the *Anti-Terrorism Act*. Toward this end, a number of academic experts in terrorism have been identified by Department of Justice personnel and have been asked to offer their assessments of the impact of the *Act*. The experts were also asked to provide their views on trends in terrorism and the threats faced by Canada. Furthermore, they were asked to offer advice regarding the manner in which this country ought to respond to these threats.

Two inter-connected events unfolding during this project ought to be noted as their high profile in the media are likely to have shaped public opinion and to have influenced the views of at least some of the participating experts. First, there is the case of Mr. Maher Arar, a Syrian-born Canadian citizen who was deported by the United States to Syria in October of 2002 due to the

belief that he was affiliated with the Al-Qaeda terrorist network. In Syria, he was imprisoned and allegedly tortured and brutalized for more than ten months. Since his return to Canada last year, Mr. Arar has repeatedly denied any terrorist connections or activities and has initiated legal actions, including ones against the Attorney-General of the United States and Canadian officials.<sup>1</sup>

The second event, occurring during the week of January 19, 2004, involved the raid by the RCMP of the home and office of Juliet O'Neill, an Ottawa Citizen reporter who had suggested, in a story published in November of 2003, that Canadian officials were complicit in Mr. Arar's deportation to Syria. Ms. O'Neill's source for the story was a leaked RCMP report making the case against Mr. Arar and her disclosure of the contents of this classified report served as the basis for the search of Ms. O'Neill's residence and office. The RCMP seized documents pursuant to their investigation of whether section 4 of the *Security of Information Act* was breached when this leak occurred. Section 4 of that Act prohibits the wrongful communication, use, reception, retention, and failure to take reasonable care of, certain government information. It was formerly part of the old *Official Secrets Act* and was left largely untouched when the *Anti-terrorism Act* renamed and amended other sections of the *Official Secrets Act* so that it became the *Security of Information Act*.

The search was vigorously denounced by the media on all sides of the political spectrum and was portrayed as particularly invasive, as her underclothing and other personal effects were not spared in the search. Prime Minister Martin expressed indignation about the raid and appeared quite sympathetic toward the reporter. The President of the Canadian Newspaper Association referred to the O'Neill case as "an egregious affront to press freedom."<sup>2</sup> Some newspapers called for a reduction of the powers conferred upon law enforcement and intelligence agencies by the *Anti-Terrorism Act*. A Globe and Mail editorial, for example, called for "a thorough review" of the *Security of Information Act*, the law enabling the search of Ms. O'Neill's home and office.<sup>3</sup>

On January 28, 2004, the federal government announced that it would initiate an independent public inquiry into the Arar case. As well, it also announced that the Minister of Justice would be asking a Parliamentary committee to review section 4 of the *Security of Information Act*. As the general deadline established in the present project for the experts' submissions was January 30, 2004, it was likely that all participants were exposed to these stories and the often critical assessments of the *Anti-Terrorism Act* and of the role of the RCMP in the case. Thus, the views of the experts consulted in this project need to be viewed against this backdrop.

Furthermore, it is important to note that the individual submissions attached to this report did not take into account events and developments following the end of January 2004. For example, on April 27, 2004, the Minister of Justice and the Minister of Public Safety and Emergency

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<sup>1</sup> Although the Mahar Arar case raises important human rights concerns, it should be noted that the Mahar Arar case did not involve the use of any part of the *Anti-terrorism Act*. None of the special preventive powers created by the Act were used against him; nor was he charged with any terrorism offence.

<sup>2</sup> Jeff Sallot, "Mounties hit 3 locations before raid on journalist." *Globe and Mail* (January 24), A6.

<sup>3</sup> Editorial, "An anti-terrorism bill stretched out of shape." *Globe and Mail* (January 24), A16.



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Preparedness announced a National Security Policy for Canada. In addition, the *Public Safety Act, 2002*, formerly Bill C-7, received Royal Assent on May 6, 2004. Certain provisions of this Act came into force on May 11, 2004.<sup>4</sup>

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<sup>4</sup> See *Canada Gazette Part II*, Vol. 138, No. 11, SI/2004-51, 2 June, 2004.

## 2.0 Methodology

The original pool of potential participants in this project was developed from a list of participants in two national conferences on terrorism that had taken place during the fall of 2003. Consultations among Department of Justice Canada personnel in the Criminal Law Policy Section and the Research and Statistics Division yielded some additional individuals who had not attended these conferences but who had commented on the *Anti-Terrorism Act* or were known for their work on terrorism. The aim was to identify a diverse group of scholars from the following fields: law, political science, history, and conflict studies. Another goal was to identify a group of experts that was balanced in terms of their views toward the *Anti-Terrorism Act*.

This process yielded a list of 31 potential participants. These individuals were first contacted and invited to participate in this project by e-mail on December 15, 2003. This message contained the purpose of the project, broadly described the issues participants would be asked to address, the time lines, and other terms (refer to Appendix B). The invitation was sent a second time in early January, 2004 to those who had not responded to the initial message. A total of 15 scholars agreed to participate and these individuals were then sent a second message, describing in greater detail the questions they were to address and the terms of participation (Appendix C). One additional individual was approached once the project was underway and agreed to participate. In the end, 11 individuals submitted a response to the questions posed by the Department of Justice.

As the pool of potential participants did not constitute a probability sample (i.e., random selection did not occur), participants cannot be taken to be a representative sample of all Canadian scholars with expertise on the subject of terrorism. Furthermore, participation is ultimately based on self-selection and not determined by the researchers. While the views expressed by the participants do not necessarily represent the population of terrorism experts, efforts were made to recruit a group of experts who were diversified in their academic backgrounds and in their views on the *Anti-Terrorism Act*. Also, a respectable participation rate of about 35% (11 participated out of 32 contacted) was achieved.

A list of the participants, along with their professional affiliations, is provided in Appendix C. The list underscores the diversity of the participants, as they are drawn from law schools (4), international studies (2), conflict studies (1), programs in governance (1), political science (2), and history departments (2). One individual has a joint appointment in history and international studies. While there is some geographic diversity, the majority (7 of 11) are from universities in central Canada. Three of the participants are from the University of Toronto and two are from Queen's. Other central Canadian participants are from McGill and Carleton. Two participants are from west coast universities (Simon Fraser and Victoria), one is from the Prairies (Alberta), and one is from the Atlantic Provinces (New Brunswick).



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Participants were asked to respond to the following three questions:

1. What has been the impact of the *Anti-Terrorism Act* on Canada?
2. What emerging trends in terrorism do you foresee and what threats do they pose to Canada? In discussing these trends and threats, please describe what you consider terrorism to be.
3. How should our country respond to these trends and threats? Please feel free to include measures at any level, such as social, economic, political, and legal or a combination of these levels.

Participants were encouraged to offer their own opinions and observations, as well as to focus on those issues with which they were most familiar. They were asked to draw on their own expertise; thus, lawyers might have more to say about the impact of the *Act* on the administration of justice and political scientists might focus more on the political dimensions of the legislation. Participants were also told that their submissions would be appended to this report (Appendix A).

The chapters that follow contain a synthesis of the participants' written submissions.

## 3.0 The Impact of the *Anti-Terrorism Act*

### 3.1 Impediments to Assessing the *Act's* Impact

Many of the participants indicated that it was too early to gauge the impact of the *Anti-Terrorism Act* as many of the most contentious powers created by it have not yet been used. There have been no substantial investigative or prosecutorial successes and no use of the preventive arrest power. The investigative hearing provision has been used only once (in the Air India case) and the witness in that case has challenged the requirement to provide compelled testimony.

Some of the participants added that outside observers have little knowledge of how frequently and to what effect the *Act's* investigative tools have been used. For example, Whitaker notes that the effect of permitting the Communications Security Establishment to monitor some communications in Canada and between Canadians is unknown. Brynen points out that this information would require a study of dossiers by the Security Intelligence Review Committee. He adds that the *Act* just addresses investigative tools and legal reforms, and not the additional funding to law enforcement, security, and other agencies. He notes, however, that additional resources offer no guarantee of more effective operations.

Another unknown is the possible deterrent effect of the *Act*. Deterrence is notoriously difficult to measure as one never knows whether the absence of a terrorist incident is attributable to a particular intervention (in this case the legislation) or the mere absence of an objective threat. As Wark succinctly notes: “Nor can deterrence really be measured except through its failure.”

Overall, Sossin asserts that both opponents and proponents have been vindicated as “Critics who said it [the *Act*] was unnecessary largely have been vindicated by this fact [its infrequent use], but so have supporters who said it would not be abused or applied in inappropriate settings.”

### 3.2 Deterrent Effects, Enhanced Intelligence, and Added Leverage in Prosecutions

Notwithstanding the lack of successful prosecutions under the *Act*, Rudner notes that the *Act* has had a powerful deterrent effect on those who may have otherwise supported now-banned organizations. By outlawing incitement, recruitment, fund-raising, money laundering, and participation in terrorist activities, those in the relevant communities may have desisted from these activities. Also, according to Rudner, these prohibitions may have encouraged the more moderate elements within the Muslim community to resist the “extremist subversion of communal institutions.”

Wark points out that CSIS has claimed that it has forced terrorist groups and individuals to alter their behaviour in Canada, though the truth of this claim cannot be substantiated. Rudner adds that the *Act* has significantly enhanced the intelligence function. “The interception of terrorist communications and the tracking of terrorist financing has reportedly yielded high value



intelligence resulting in the disruption of terrorist activities and plans in this country and abroad.”

By contrast, Martyn notes that the *Act* fails to provide added security to Canadians because any legislation in this area must be part of “an overarching, coordinated national security policy, which Canada presently lacks...”

Stribopoulos adds that while the *Act*'s primary goal is to increase their collective sense of security, Canadians continue to fear terrorism and have increasingly come to fear their own government due to the abuses associated with the *Act*.

Rudner asserts that the lack of prosecutions under the *Act*, preventive detentions or elicitation of compulsory testimony do not preclude the effectiveness of the criminal law provisions as “the availability of strong legal instruments gives investigators and prosecutors important leverage for persuading terrorist suspects to open up, enabling them to elicit information in return for more lenient treatment.”

Roach, on the other hand, argues that additional levers to induce cooperation, such as the threat of being held in contempt of court or prosecution for non-cooperation, are not likely to be effective in the case of a determined terrorist. Therein lies the dilemma with regard to anti-terrorism law. Roach asserts that measures, such as those adopted in Canada, may be too tough in dealing with religious or political extremists viewed by authorities as threats or in dealing with those associating with persons or groups thought to be terrorists. However, such measures may be inadequate in deterring hardcore terrorists who may be prepared to die for their cause.

Roach further asserts that the preventive arrest power provided for under the *Act* was not used in the first year, indicating either that law enforcement agencies prefer to keep terrorist suspects under surveillance or that these agencies are encountering difficulties in identifying terrorist suspects. He adds that Canada has relied almost exclusively on immigration law in countering terrorism. So far the utility of the *Act* as an anti-terrorism device seems limited.

Wark notes that the government has moved slowly in creating a list of terrorist entities. “The greatest test of Bill C-36's legal provisions will come when and if the emergency for which they were intended arises—only then will we see when the combination of laws and good judgement exist to safeguard Canadians' security and liberty.”

Whitaker adds that there appears to be little return, as yet, from monitoring money laundering undertaken in the interests of terrorism. Although FINTRAC has reported two dozen cases, no criminal prosecutions appear to have been undertaken to this point. In addition, extended powers of electronic surveillance were promised but have not reached legislative form.

### 3.3 Symbolic Benefits of the *Act*

Several of the participants asserted that the *Act* produced some symbolic benefits to Canada and the international community in its efforts against terrorism. The mere enactment of the *Act*, they say, reassures the United States that Canada is taking the terrorism threat seriously. Such signals to the Americans protect Canadian sovereignty, promote intelligence sharing, and maintain the

flow of commerce between the two countries. Farson points out that there is a sense among senior intelligence officials that if Canada does not protect US interests in Canada, the US will step in and do so.

Also, Martyn points out that the *Act* supports international initiatives by inducing Canada to sign two major United Nations conventions dealing with terrorism: the Suppression of Terrorist Financing and Suppression of Terrorist Bombing Conventions. Furthermore, Wark asserts that the *Act* “may have altered the threat environment” by sending the message that Canada is not a safe haven to those contemplating terrorist attacks or supporting activities in this country.

### 3.4 Issues Relating to the Definition of Terrorism and the Scope of the *Act*

Many participants expressed a concern about any statutory definition of terrorism, due to the lack of consensus on a definition by scholars and the suggestion by a number of participants that terrorism was a relative concept.

Whitaker indicates that the Canadian definition of terrorism has been criticized for including motive (“a political, religious or ideological, objective, or cause”). “This criminalization of motive is perhaps unnecessary and inherently risky, and may prove in future to be vulnerable to judicial challenge.”

Roach points out that proving that terrorist acts have been committed for religious or political motives requires the police to investigate the religious and political beliefs of terrorist suspects. He indicates that while this aspect of the *Act* was intended to “restrict the ambit of crimes of terrorism” he suggests that it may be counterproductive, making conviction more difficult. He notes that previous acts of terrorism in Canada (e.g., the Air India case) has been dealt with under ordinary criminal law.

Roach adds that in the case of *Suresh v. Canada*, the Supreme Court implicitly rejected the broad definition of terrorism contained in the *Act* and defined terrorism for the purpose of immigration law as an “...act intended to cause death or serious injury to a civilian, or to any person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act by its nature or context is to intimidate a population or to compel a government or an international organization to do or abstain from doing any act.” Roach notes that adopting the *Suresh* definition into the *Act* could ease concerns about “overbreadth in the definition of terrorism.” However, he is concerned that defining terrorism under the *Immigration Act* by virtue of the *Act* “would expand the definition of terrorism used under that act and result in special dangers given the absence of due process protections under immigration law.”

Roach is also concerned about the criminalization of a broad range of activities preceding the commission of a terrorist act (e.g., provision of finances and assistance to terrorist groups), due to a lack of “proximate nexus” to any planned terrorist act. He does acknowledge, however, that many of the financing provisions must be retained to comply with the 1999 international convention on terrorism financing to which Canada was a signatory. He further notes that people can even be prosecuted for terrorism threats. He argues that the criminalization of such





threats ought to be reconsidered since expressions of political and religious views are protected under the Charter of Rights and Freedoms.

Whitaker, on the other hand, notes that the new offences of facilitating terrorism “are reasonable tools for government to control activities and track networks designed to be fluid, decentralized, and resistant to investigation.”

### 3.5 The Impact of the *Act* on Civil Liberties and Canadian Values

There was no consensus among the participants with regard to the impact of the *Anti-Terrorism Act* on civil liberties. On the one hand, Brynen asserts that “I do not, to date, detect any substantial erosion of rights or liberties as a consequence of the *Act*.” Farson adds that, “There is little evidence that the *Act* itself has proven to be the ‘demon’ that critics feared.”

Other participants were emphatic in their condemnation of the *Act* on the basis of its impact on personal liberties.

Sossin believes that Canada has betrayed its own values by sacrificing civil liberties in exchange for enhancing investigative and detention powers: “...the very fact that countries such as Canada showed such readiness to jettison fundamental civil liberties (e.g., the authorization of preventative detention) in the face of terrorist threats reflected an abnegation of the very values [that] stand so starkly opposed to the logic of terrorism (i.e., the rule of law, etc.). The *Anti-Terrorism Act*, in other words, represented an admission of defeat in the “war against terrorism.”

Stuart sees the *Act* as excessive in the post-9/11 world. More resources for intelligence and evidence gathering may be needed but not more laws.

“The new terrorism offences cynically cut across fundamental principles that there should be no State punishment without meaningful fault and act requirements...Extraordinary and un-Canadian powers of detention on suspicion and compelling testimony before judges were not needed or properly justified. Bill C-36 puts in place many unfettered Ministerial powers, such as the power to define terrorist groups, authorize electronic surveillance...These powers contravene fundamental hallmarks of our justice system such as the rule of law, the presumption of innocence and the need for [the] State to prove guilt beyond a reasonable doubt before an independent and impartial judge.”

Roach questions the value of a new investigative power that allows the police to compel an individual to answer questions about past or future terrorist activities. This provision has been used at least once in the Air India case and its constitutionality has been challenged in that case. The Supreme Court has yet to decide on this matter; however, even if constitutional, Roach takes the position that this power “represents an undesirable incursion on the adversarial traditions of criminal justice and one that could spread in an attempt to combat other serious crimes.” Roach adds that authorities already have the power to offer those associated with terrorists reductions in potential charges and witness protection in return for cooperation. Stribopoulos adds that while

Canadians fear terrorists, cases such as that of Maher Arar have led to an increasing fear of “our own law enforcement apparatus.”

Charters is somewhat more ambivalent, noting that the powers under the *Act* have been used sparingly and that the expanded investigative powers may have prevented terrorist acts.

However, he is concerned that “the Maher Arar case suggests that those powers allowed security forces to cast their net too wide, leading to investigations and detentions of persons who were, in fact, innocent.”

Sossin also raises the possibility that some of the additional powers under the *Act* might even be counterproductive in combating terrorism. He argues that due process not only guarantees transparency but minimizes the risk of error: “If the subject of an investigation into terrorist activity has the opportunity to know the case against them, and [to] refute it in a meaningful way, the likelihood of action taken on poor intelligence, false identifications, or mistakes is reduced. There has yet to be a compelling argument put forward to justify the limiting of the review of ministerial certificates or curtailing the potential for parties subject to investigations to be given [a] meaningful opportunity to refute the evidence against them.”

### 3.6 The Impact of the *Act* on Specific Groups and Organizations

About half the participants discussed the possibility that the *Act* has a disproportionate impact upon particular groups and types of organizations within Canada. There was some agreement that Arab and Muslim Canadians were especially at risk of being targeted, as were some charitable organizations; in particular, those doing humanitarian work in the Middle East. Martyn notes that these organizations “...are actively ensuring due diligence to avoid any wrongful accusations of terrorist affiliation; even suspicion of such activity could harm their requisite public support.”

The listing of terrorist groups and individuals was considered by Whitaker as a highly partisan exercise, with lobbying campaigns waged for and against the addition of various groups (e.g., Hezbollah and Hamas). One consequence is the exacerbation of inter-ethnic and religious rivalries in Canada. There are consequences in terms of the ability of organizations such as Hezbollah to provide humanitarian assistance in places where they may be the only organization providing health, educational, and social services. The listing of terrorist entities tends to disproportionately affect communities such as the Canadian Arab and Muslim communities, creating the perception of bias on the part of the state toward the affected groups.

Stribopoulos adds that the *Act* says little about the criteria to be used in deciding who is to be targeted for investigation, leaving considerable discretion to law enforcement. This fact and the “war on terrorism” rhetoric sweeping North America, leads to an inevitable focus on Muslims and Arabs. The anecdotal evidence suggests that racial profiling is taking place. Farson notes that the Canadian government needs to be particularly careful listing groups as terrorists given the tenuous nature of the concept. Roach adds that as a result of the repercussions and the stigmatizing effect of being on a terrorist list, such designations should require a standard of proof beyond a reasonable doubt in a criminal trial.



### 3.7 Issues of Accountability and Oversight

Almost half of the participants expressed concerns relating to the oversight mechanisms under the *Anti-Terrorism Act*. They feel that law enforcement activities and certain executive powers (e.g., listing entities as terrorists) are not subject to sufficient review.

According to Whitaker, the most important shortcoming of the *Act* may be “the failure of the government to create an appropriately wide and comprehensive accountability, review, and oversight mechanism to cover all aspects and institutional manifestations of the national security policy function.” He adds that the scandal surrounding the Arar case points to the weakness of the present accountability structures and practices.

Wark, commenting on the Communications Security Establishment, points out that the powers of the Commissioner of the CSE are “too narrowly focused on reviewing the legality of CSE operations and do not approach the scope of the review body for CSIS, the Security Intelligence Review Committee.”

Furthermore, Stribopoulos adds that there is an absence of meaningful checks on police practices: “...an investigation (no matter how prolonged or intrusive it might happen to be) that does not culminate in a preventive arrest, an investigative hearing, or formal charges, is shielded from any meaningful review.”

In addition, Roach notes that the *Act* empowers the executive branch (i.e., the Cabinet) to designate groups and individuals as terrorists--thus far, over 30 groups have been so designated. While there is a form of *ex post facto* judicial review, Roach argues that such reviews are unlikely to overturn a group’s designation as “terrorist”, as these reviews may be conducted in camera and in the absence of the applicants. Also, there may be limited disclosure to the applicant of information considered by the judge. Roach notes that while the designation of terrorist groups by the executive branch is a standard feature of anti-terrorism measures in other countries, the process leaves a limited role to the judiciary and to those being designated.

### 3.8 Other Comments

Two participants offered additional comments on the impact of the *Anti-Terrorism Act* and of other counter-terrorism measures.

One participant added that any assessment of the impact of Canada’s counter-terrorism efforts must consider the operational effectiveness of law enforcement and security agencies. This being said, he asserts that, “I continue to find CSIS’ analytical capabilities to be extremely weak on international terrorist movements and the political contexts within which they operate.”

Wark notes that Bill C-36 sparked a broad debate within Canadian society and the legal community regarding the issue of the appropriate balance between security and civil liberties. As a result, conferences were organized, media coverage has been extensive and, more concretely, a sunset provision of five years has been established for some aspects of the *Act*.

## 4.0 Emerging Trends in Terrorism and Threats Faced by Canada

### 4.1 The Abandonment of Restraint in Terrorist Attacks

More than half the participants pointed out that the 9/11 attacks heralded a new era in which previous limits and restraints have been abandoned. Mass casualties are sought and the use of Weapons of Mass Destruction are a possibility that must be considered by planners. Brynen notes that the 9/11 attacks and follow-up attacks from Bali to Istanbul have erased previous limits and will be modeled by others. “There will be a long-term increase in the willingness of groups to use mass-casualty attacks on soft targets to make their point...The scope of 9/11 may create a phenomenon or terrorist ‘kill-inflation’, with pressure within terrorist groups for larger and larger attacks.”

Charters adds: “For if a terrorist group can now kill and injure nearly 10,000 people in one coordinated attack, then a much bigger attack—possibly using Weapons of Mass Destruction (WMD) to decapitate or paralyze a state—is conceivable. It may no longer be a question of ‘if’ but of ‘when’.”

Wark believes that terrorism will continue to proliferate globally and that no prediction is safe about the weapons and scale of violence to be employed by terrorist groups. Both military and civilian entities, as well as symbolic targets, will be vulnerable.

### 4.2 The Transformation of Terrorist Groups

Martyn notes that there has been a decline in left-wing terrorism with the decline of Marxism as a viable political theory. Right-wing causes, single-issue groups (e.g., animal rights activists), and anarchists provide an impetus for terrorism. However, the most visible trend is religious fanaticism, with an increased number of incidents attributed to extremists from all the major religions. He and other participants observe that there has been a decline in the state sponsorship of terrorism. Funds are as likely to come from traditional criminal activities (e.g., drug trafficking, fraud) or from fundraising in uninvolved countries.

All participants discussing the main sources of terrorism mentioned militant Islamic groups, in particular Al-Qaeda, as posing the primary threat. The Arab-Israeli conflict is regarded as a source of grievances in the Middle East; however, Islamic extremist groups are also seen as opposing western-style democracy, secularism, and liberal values. The major targets of these groups are Israel, the United States, and Arab states that are viewed as corrupt.

Several participants mentioned that the military operations against Al-Qaeda and the loss of their sanctuary in Afghanistan have produced a more de-centralized and diffuse network that will be more difficult to counteract. Also, globalization and, in particular, new communications



technologies, facilitate terrorism in a variety of ways (e.g., in recruitment and inciting further attacks).

Farson points out that terrorism used to be a form of political communication in which the perpetrators of acts of serious violence claimed responsibility for the act and used the media to promote their agenda. However, Al-Qaeda seldom claims responsibility for their actions and uses suicide bombers to attack targets. They do use modern communications technologies (e.g., videos) to encourage their supporters to undertake further acts of violence. Al-Qaeda also differs from past forms of terrorism in its global scope and decentralized network of fairly autonomous cells.

According to Charters, the Al-Qaeda model is different from conventional terrorist groups, combining “some of the features of an apocalyptic cult with those of a multinational corporation. The result is a decentralized, post-modern organization, whose very nature has made it difficult to find and to defeat.”

Charters notes that the model’s cult-like features include:

1. charismatic leadership, who inspire ‘loyalty unto death’ among their followers;
2. a Manichean ideology that gives its members a reductionist (‘we vs. they’) world view that is not a mindset of compromise;
3. a messianic vision of ultimate victory to motivate followers;
4. use of religious leaders and organizations to recruit and indoctrinate members;
5. rigorous para-military training by experienced terrorists from all over the world.”

According to Charters, Al-Qaeda’s corporate features include increasing de-centralization, the use of modern technologies to communicate, transfer funds, and transport personnel, varied funding sources, novel tactics, and the development of a communications strategy. Charters observes that “Al-Qaeda embodies the convergence, symbiosis, and synergy of two trans-national forces: *Jihadism* and IT, the former challenging modernity, the latter embodying it, an apocalyptic vision wedded to a capability that allows it to ‘Think Globally, and Act Locally’”.

Charters believes that it may be premature to consider the 9/11 attacks as heralding a revolution in terrorist attacks as it may be an anomalous event. The Muslim world has not rallied to bin Laden’s cause, security has been enhanced, and thus far there have been no additional strikes on American soil. No one can say with certainty the extent to which Al-Qaeda has been weakened or whether it represents a mutation or paradigm shift.

Brynen observes that globalization—more travel, migration, new information and communication technologies—creates new ways of sustaining terrorist activity. Media globalization amplifies the global impact of local mass-casualty incidents. In this context, the threat of quasi-WMD usage increases as even a less successful attack than that on 9/11 would generate extensive media coverage and fear.

### 4.3 Level of Threat to Canada

Participants were divided on the issue of whether the risk of a terrorist attack in Canada is increasing. On one hand, there is no hard evidence in the public domain indicating a higher level of risk since 9/11. On the other hand, Canada's involvement in Afghanistan was viewed as increasing the threat to Canadian troops. Also, while several participants stated that Canada is not a primary target, more attacks have been unleashed recently against "soft" targets. Whitaker notes that the recent targeting by Al-Qaeda and associated groups of softer targets such as Bali, Morocco, Saudi Arabia, and Turkey ought to be a warning for Canada. Also opportunistic attacks on soft targets could threaten Canada. Furthermore, Brynen notes that neutrality may be less of a protection than in the past as UN and humanitarian personnel have been attacked in Iraq and Afghanistan.

Charters notes that several individuals with Canadian backgrounds and possible connections to Al-Qaeda have been captured, arrested, or detained here or overseas and some remain at large. Some of those detained have eventually been released owing to lack of evidence. He adds: "None of this makes Canada a 'haven for terrorists' or a primary target for attack. But it introduces an element of doubt about its immunity from terrorism."

Martyn adds that greater access to information increases the potential for the use of more destructive weapons, such as chemical and biological weapons. The scarcity of these weapons, however, makes it less likely they will be used against Canadian targets.

Wark asserts that public statements by CSIS indicate a "significant terrorist presence" in Canada. That presence can include fund-raising and other activities that might not be related to attacks on Canada. It would be imprudent to assume that we are immune from attacks. Canada may not be a first tier target but the risks increase as transnational groups seek new bases and targets. Stribopoulos believes that Canadian interests overseas are at greatest risk. Attacks in North America are likely to be launched against the US.

### 4.4 Factors Contributing to Canada's Vulnerability

Roach notes that Canada has faced acts of terrorism before, during the October crisis in 1970 and in the bombing of an Air India aircraft in 1985. Several participants argue that Canada's diversity makes it vulnerable to the possibility that international conflicts will get played out, in part, on Canadian soil. Our multicultural society is a potential recruiting ground for various extremist organizations. Support can take a variety of forms—fundraising, recruitment, and providing cover or identity documents.

Several participants assert that Canada's participation in the war in Afghanistan may make Canada a target. Martyn adds that our "porous" border with the United States makes us a potential transit route and thereby a terrorism risk.

Rudner notes that the sources of Canada's vulnerability include its openness, proximity to the US, and close economic integration with its southern neighbour. He states that "The Canadian presence gives them local facilities for incitement and propaganda for their cause, and resident



cells for recruiting operatives and fighters, raising and transferring funds, fabricating false identities and document forgery, procuring weaponry and material, establishing safe houses and sleeper cells for future operations, and supporting infiltration across the border to the United States or operations overseas.”

#### 4.5 The Nature of Threats and Specific Targets in Canada

Charters notes that threats to Canada take various forms: (1) Direct attacks on Canadian targets at home or abroad (e.g., Afghanistan); (2) Attacks on American, British, Israeli, or Jewish targets or interests in Canada, including critical infrastructures shared by Canada and the US; (3) An attack on the United States that is launched from Canada (as in the attempted attack on the Los Angeles airport by Ahmed Ressaam and his associates); (4) An attack using WMDs on a border city, such as Detroit or Windsor, requiring evacuations, quarantining, and decontamination of people and property.

Martyn notes that attacks in Canada would likely be launched against US interests or for an American audience (e.g., Ontario/Quebec power grid). Such an attack would disrupt the US economy in the northeast and would reach the attention of an American audience, but would not have the same impact as one on American soil.

Whitaker notes that the use of WMDs by terrorists, while difficult, must be taken very seriously due to the potential consequences. Of these weapons, “dirty” radiological bombs are the easiest to assemble and deliver. Critical infrastructures must be protected due to the dual threat to public health and the economy (e.g., attacks on nuclear power plants). Terrorism should be viewed along a spectrum of public safety concerns, alongside recent non-terrorist threats to health and public safety such BSE, SARS, BC forest fires and the recent power blackout.

Rudner observes that Canada may be vulnerable to WMDs both as a locale for terrorist access to the technologies used in making these weapons and as a possible target for a WMD attack. He reminds us of a Canadian charitable front for Al-Qaeda that was suspected of having links to efforts to procure nuclear and chemical materials. He notes that terrorists may dispatch students and researchers to Canadian universities to gain access to technologies required in the production of WMDs.

## 5.0 Canada's Response to Terrorism

### 5.1 Adopting a Multi-Faceted and Measured Response

Several participants asserted that terrorism is a complex phenomenon requiring a multi-faceted response. According to Rudner, "...[Canada] must deploy all the instruments of an asymmetric warfare effort, including an effectual legislative armoury, proactive intelligence collection, vigilant law enforcement, critical infrastructure protection, and government policies designed to promote the values and interests of [Canadians]..."

A number of participants supported a comprehensive approach to the diverse threats faced by Canada, including terrorism. Roach notes that monitoring public health concerns (e.g., food and water safety) provides protection "not only against the risk of terrorism but also the risk of diseases and accidental contamination of food and water." He adds that such monitoring, along with improved emergency preparedness, will enhance public safety in relation to a variety of threats, while avoiding the *Anti-Terrorism Act's* potential to abuse human rights.

Martyn underscores the importance of cooperation among justice and intelligence agencies, health, supporting international development, and financial bodies. Farson adds that Canada should prioritize all threats—natural and man-made—"so that governments across the country can respond in an appropriate and cost-effective manner on a regional basis." He notes that review of risk assessment methodologies is important as more emphasis is needed on the strategies, capacities and intentions of terrorists rather than merely on the vulnerability of certain targets. Wark adds that Canada needs a national security strategy for dealing with transnational terrorism, involving inter-departmental coordination on security and intelligence matters.

Whitaker observes that the creation by the Martin government of a new super-ministry of Public Safety and Emergency Preparedness, with its all-threats emphasis, is a step in the right direction. "Particularly important here is the development of a central threat assessment capacity to evaluate and prioritize potential threats, whether terrorist or non-terrorist, for the purpose of rationally allocating resources."

Several participants stressed the need for a measured response by Canada. Martyn argues that an over-reaction to threats will be financially draining, undermine civil liberties, and alienate various communities that will then be a more favourable recruitment ground for extremist groups. Stuart questions the authenticity of the terrorist threat and believes that Canada should focus on what he refers to as proven and real threats (e.g., cancer, suicide, vehicular accidents, and domestic violence).

While Charters agrees with the need for a response that is commensurate with the estimated threat level, he points out that Canada should sustain existing security measures. He reminds us that preserving the safety of Canadians is a fundamental responsibility of government. Canada, he says, also has a moral and legal obligation not to serve as a sanctuary for terrorists. This is also in our own interest as a successful attack on the US launched from Canada would not only





“have devastating consequences for the Canadian economy, but also for Canadian sovereignty. The border could be closed to trade and travel and the US could impose its own security measures on the continent as a whole.” Canada should send a strong message that activities in support of terrorism will not be tolerated.

Wark adds that Canada needs a sustainable capacity to know, pre-empt and respond to terrorist threats taking into account public opinion, our democratic values, and fiscal considerations.

## 5.2 Intelligence and Intelligence Sharing

Charters and Wark characterize intelligence as our first line of defence against terrorism. As such, Canada should deploy additional resources in counter-intelligence. Wark adds that, “Measures are required to further raise the profile of intelligence in the federal government, to increase the centralization and coordination of intelligence work and to enhance capability, including the formation of a foreign intelligence service.” Farson adds that the private sector must be included in intelligence sharing as it owns 80 percent of the critical infrastructure in Canada. Brynen notes that, apart from the coordination of human and technical intelligence work within and between jurisdictions, appropriate legal frameworks are required.

Sossin emphasizes the need for cooperation with foreign governments among law enforcement and intelligence agencies. He states that the Arar case reveals significant uncertainty with regard to the interaction between different branches of the Canadian government and between Canadian and foreign governments. Whitaker adds that by enhancing its foreign intelligence capacity, Canada would also improve the quality of intelligence received from its allies in exchange.

Rudner observes that Canada’s Arab and Muslim communities are especially vulnerable to Islamicist terrorist groups that embed themselves in their communities, promote terrorist activities, and radicalize community institutions. Charitable organizations based primarily in Saudi Arabia and Pakistan provide clergy, teachers, and teaching materials to Arab and Muslim communities around the globe, often promoting extremist and militant Islamic perspectives. Canadian authorities should monitor financial flows, personnel movements, and incitement, so as to protect the integrity of Arab and Muslim religious, educational, and communal institutions in this country. Rudner adds that terrorist recruitment among Muslim Canadians should also be monitored and human intelligence sources should be cultivated within the tightly knit Islamic terrorist cells.

Rudner adds that given the attempts by global networks to widen recruitment and acquire WMDs, Canada and its laboratories need to become less vulnerable to terrorist recruitment and trainees. Tighter border controls have been circumvented by enrollment in fraudulent educational institutions and no security procedures currently exist in Canada to monitor transfers to other institutions. Unlike in the United Kingdom, Canada’s intelligence agencies have no mechanism to alert universities and laboratories about applicants who may pose a threat.

### 5.3 Working with Communities at Risk and Profiling

Brynen asserts that it is counterproductive to view ethnic groups from troubled areas as posing a high risk, as this will alienate these groups from law enforcement and make them more susceptible to recruitment by extremist groups. He adds that community leaders need to be consulted and minority groups need to be empowered to speak out against misperceptions and biases held by police. Furthermore, security and law enforcement agencies need to reflect the ethnic diversity of the Canadian population. These agencies need to develop linguistic and cultural skills “for a nuanced understanding of community politics.”

While troubled by the profiling of airline passengers or of individuals at border crossings on the basis of race or nationality, some participants conceded that some profiling was unavoidable. On the downside, Roach notes that profiling of airline passengers may be both under and over inclusive and may alienate communities that might be helpful to authorities in identifying terrorists.

Sossin, while opposed to profiling on the basis of race or nationality, does support profiling on the basis of criteria that are objective, such as passengers traveling with one-way tickets, so long as proper training is done and various safeguards (legal, effective supervision) are in place to prevent “arbitrary mistreatment.” Whitaker adds that ethnic profiling is to some degree impossible to avoid in dealing with terrorism that has certain national, ethnic and religious roots.

### 5.4 The Role of the Criminal Law in Combating Terrorism

Roach notes that the criminal law will be of limited use in combating terrorism. Even prior to the enactment of the *Anti-Terrorism Act*, the tools were available to prosecute individuals for crimes such as murder, hijacking, and the use of explosives, as well as for conspiracy, counseling, and attempts to commit such crimes. While the *Act* increases the severity of punishment, Roach points out that deterrence also depends on the certainty of punishment and assumes that terrorists are rational actors. According to Roach, criminal law will be most useful when directed at third parties (e.g., financial institutions) providing various services to terrorists. Responses to terrorism through criminal law reforms may also result in harms inflicted on innocent citizens.

Roach argues that a reliance on immigration law may lead to the rejection of many more legitimate refugees than those associated with terrorism. He says that the long-term preventive detention allowed under Canadian immigration law may incapacitate terrorists, but their eventual deportation may simply displace the problem.

Stuart sees few redeeming features in the *Act*. He takes the position that it is “a dangerous and unnecessary blight on our justice system” that should be repealed in its entirety.

### 5.5 The Role of Foreign Policy and of the Military

Several participants took the position that Canada’s foreign policy should be geared toward the alleviation of conditions (the “root causes”) that contribute to terrorism. According to Farson,



these “causes” of terrorism include “autocratic government, corruption, ethnic strife, poverty, and religious strife in numerous countries abroad...The Canadian Government would be wise to do what it can to ameliorate them through well-crafted foreign policies, carefully and strategically directed foreign aid, and well supported peacekeeping operations.” Stribopoulos adds that Canada should work toward “reforming the World Bank and the International Monetary Fund, supporting debt relief, and increased aid to countries in the developing world.”

Martyn adds that foreign aid should be provided in a manner that is not demeaning and paternalistic. Also, a communications strategy needs to be devised to counter the perception, fostered by certain opinion-makers, that such assistance is being provided to those launching terrorist attacks against us. However, Wark cautions that the idea of “root causes” of terrorism are highly controversial. The Canadian role in Afghanistan is a test case for actions designed to assist failed states that are seen as breeding grounds and havens for terrorism.

While some participants called for greater investments in Canada’s military, others cautioned about an over-reliance on military force in dealing with terrorism. Whitaker notes that increased funding for the military would enhance Canadian sovereignty in anti-terrorist policy as Canada could better fulfill a peacekeeping role as part of multilateral anti-terrorist measures. Charters adds that Canada should continue to commit military forces to support operations in Afghanistan against Al-Qaeda and to support stability in that country. Canada, he noted, should also commit other resources to assist Afghanistan in its physical and political reconstruction. Wark takes the view that both our military and developmental aid capacity are under-resourced and require greater focus.

Two of the participants had major reservations about the use of military force. Roach believes that reliance on military force, such as Canada’s military operations in Afghanistan, may neutralize state sponsors of terrorism but may also disperse terrorist networks and send them further underground. Other consequences include the loss of human life and Canada’s complicity in human rights abuses (e.g., Canada’s role in transferring prisoners to Guantanamo Bay). Furthermore, Stribopoulos advises Canada to support the international legal order and to counsel the US against unilateral action: “The global war on terrorism must be completely reconsidered, in light of the lessons learned in Iraq.”

With regard to the harmonization of such things as immigration and refugee policies with the United States, Whitaker notes that while cooperation with the US on security measures is essential, harmonization means that Canada will adopt US policies and standards, even though these may conflict with Canadian values and even with the Charter of Rights and Freedoms. Also, pressure by the US and from domestic sources to align Canadian foreign policy with the US and Israel conflicts with the Canadian preference for multilateral diplomacy and peace-building. The Bush Administration’s failure to differentiate between the threats posed by “non-negotiable” and other forms of terrorism, as well as the foray into Iraq, has undermined the “war on terrorism” and Canada must skillfully navigate a sovereign course while cooperating with the US in areas of agreement. Whitaker concludes that, “It is important that Canada continue to follow its own, more moderate path, especially in light of the greatly troubled relations between the Arab and Muslim communities and the US.”

## 5.6 Target Hardening and Improved Emergency Response

Several participants emphasized the importance of enhancing critical infrastructure protection (e.g., pipelines), crisis management, and emergency response capabilities to mitigate harms once an attack has occurred. In addition, some call for tighter controls over hazardous materials.

Rudner notes that Canada must harden those assets, in particular, that are closely integrated with the US. The hardening of target countries includes “a well crafted legislative armoury that addresses the scope and extent of the terrorist threat, coupled with a broad spectrum of intelligence and law enforcement capabilities. Counter-terrorism efforts must be backed by political will and a security culture that is aware of the risks posed by terrorism. “It is noteworthy that targeted countries that have undergone a counter-terrorism hardening since September 11<sup>th</sup>, including the US and UK, have managed, so far, to avert terrorist strikes in their respective jurisdictions.

Wark points out that an optimal response to attacks includes adequate levels of equipment for first responders, as well as medical resources and drug stockpiles, in addition to a coordinated (with all levels of government) national plan. Exercises ought to be conducted to test the capabilities of first responders in a variety of scenarios.

## 5.7 Accountability Mechanisms and Civil Liberties

Whitaker notes that accountability structures, oversight, and review should be strengthened and expanded in order to balance security and human rights concerns.

Farson adds that “there have been a number of instances, especially where joint task forces have been engaged...[that]have revealed both the importance of effective law enforcement oversight where national security affairs are involved and the shortage of it...[The Martin Government’s] initiatives to provide a permanent standing committee in the House of Commons on National Security composed of privy councilors and more substantive oversight of national security policing are important initiatives...”

Sossin asserts that, “Rather than send the message contained in the *Anti-Terrorism Act* which is that procedural fairness, civil liberties and privacy rights are ‘expendable’ in the interests of national security...The question ought to be: how best can the exercise of executive authority in the interests of national security be monitored, constrained and supervised to ensure it is carried out according to the rule of law and in a fashion consistent with the fundamental values of Canadian society?” Sossin maintains that Canada’s track record with regard to the use of “unbridled” executive authority is poor as illustrated by the internment of Japanese Canadians during World War II.

## 5.8 Generating the Public’s Buy-in and Confidence in Counter-Terrorism Measures

Several participants stressed the importance of the public’s approbation with regard to counter-terrorism measures. Martyn notes that the key to any strategy is communicating what is being done to both the domestic and international community, as the public must buy-in, whether in the form of financing measures (e.g., foreign aid) or tolerating enhanced security procedures while



traveling. The public must be engaged in the measures taken rather than being presented with them as a *fait accompli*. Martyn does caution, however, that engaging the public is difficult, due to the confidentiality of intelligence gathered, apathy, and its impatience, as terrorism is a long-term war and “there will be no clear, decisive closure” as in past wars. He therefore urges honest communications, along with “achievable and justifiable goals.”

Rudner calls for the government to build public confidence in the ability of the authorities to protect Canadians from terrorism. A confidence-building effort would familiarize Canadians with the terrorist threats facing this country and its interests, promote knowledge about Canada’s security and intelligence community, their lawful functions, and review mechanisms, and promote a public discussion about national security issues, human rights, and democracy. Proper oversight of the intelligence function is critical in building such confidence. Building public confidence is important because, “...terrorist asymmetric warfare may call for counter-terrorism actions that could touch on sensitive cultural, social, or human rights concerns...”

Wark adds that popular support is crucial in achieving a sustainable national security strategy. New programs for research, teaching, and publication on the topic of national security are required in Canadian universities. The government must be willing to disseminate information on terrorist and other national security threats. A new standing national security committee will raise public awareness. Attention should also be paid to the issue of how and when to alert the public about changing threat levels.

## 5.9 The North American Perimeter and Border Security

Whitaker asserts that Canada has an economic stake in an open border and in the sharing of intelligence with the US and requires that we establish the levels of security necessary to reassure the Americans that their northern border is not at risk. An effective North American security perimeter is worth striving for and must be viewed in global terms (e.g., pre-clearance of container traffic from anywhere in the world).

Rudner also advocates careful controls on identity documents and trans-border movements to interrupt the mobilization and deployment of recruits by terror networks. Furthermore, Wark notes that Canada needs to devote attention to maritime security, which includes the physical security, as well as the monitoring and control of traffic, at Canadian ports.

## 5.10 Concluding Comments

Wark notes that Canada must share burdens, resources, and intelligence with its allies, arguing that we are too dependent and lack informational sovereignty. “New investments in military capabilities, development aid, political reporting and intelligence are required for Canada to serve its own national security interests...”

Rudner provides a sobering concluding comment on the importance of an active role for Canada in counter-terrorism efforts:

Even if Canada sees itself as a follower...in the international counter-terrorism campaign, this country cannot allow itself to be targeted...[nor to] become staging grounds for terror attacks on neighbours, allies, and friends. Surely our neighbours and friends will not simply stand by passively should Canada become a window of vulnerability to their national security and public security interests. They will doubtless act to protect themselves, even if these actions cause collateral damage to a wide spectrum of Canadian interests...we must cope and deal effectively with these threats in the interest of our national security, public safety, and democratic values. Either we do it ourselves, or it will be done to us.

## 6.0 Conclusions

The principal aim of this project was to ascertain the major effects of Bill C-36, the *Anti-Terrorism Act*, an omnibus bill introduced by the Government of Canada to combat terrorism in the aftermath of the events of September 11, 2001. To achieve this aim, the Department of Justice identified a number of academic experts on terrorism and asked them to provide written responses to questions on the impact of the *Act*, the threats faced by Canada, and on the measures this country ought to consider in responding to these threats.

The participating scholars formed a diverse group geographically, as well as in terms of their academic backgrounds. They were drawn from law schools, international studies, conflict studies, programs in governance, and history departments. As the original pool of experts was not selected randomly, the participants cannot be taken to be a representative sample of all Canadian scholars with expertise in the area of terrorism.

### 6.1 The Impact of the *Anti-Terrorism Act*

Many of the participating scholars indicated that it was too early to assess the impact of the *Act* as many of the most contentious powers under it have not been used. It was also pointed out that the *Act*'s ability to deter terrorist attacks is difficult to determine, as the absence of such incidents can indicate that the measures taken have been successful or simply that the objective threat has been minimal.

#### Highlights:

- Participants were divided in terms of the extent to which the *Act* provided enhanced deterrence and facilitated the disclosure of information by terrorist suspects fearing prosecution;
- Some participants argued that intelligence of high value has been obtained from intercepted communications and the tracking of terrorist financing;
- Several participants noted that the *Act* promotes Canadian sovereignty, intelligence sharing, and the economic interests of Canada by reassuring allies, especially the United States, that Canada takes the terrorism threat seriously;
- It was pointed out that the *Act* supports international initiatives by inducing Canada to sign two major United Nations conventions relating to terrorism;
- Many participants expressed a concern with any statutory definition of terrorism, given the lack of consensus on a definition;
- There was a difference of opinion among a small number of participants about the “breadth” of the definition of terrorism under the *Act* (i.e., whether it was desirable to create offences only remotely related to a terrorist act);
- There was some concern that including political, religious, and ideological motives within the *Act*'s definition of terrorism may serve as an impediment to conviction;

- Participants were deeply divided on the impact of the *Act* on civil liberties, ranging from those who felt that there was a minimal erosion of rights to those who regarded the *Act* as “un-Canadian” and as a betrayal of Canadian values;
- Participants agreed that Arab and Muslim Canadians, as well as organizations doing humanitarian work in the Middle East, would likely be disproportionately affected as a result of the new legislation;
- Several participants felt that the listing of terrorist entities was a highly partisan and arbitrary exercise and that this practice would stigmatize those listed as well as exacerbate inter-ethnic and religious tensions in Canada; and,
- Many participants believed that the oversight mechanisms under the *Act* were inadequate (e.g., in monitoring various law enforcement activities and the exercise of executive powers).

## 6.2 Emerging Trends in Terrorism and Threats Faced by Canada

Many of the participants alluded to the transformation of terrorism in the post-September 11<sup>th</sup> era. Specifically, they spoke of the abandonment of restraints in terrorist attacks, the pursuit of mass casualties, and the danger of an attack involving weapons of mass destruction.

### Highlights:

- Participants noted that state sponsorship of terrorism has declined and has been replaced by religious extremism funded by criminal activities and fundraising in uninvolved countries;
- There was agreement that the greatest threat was posed by Islamic extremist groups motivated by the Arab-Israeli conflict, as well as by an opposition to western-style democracy, secularism, and liberal values;
- The Al-Qaeda network was seen as decentralized, global in its scope, and as making use of modern technologies to communicate and transfer funds;
- While participants were divided on the issue of whether the risk of a terrorist attack in Canada is increasing, there was some consensus that Canada was not a primary target;
- There was also some agreement that recent attacks on “soft” targets and the detention or arrest of Canadians with connections to Al-Qaeda suggest that this country is not immune to a major terrorist attack;
- Factors mentioned by participants as contributing to Canada’s vulnerability include Canada’s multi-cultural character, its involvement in military operations in Afghanistan, and its proximity to and economic integration with the United States; and,
- The type of threats to Canada identified included direct attacks on: Canadian targets at home or abroad; American, British, Israeli, or Jewish interests within Canada; critical infrastructure shared with the United States; the United States launched from Canada; and Canada or bordering states involving WMDs.

## 6.3 Canada’s Response to Terrorism

Overall, participants stressed that a multidimensional response was required in dealing with terrorism, including effective legislation, intelligence, and police work, as well as critical





infrastructure protection and government policies designed to promote the values and interests of Canadians. Several participants supported a comprehensive approach to dealing with all threats faced by Canada—including terrorism—and the prioritization of these threats. Such an approach can be pursued only with the cooperation of public and private agencies that have responsibilities in addressing these threats. Participants also discussed the importance of establishing a central threat assessment capacity and a review of risk assessment methodologies toward the end of identifying the capabilities and intentions of terrorists, as well as the vulnerability of various targets.

Several participants mentioned the need for a measured response that is sustainable financially, respects civil liberties, and does not alienate various communities, so they do not become a more fertile ground for recruitment by extremist groups. Notwithstanding the admonitions to avoid over-reacting to the terrorist threat, it was pointed out that preserving the safety of Canadians is a fundamental moral and legal obligation of the government.

### Highlights:

- Several participants stressed the importance of investing in Canada’s intelligence capability, as well as sharing intelligence among relevant public and private sector agencies;
- It was stressed that an improved intelligence capability abroad and the sharing of same with allies results in the receipt of more valuable intelligence in exchange;
- One participant stressed the need to monitor financial flows, personnel movements, terrorist recruitment, and incitement, so as to protect the integrity of Arab and Muslim religious, educational, and communal institutions;
- It was also suggested that Canadian laboratories require monitoring, to prevent terrorist recruitment and training;
- Some participants stressed the need to consult with and empower ethnic groups from troubled areas to prevent their alienation and expressed concern about profiling at border crossings on the basis of ethnicity or nationality alone;
- Two participants questioned the utility of the criminal law in combating terrorism, expressed concerns about civil liberties, and argued that the tools available prior to the enactment of the *Anti-Terrorism Act* were sufficient in dealing with major crimes;
- While some participants expressed reservations, several argued that Canadian foreign policy should aim to alleviate the “root causes” of terrorism through such measures as strategically directed foreign aid and peacekeeping operations;
- While several participants called for increased investments in Canada’s military toward the end of an enhanced peacekeeping role and in combating insurgents in Afghanistan, others expressed the reservation that military force merely disperses terrorism and is costly in terms of human life and personal liberties;
- One participant noted that Canada must skillfully navigate a sovereign course in foreign policy while cooperating with the United States in areas of agreement;
- Several participants stressed the importance of enhancing critical infrastructure protection, crisis management, and emergency response capabilities, as well as tighter controls over hazardous materials;

- Participants asserted that there was a need for improvements in accountability structures, oversight, and review of law enforcement and other activities undertaken pursuant to the new powers conferred under the *Anti-Terrorism Act*;
- Several participants stressed the importance of obtaining the public's buy-in (e.g., by raising awareness about the terrorist threat) with regard to counter-terrorism measures in order to achieve public cooperation in security measures and a sustainable national security strategy;
- Participants indicated that security at the Canadian border and throughout the perimeter of North America was essential in protecting Canada and in maintaining the flow of goods within North America; and,
- Participants asserted that Canada stands to surrender its sovereignty and compromise its national security if it is overly dependent on its allies and ineffective in its counter-terrorism efforts.



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## Postscript

The scholars participating in this project were invited to comment on the first draft of this report and to indicate whether statements attributed to them were accurate and placed properly in context. In general, the comments were quite positive. One participant did ask that one assertion be reworded in order to more accurately reflect what he had intended to say. A second asked that specific text from his submission be added to the report.

Two participants provided more general comments about the project. Stuart cautions that this project should not be viewed as a substitute for debate or the review of the *Anti-Terrorism Act*:

The report reads well. However one of the problems of asking us each to respond by e-mail to very general questions and then quantifying the results in a summary is, of course, that we have had no chance to consider the views of others so that they may be critically assessed or supported. I trust that the Minister of Justice does not see this type of opinion gathering without debate as a substitute for open discussion or the review required by Bill C-36.

Charters reminds us that terrorism is highly fluid and that much has transpired since the participants submitted their views just a few months ago:

A major problem with a report on this topic at this time is that terrorism is, of course, a moving target. In four respects, the report already has been overtaken by events: the Madrid bombing and the fallout therefrom; the arrest of an Ottawa man—the first under the *ATA*; the attack on the Jewish school in Montreal; and...[the] National Security Policy...the Madrid bombings have made me much more pessimistic...the success of the bombing in the political arena in Spain makes similar attacks elsewhere much more likely...The arrest in Ottawa may indicate that the security forces are on top of the problem, but...the arrest may be an indication of the “tip of the iceberg”...The firebombing of the Jewish school in Montreal has to be considered a terrorist attack, and may be an indication of worse to come.

## Appendix A – List of Participants and Individual Submissions

The following papers were submitted to Professor Thomas Gabor between January 2004 and the end of February 2004. They were reviewed by Professor Gabor and form the basis for the summary report above. It is important to note that submissions have not been edited and reflect the text that was submitted by the individual authors. The papers are in order of the author's last name.

1. Rex Brynen, Department of Political Science, McGill University
2. David Charters, Centre for Conflict Studies, University of New Brunswick
3. Stuart Farson, Institute for Governance Studies, Simon Fraser University
4. Robert Martyn, Department of History, Queen's University
5. Kent Roach, Faculty of Law, University of Toronto
6. Martin Rudner, Paterson School of International Affairs, Carleton University
7. Lorne Sossin, Faculty of Law, University of Toronto
8. James Stribopoulos, Faculty of Law, University of Alberta
9. Don Stuart, Faculty of Law, Queen's University
10. Wesley K. Wark, Department of History/International Studies, University of Toronto
11. Reg Whitaker, Department of Political Science, University of Victoria



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## 1.0 Rex Brynen, Department of Political Science, McGill University

### 1.1 What has been the impact of the Anti-Terrorism Act on Canada?

In assessing the impact of Bill C-36 (The Anti-Terrorism Act), it may be important to distinguish between two broad sets of effects: the contribution of the Anti-Terrorism Act to Canadian counter-terrorism efforts, and the impact of the Act on Canadian society (including its implications for civil liberties, multiculturalism, democratic values).

Regarding the impact of the Act on counter-terrorism efforts, it is both too early and too difficult to tell. It is too early, in the sense that the additional powers provided under the act have yet to make themselves (publicly) evident in any substantial investigatory breakthrough or prosecutorial success. Indeed, many of the special powers in the Anti-Terrorism Act (at least those requiring report to Parliament) have not yet been used.

It is too difficult to tell, in that outside observers have little sense of how frequently and to what effect these tools have been used. Answering these questions really requires investigation by the Security Intelligence Review Committee of particular dossiers, to see where and when the additional powers granted to CSIS (and, in some cases, the RCMP) made a difference, if at all.

It should be underlined, moreover, that the Anti-Terrorism Act only addresses two elements of counter-terrorism policy: investigatory tools, and legal reforms intended to (more clearly) criminalize actions taken in support of terrorism. It does not address actual counter-terrorism capacities, which have been buttressed by additional (post-9/11) funding to CSIS, IAS/PCO, the RCMP, DND, and other government agencies. In turn, the provision of funding does not automatically translate into more effective operations.

Regarding the question of civil liberties and democratic values, others far more expert than I have discussed these issues during consideration of C-36, and I doubt that I have much of value to add to those earlier debates. I do not, to date, detect any substantial erosion of rights or liberties as a consequence of the Act.

I do have some concerns over the definition of terrorism in C-36, however, and its implications. My own late grandfather, a Dutch resistance organizer during WWII, certainly engaged in actions “serious interference with or serious disruption of an essential service, facility or system, whether public or private” —actions defined in C-36 (s83.01) as constituting “terrorist activity”. My own father, as a boy, helped to smuggle diamonds from the soon-to-be occupied Netherlands, and hence may have violated s83.02 regarding the “financing of terrorism”. I, as a university student, raised funds for the anti-apartheid movement in South Africa, some of which undoubtedly were passed on to the (now-governing) African National Congress and its affiliates. Given the ANC’s use of violence (including periodic attacks on civilian and governmental targets, and its efforts to disrupt essential services), the ANC (and Nelson Mandela, who

supported armed action) would have fit the C-36 definition of terrorism, and anti-apartheid fundraising in Canada would have violated s83.01.

The point here is that even actions that Canadians and Canada have supported in the past—resistance activities in occupied Europe, or the struggle against apartheid in South Africa—would have been criminalized under the Act. I'm not sure what the definitional solution to this issue is, but I remain uncomfortable about leaving the question wholly to judicial good sense.

Also, I would have liked to see some linkage in the legislation to issues of war crimes and violations of international humanitarian law. Mass casualty suicide bombings in the context of ongoing insurgent warfare would appear to fall across multiple categories.

A final, and unrelated observation concerns the extent to which the Act may have deleterious effects on civil liberties is a function not only of its legal content, but also of human resources issues: that is, the sensitivity shown by investigators and potential prosecutors for the concerns of Canadians (especially those within minority/diaspora communities, related to their connections to homelands-in-conflict).

## 1.2 What emerging trends in terrorism do you foresee and what threats do they pose to Canada? In discussing these trends and threats, please describe what you consider terrorism to be.

It is impossible to even begin to adequately address these questions in the space available. Still, some key trends can be identified:

- The terrorist attacks of 9/11, as well as follow-on attacks from Bali to Istanbul, have clearly erased previous limits and set a new “gold standard” for terrorist action. There is little doubt that terrorism has substantial demonstration effects, with terrorist groups borrowing what worked “best” for others. Consequently, there will be a long-term increase in the willingness of groups to use mass-casualty attacks on soft targets to make their point.
- The scope of 9/11 may create a phenomenon of terrorist “kill-inflation,” with pressure within terrorist groups for larger and larger attacks.
- Neutrality or non-involvement in conflicts may be less of a protection from terrorism than it was in the past, with attacks against UN and humanitarian personnel in Afghanistan and Iraq possibly ushering in an era where such assaults become more frequent, and even begin to spill across state borders.
- The break-up of the more organized components of the al-Qa’ida network (and especially its loss of its Afghan sanctuary) have impaired its operational effectiveness, but have also created a more “virtual” organization, consisting of diffuse networks of intersecting individuals, techniques, and grievances. This poses a much more difficult counter-terrorist challenge.



- Globalization—expanded travel, population migration, and new information and communication technologies—contributes to this, creating new ways of sustaining terrorist activity. Media globalization also amplifies the global political impact of local mass-casualty attacks.
- In this context, the threat of quasi-WMD usage by terrorist groups becomes larger. In practice, such attacks are unlikely to really produce mass casualties (and may be much less deadly than “conventional” 9/11-attacks), but would generate both massive media coverage and considerable fear.
- The Middle East will continue to generate or inspire a significant amount of global terrorism. The Arab-Israeli conflict will likely continue to fester without resolution for the next decade or so, and Israel’s occupation of Palestinian territory will be a major source of grievance among radical Islamist groups. Conditions in Iraq may also deteriorate (although this is less certain), with similar effects.

### 1.3 How should our country respond to these trends and threats? Please feel free to include measures at any level, such as social, economic, political, or legal or a combination of these levels.

Again, this is an enormously complicated question that cannot be adequately addressed within a short response to questions. However, it is possible to suggest a number of key elements.

Effective counter-terrorism requires many things, including intelligence sharing within and between national jurisdictions; a broad spectrum of human and technical intelligence; appropriate legal frameworks that allow action to be taken against supporting infrastructures.

In addition, however, many of the chief tools of effective counter-terrorism and counterintelligence are remarkably similar to those of good community policing. Most (although not all) of the terrorist threats to Canada arise from overseas conflicts. Many Canadians have ethnic or other links to such conflict-affected areas. Such diaspora populations themselves are particularly well equipped to detect in their midst activities that are detrimental to Canadian security—but this information is useless if it remains locked inside a tight-lipped, suspicious, or fearful community. Consequently, the RCMP, CSIS, and other security-related agencies need to develop relations of trust and transparency with such groups within Canada. Consultation is important with community leaders. Recruitment into security and law enforcement agencies needs to reflect the ethnic diversity of the Canadian population, and agencies need to purposefully develop the linguistic and cultural skills necessary for a nuanced understanding of community politics. Moreover, personnel from non-majority backgrounds need to be empowered to speak out against the preconceptions, misperceptions, and biases they find within their own law enforcement organizations.

Conversely, seeing Canadian ethnic populations from conflict-afflicted regions solely through the lens of risk (as potential recruits to or supporters of terrorist groups) is highly counter-productive. Exclusionary or discriminatory security measures targeted against particular transnational ethnic communities are at grave risk of failure, or even backfiring. Such measures

threaten to alienate diaspora populations, aggravate the barriers between communities and local law enforcement officials, and heighten the sense of alienation upon which extremist groups may prey.





## 2.0 David Charters, Centre for Conflict Studies, University of New Brunswick

### 2.1 What has been the impact of the Anti-Terrorism Act on Canada?

I'm not sure I can answer this with any certainty owing to a lack of legal expertise and lack of inside knowledge on security operations. My sense, which could be incorrect, is that the powers under the Act have been used sparingly. While there have been a number of investigations and detentions, it is my understanding that most of these have been carried out using powers that existed before the Anti-Terrorism Act, i.e., immigration laws, and security certificates. Clearly the extended detention powers have been used, but with what effect or result are unclear. It may be that the expanded investigative powers provided for under the Act have allowed CSIS and the police to identify and investigate suspected terrorists more thoroughly and precisely than had been possible before, possibly preventing terrorist acts. But the Maher Arar case suggests that those powers allowed security forces to cast their net too wide, leading to investigations and detentions of persons who were, in fact, innocent. If so, there are implications for civil liberties and privacy. But I do not have hard empirical evidence to prove any of those points, as information in the public domain is incomplete.

### 2.2 What emerging trends in terrorism do you foresee and what threats do they pose to Canada? In discussing these trends and threats, please describe what you consider terrorism to be.

#### 2.2.1 Emerging Trends

9/11 and its perpetrators - the *Al-Qaeda Jihadist* movement - may represent a Revolution Terrorism Affairs (RTA). Together they appear to represent something new in terrorist organization and capacity. *What is less clear* is whether they have created a *new model and strategy* that other groups will wish to or be able to emulate.

The *Al-Qaeda* model clearly is different from the more conventional terrorist groups that were active in the second half of the 20<sup>th</sup> century. *It appears to combine some of the features of an apocalyptic cult with those of a multinational corporation.* The result is a decentralized, trans-national, *post-modern* organization, whose very nature has made it difficult to find and to defeat.

The *Al-Qaeda* models cult-like features include:

1. *charismatic leadership*, who inspire loyalty unto death' among their followers;
2. a *manichean ideology* that gives its members a reductionist ('we vs. they') world view that is not a mindset of compromise;
3. a *messianic vision of ultimate victory* to motivate followers;
4. *use of religious leaders and organizations* to recruit and indoctrinate members; and
5. *rigorous para-military training* by experienced terrorists from all over the world.

This produces skilled and fanatically motivated Soldiers of God who are willing to sacrifice themselves for the cause. In this, they more closely resemble the Waffen SS or Japanese Kamikaze of World War II. Most other terrorist organizations (except for the Tamil Tigers, which also use human bombs) tend to be pragmatic, seeking achievable goals in which their members ultimately have a stake, and thus prefer to save their members to fight another day.

The corporate features of the *Al-Qaeda* model include:

1. *Structure*: the flat, de-centralized, Information Technology (IT)-driven, hub-and-wheel model. It is not so much a single *organization* as a network of networks, connected by intertwined fibres of ideology and technology.
2. *Management style*: Until it lost its Afghan base, *Al-Qaeda* used directive control and management by objective to guide terrorist franchises in many countries. They shared a common mission statement, but the individual franchisees were encouraged to use their initiative to develop a product (attacks) best suited to the local market (targets). They would submit their plans to head office; if it approved, then it subsidized the operation. Since the fall of the *Taliban*, it appears that the franchises have had to operate with even less central direction. The relevant newer model here may be a *Leaderless Resistance*.
3. *Modus operandi*: *Al-Qaeda* is a cutting edge product of the borderless, post-modern world. It uses all of Globalisation's tools - air travel, computers, the Internet, ATMs, and cell phones - to conduct its business. It probably could not work without them (especially communicating and moving money secretly). *Al-Qaeda* embodies the convergence, symbiosis and synergy of two trans-national forces: *Jihadism* and IT, the former challenging modernity, the latter embodying it, an apocalyptic vision wedded to a capability that allows it to Think Globally, and Act Locally.
4. *Financial resources*: By funding the group himself, through charities, individual donations, and investments, Osama bin Laden has *privatized warfare*. The *Al-Qaeda* model is *Terrorism.com*.
5. *Operations*: The 9/11 attacks could be seen as a Breakthrough Event: *Terrorism as Strategy not Tactics*. They showed just how far *Al-Qaedas* operatives were thinking outside the box. Thirty years ago the conventional wisdom was that terrorists want a lot of people watching ... not a lot of people dead. In short: *publicity*. The primary motive of *Jihadists* now seems to be to strike overwhelming physical and psychological blows to *punish* their enemies. 9/11 took the lethality of mass casualty incidents to a whole new level. So, now we have a lot of people watching *and* a lot of people dead. *Apocalyptic terrorism poses an existential threat to states*.
6. *Communications strategy*. The *Al-Qaeda/9/11* model brings the traditional terrorist strategy of Propaganda of the Deed into the age of McLuhan; the medium (the attack) *is* the message. It has changed the nature of strategic competition; the contested ground is no longer space, but values. On 9/11 *Al-Qaeda* shifted the message of political discourse from state-based, management values to the apocalyptic.



Was 9/11 a trendsetter? The factors driving this change - Globalization, IT, terrorism, and *Jihadism* - had *emerged* earlier in an *evolutionary*, synergistic, and non-linear fashion. But they *converged* on 9/11 in an apparently *revolutionary* way. A major concern is that it has raised the bar, setting a new standard by which all subsequent terrorist attacks will be measured. For if a terrorist group can now kill and injure nearly 10,000 people in one coordinated attack, then a much bigger attack - possibly using Weapons of Mass Destruction (WMD) to decapitate or paralyse a state - is conceivable. It may no longer be a question of if, but of when.

That said, *it may be premature to proclaim 9/11 as heralding the RTA. It could prove to be an anomalous event that is never replicated.* The War on Terrorism probably has dispersed and weakened the movement. Furthermore, the Muslim world has not rallied to bin Laden's cause. Enhanced security and the movement's weakness probably have ensured that subsequent attacks have been a pale shadow of 9/11, and that it has been unable *so far* to strike again at the American homeland. But, *Al-Qaeda* may not be permanently crippled. Its top leaders remain at large, and its structure provides redundancy and survivability. No one can say by how much *Al-Qaeda* has been weakened, because it is not clear how big it was to start with. Moreover, the US occupation of Iraq tends to validate the *Jihadists* world-view and is being used as propaganda to draw more recruits to the movement. Given time and a new sanctuary it could regroup. While *Al-Qaeda is not the only terrorist group that threatens the Western democracies, it is not inevitable that the others - domestic or foreign - would try or be able to emulate it.* Few of them share *Al-Qaedas* grandiose apocalyptic vision or its nihilistic will to fulfil it by self-destruction.

So, further catastrophic attacks are possible, but unless they become the norm rather than the exception, then terrorism will remain simply a costly, dangerous, and intractable problem of crisis and conflict management. In that case, rather than an RTA, *Al-Qaeda* may represent only a mutation or paradigm shift. The only certainty at this stage is a future of *great uncertainty*.

## 2.2.2 Threat to Canada

In the wake of 9/11, it has been easy to imagine plausible scenarios for terrorist attacks on or involving Canada.

1. *Direct attacks against Canadian targets:* government or military facilities and personnel or soft civilian targets, at home or abroad. One such attack has occurred in Afghanistan.
2. *Attacks on enemy targets in Canada,* including attacks on the businesses, diplomatic premises and representatives of countries such as the US, the UK, or Israel, or targets identified as Jewish. Canada's advanced, post-industrial, globalized economy, closely tied to the US, offers many potential targets, such as corporate offices, factories, and sales outlets. Of potentially greater consequence would be an attack on Critical Infrastructures (CI) shared by Canada and the US: pipelines, railroads, telecommunication and electricity grids, bridges, and the St. Lawrence Seaway. Depending on the target(s), the type of attack and the results, an attack on any of those CI could be both deadly and costly in human and economic terms.

3. *An attack on the United States launched from Canada.* This is most plausible, first, because the US is the prime target of *Al-Qaeda*, and second, because such an operation has already been attempted. In December 1999 Ahmed Ressam was arrested trying to smuggle bomb-making materials into the US, en route to carrying out an attack on Los Angeles airport.
4. *WMD attack on a border city*, such as Detroit or Windsor, the lethal effects of which would impact both countries. This would put many lives immediately at risk, and might involve mass evacuations, quarantining, and decontamination of people and property. This would require the mobilization of public health and other emergency services, including military assistance on both sides of the border.

But *there is no evidence to suggest that any of the foregoing scenarios are either imminent or inevitable.* In spite of repeated warnings of imminent terrorist threats, or perhaps because of them, there have been no further attacks in the United States. Veiled threats to Canada attributed to *Al-Qaeda* have not yet materialized as attacks. This forces one to ask whether a significant threat to Canada exists. The evidence in the public domain, however, leaves that question unanswered.

The problem is that *an attack cannot be either predicted or ruled out with any certainty.* Well before 9/11, the Canadian Security Intelligence Service (CSIS) warned that many international terrorist groups, including *Jihadist* organizations, were represented and active in Canada, recruiting, fund-raising, and planning operations. Anecdotal evidence in the public domain both before and since 9/11 supports this claim, although the numbers are not large. For e.g., in late 2001, acting on information from Syria, US and Canadian agencies unravelled an *Al-Qaeda* plot to attack major government institutions in both countries. Several individuals with Canadian backgrounds and alleged connections to *Al-Qaeda* have been captured, arrested, or detained here and overseas. Some remain at large. Some of those detained have since been released owing to lack of evidence. None of this makes Canada either a haven for terrorists or a primary target for attack. But it introduces an element of doubt about its immunity from terrorism. Because of that, the security and policing agencies are wisely operating on the assumption that *some degree of threat remains.*

### 2.2.3 Defining Terrorism

The definition issue has proved to be the black hole of terrorism studies. Terrorism is a political issue, and many definitions (there are hundreds) have taken on a political or normative, values-laden character. As a result, experts have conceded that *there is no single definition of terrorism*, and have fallen back on a description of common features. Regardless of identity of the



perpetrators, the reason for their actions, or the merits of their cause, there is general agreement that their actions could be classified as sub-state terrorism if they meet the following criteria:

- 1) The actions are undertaken as a form of warfare or violent politics;
- 2) The objectives are political, not for personal gain, and the impact is societal;
- 3) The actions include violent criminal techniques, such as murder, arson, bombing and extortion, for instrumental or punitive purposes, and/or to create a climate of extreme fear (i.e., *terror*) to induce compliance with the terrorists' objectives;
- 4) The attacks usually are selective in intent and objective, but appear to be indiscriminate in effect to enhance the surprise and shock factor that creates the climate of fear;
- 5) The attacks are conducted in a manner to send messages to a number of targets and audiences regarding the intentions and goals of the terrorists - a violent form of political communication;
- 6) The attacks project an image of power and omnipotence for states, groups, or persons whose real power is actually very limited; and,
- 7) The perpetrators are organized and operate secretly, both to ensure their security and to enhance the surprise/shock - and terror - effects of their actions.

Terrorism becomes international when the target of attack or influence is a foreign government, representative, business, or citizen, or when the incident involves crossing international boundaries. Therefore, an attack by local terrorists on an embassy inside their own country, or an airline hijacking that moves from one country to another, would both be examples of international terrorism. Likewise, an attack planned and organized in one country and carried out in another would also be international. A terrorist group could be described as trans-national when it meets the international criteria, but also has an agenda or objective that is intended to effect more than one country. For example, *Al-Qaeda* is *trans-national* because it sees its mission as being to transform the entire Muslim world, not just Saudi Arabia.

### 2.3 How should our country respond to these trends and threats? Please feel free to include measures at any level, such as social, economic, political, or legal or a combination of these levels.

*It is not in Canada's interest that Afghanistan should return to anarchy or rule by an extremist regime; either could allow Al-Qaeda to restore its operational base. Therefore, to the extent that resources permit, Canada should continue to commit military forces to support operations against Al-Qaeda and to promote stability in Afghanistan. It should also commit other resources (people, money, material aid, and experience) that will assist Afghanistan in political and physical reconstruction, thereby helping to prevent a return to chaos or authoritarianism. The Canadian Forces will require a considerable investment in order to fulfil this mission.*

On the domestic front, *the government should sustain existing programs intended to ensure internal security, at a level commensurate with estimated threats (whether that estimate be low or high). This is essential to preserve the safety of Canadians, which is a fundamental duty of government. Canada also has an international moral and legal obligation not to allow its territory to be used as a sanctuary for terrorists. But it is also in our own self-interest. Not only could unchecked terrorist activity pose a threat to Canadians, but to other countries, in particular*

the United States. *A successful attack on the US shown to have originated in Canada would have devastating consequences for the Canadian economy, but also for Canadian sovereignty.* The border could be closed to trade and travel and the US could impose its own security measures on the continent as a whole. Groups bent on violence elsewhere should not feel that in Canada they have a safe haven where they can freely recruit people to conduct violent acts, raise funds to do so, purchase the means to do so, or to plan operations. *Those who do so should be prosecuted, extradited, or deported.* They should not be allowed to use refugee status as a cover for terrorism. The message the government sends to Canadian-bound would-be terrorists must be unequivocal: *park your war at the door.*

*Intelligence is the first line of defence against terrorism.* If the threat level increases, the government should be willing and prepared to deploy additional resources (people, funding, technology, analytical capabilities) in counter-terrorism intelligence.

*Critical Infrastructure protection, crisis management, and disaster response mechanisms need to be tested and should be given priority, funding, legal authority, and more resources if tests show them to be inadequate.* These are essential to maintain vital services, a functioning economy, public order, and continuity of government in the face of a major attack. Failure or inability to do so in a crisis would amount to abdication of the responsibilities of governance.



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## 3.0 Stuart Farson, Institute for Governance Studies, Simon Fraser University

### 3.1 What has been the impact of the Anti-Terrorism Act on Canada?

It is, I think, important to distinguish between several issues before trying to discern what impact the *Anti-terrorism Act* itself has had on Canada. These issues concern the impact of the attacks of September 11, 2001 on the United States; the impact of the responses that the United States has taken to these attacks on Canada; the impact of Canada's *Anti-terrorism Act* on Canada and Canadians; and the impact of the September 11, 2001 attacks on Canada and Canadians.

There is little doubt that the events of September 11, 2001 have had an enormous and direct impact on the U.S. Government and its citizens, immigrants and visitors. On the home front it has led to the largest reorganization of government since the end of the Second World War. The most noticeable change in this regard has been the formation of a new omnibus department, the Department of Homeland Security. This organization will attempt to meld a variety of organizations with distinctly different organizational cultures under a single tent. Several factors will affect this reorganization and whether it will turn out positively. Two are of critical importance. Providing enhanced and adequate levels of security across a range of needs will depend on the broad-scale collaboration between not only the various arms of government federal, state, and municipal but also between government institutions and the private sector. In this regard, it is important to recall that most critical infrastructure is in private sector, not public sector, hands. The second factor concerns a new set of attitudes toward the sharing of information and intelligence between organizations. This needs to happen very broadly not only between the various federal members of the U.S. security and intelligence community something that has not happened either readily or effectively in the past but also between federal government institutions and state government organizations, and among all levels of government and the private sector.

Overseas the United States has undertaken a vast intelligence and military project to nullify the influence of the Taliban and elements of the Al-Qaeda network in Afghanistan and in neighbouring states. Further afield it has undertaken, again in conjunction with supporting states, to thwart the threat posed by Al-Qaeda and the network of Islamic extremist groups. An important component of this activity has been the increased sharing and swapping of intelligence not only with traditional allies like Canada but also with more unsavoury regimes. In addition, under the banner of the war on terror the U.S. and Britain have invaded Iraq and toppled the regime of Saddam Hussein. The premise under which this was pursued was the belief, based supposedly on sound intelligence, that the Iraqi regime not only possessed weapons of mass destruction but also was prepared to use them. Most appear to believe that this has been proven to be false. It is likely that the selective use of intelligence in this way to support policy viewpoints will have long-term ramifications for U.S. and British intelligence. Inquiries in both countries have been announced.

These changes at home and abroad have incurred substantial economic costs, particularly regarding the attack on Iraq and the rebuilding of its critical infrastructure. On the domestic level, several economic sectors have been particularly hard hit. Not the least of these is the airline industry and transportation generally. Abroad countries relying on U.S. tourism dollars will be hard hit. It is unclear, at this point, what the immediate and long-term ramifications for the U.S. economy will be. Certainly, the debt levels are now sufficient to cause serious international concern.

Change to U.S. national security law has been another important effect of the dramatic September 11, 2001 attacks. Domestically, new legislation has provided greater and more invasive powers of surveillance, investigation and procedure. Similarly, people believed to be involved in terrorism who have been captured abroad are being detained outside U.S. territory as enemy combatants. This will likely permit such individuals to be brought before military tribunals rather than civilian courts without the usual safeguards and remedies provided under the U.S. constitutions. Collectively, these changes to law and procedure challenge many of the long cherished traditions of freedom and democracy that the U.S. has hitherto epitomized.

It is also important to recognize that the attacks have had an important and profound effect on the American psyche. This has occurred at a number of levels. Fear levels have evidently risen. These are reflected in the decline in air travel both within the United States and to foreign locations and in the decline in tourism by Americans outside the U.S. Voices of criticism against the war in Iraq have found it hard to find a stage. And there is a greater willingness to accept measures such as traveller profiling and immigrant tracking that are geared to persons of particular religious beliefs and ethnic backgrounds. The reputation of the United States as a welcoming place to immigrants, visitors and students alike is now profoundly changed. All are suspects. It is to be hoped that the insecurity state, which appears to have resulted, will be short-lived.

The impact of these developments on Canada has already been considerable. The amount of Canada's trade that Canadians ship to the U.S. provides the U.S. Government with substantial leverage. Not surprisingly, this has been most closely felt in the area of security. For many Canadians, several of the key measures in the *Anti-terrorism Act* and elements of the border security agreements were adopted specifically to assuage U.S. fears rather than to enhance Canada's security against a real threat. It is important in this regard to note that many in the U.S., even normally well informed and astute politicians are still under the wrong-headed assumption that the hijackers who carried out the attacks on September 11, 2001 entered the U.S. from Canada. Similarly, though senior FBI officials have been at pains to point out that Ahmed Ressam was not a member of Al-Qaeda, he is frequently mythologized as such both in the U.S. and Canadian media. An important development has occurred in the field of intelligence. It is probably true to say that from the Second World War to the events of September 11, 2001, Canada received a greater benefit from its various intelligence sharing relationship with the U.S., than did the U.S. The ground has shifted since September 11, 2001, probably profoundly. Not only is the information that Canadian intelligence organizations can provide now of greater interest and importance to their U.S. counterparts but there is clear recognition among senior Canadian intelligence officials that if Canadians do not protect U.S. interests in Canada, U.S. agencies will step in and do so. Thus, the current climate includes both carrots and sticks for





Canadian intelligence agencies. The result in all likelihood will be better cross-border working relationships. However, the Arar case demonstrates that these arrangements remain highly problematic and fragile.

U.S. responses to terrorism have created other problems for Canadians. New border restrictions and procedures as well as new tracking and screening systems have made travel to the US a decidedly unpleasant experience for Canadians of particular ethnic and religious backgrounds. Similarly, Canadian enterprises have suffered along with their U.S. counterparts as the result of the September 11, 2001 attacks. Canada's national airline is currently in bankruptcy protection and tourism by Americans to Canada is down considerably. The actual impact of the *Anti-terrorism Act* on Canada and Canadians is hard to assess. Certainly, its passage and eventual adoption created significant interest in terrorism and the Government's reaction to it. For many, the traditional delicate balance between the state's right to protect itself and its obligation to preserve the rights and freedoms of individual Canadians as well as the democratic fabric, which was established by the McDonald Commission, was placed under threat. In this regard, at least two major academic conferences were spawned directly by the legislation, their proceedings being subsequently published. There is little evidence that the Act itself has proven to be the demon that critics feared. Certainly, the most controversial powers provided under the legislation do not appear to have been used except in the earlier Air India investigation and court case. It is harder to judge--because their actions are not readily visible what impact the legislation has had on the attitudes and practices of those with law enforcement powers, and hence the rights and freedoms of those they investigate. Certainly, the inclusion of terrorism as a Criminal Code offence has expanded the national security role of the Royal Canadian Mounted Police and has given other police forces a remit in this area. Law, it is to be recalled, has both symbolic and actual value. In this regard, there have been a number of instances that give cause for concern, especially where joint task forces have been engaged. These have revealed both the importance of effective law enforcement oversight where national security affairs are involved and the shortage of it. It appears from the significant changes that the new Martin Government has introduced to the national security sector that it too perceived that a dramatic shift in the delicate balance had occurred. In this regard, its initiatives to provide a permanent standing committee in the House of Commons on National Security composed of privy councillors and more substantive oversight of national security policing are important initiatives in redressing the perceived imbalance.

It would be wrong to suggest that national security initiatives provided by the Canadian Government resulted only from U.S. pressure or a desire to assuage U.S. fears. Prudence and self-interest were also likely factors.

### 3.2 What emerging trends in terrorism do you foresee and what threats do they pose to Canada? In discussing these trends and threats, please describe what you consider terrorism to be.

How terrorism is defined, and who labels persons and groups as terrorists, and how they do it, are important issues that need to be understood. Academic researchers have found more than 200 definitions of terrorism. None of these seem to have found extensive common ground. Perhaps for this reason, the framers of the *Canadian Security Intelligence Service Act*, wisely in

my view, studiously avoided defining terrorism, using instead the notion of serious political violence.

In the past, defining who is a terrorist has proven equally problematic. Nation states possess the power to define particular groups as terrorist when their authority is challenged through force. In some instances, such labelling has legitimacy where the labeller is a democratic government. Where the state either is autocratic or prevents specific groups from participating in the process of governance such labelling is often on more tenuous ground. The process of democratization can, in fact, turn today's terrorist into tomorrow's freedom fighter.

Because of these factors, I did not favour defining terrorism in legal terms and would have preferred to use constructs that were already within the Criminal Code. While it is now probably too late to put the genie back in the bottle, the Government of Canada needs to be particularly careful when it comes to listing groups formally as terrorists.

Terrorism for me includes all those activities which involve the planning, training for, and carrying out of acts of serious violence where those involved attempt to instil fear in a society or community for a political motive. It would not normally include such activities as cyber-terrorism, broadly construed. That having been said, cyber attacks can be used by terrorists to cause broad-scale economic and social havoc, particularly where they affect the safe functioning of utilities. Terrorism may, however, include acts that are normally perceived to be purely of a criminal nature where that activity is being used later to support or finance acts of serious political violence.

In earlier years, an important characteristic of terrorism was political communication. Frequently, the perpetrators of an act of serious violence claimed responsibility for that act and used the media to promote their particular political agenda. Though the leaders of Al-Qaeda have made use of modern means of communications, and have released videos and other communications of various types with a view to encouraging their supporters to conduct further acts of violence, they have seldom specifically claimed responsibility for particular acts.

Another important characteristic of Al-Qaeda activities is the extensive use of young, male suicide bombers to attack particular targets. While other groups have used this tactic extensively against Israel, it had not hitherto been used widely by other groups since the Second World War. While suicide bombing is difficult but possible to defend against, it has proven to be a very effective device in deterring air travel and encouraging domestic tourism. Though Canadian airlines have not, as yet, been successfully targeted, they have been affected significantly by the fall in international travel.

Most terrorism before the end of the Cold War was secular or nationalistic in nature and in large part sponsored by particular states, the Soviet Union being a prime example. The end of the Cold war has removed Russia from the equation along with a number of other state sponsors. By contrast, contemporary terrorism tends to be based primarily on religious or ethnic motivations. With few exceptions the groups in Columbia are good examples--it is not primarily encouraged by ideological differences. Similarly, contemporary terrorism is also more likely to be self-funded.



Al-Qaeda also differs from other forms of past terrorism in being more global in scope, operating at once nationally, regionally and internationally. In this regard, it is said to comprise a decentralized network of fairly autonomous cells, each with its own leadership. Some studies suggest that parts of the network exist in as many as 60 countries. To be effective it has widely used modern communications technologies. For funding it has had to rely on a range of mechanisms: drug trafficking; criminal activities such as credit card fraud; front companies; charitable organizations; and range of covert supporters. It is said to transfer money through couriers, money-laundering techniques using a variety of banks and institutions, and through such traditional remittance mechanisms as the hawalas. All these mechanisms together provide the network with greater resilience. Even so, Al-Qaeda's influence will likely still eventually wax and wane as other groups have done before it.

While the primary targets appear to be the United States, Israel and what Al-Qaeda's leadership perceives as corrupt Arab states, such as Saudi Arabia, the victims of the networks attacks come from a broad range of nationalities. Canadians were, for example, among the victims of the attacks on the World Trade Centre. To date, however, Canada does not appear to have been specifically targeted, except its soldiers in Afghanistan, which have been attacked by suicide and other bombers.

To date Al-Qaeda has used only conventional weapons, albeit in strategically new ways. Given the willingness of Al-Qaeda to cause mass casualties and not to distinguish between state targets and innocent victims, it seems a prudent step for the international community to consider that it one day might use chemical, biological, radiological, nuclear weapons, or high-yield explosives. There is, of course, a precedent for terrorist groups using such weapons. The Aum Shinryko used a chemical weapon, sarin gas, when it attacked the Tokyo subway system in 1995.

### 3.3 How should our country respond to these trends and threats? Please feel free to include measures at any level, such as social, economic, political, or legal or a combination of these levels.

The threats that Canadian society routinely faces take many forms. Terrorism is but one of them. Some threats, like terrorism, are man-made: others constitute natural hazards. Some threats, particularly those of the natural type, cannot be prevented. Others sometimes can be thwarted. Both man-made and natural disasters can have a disastrous impact on communities across the country and on specific sectors of the economy. Response to threats can be designed either to be preventive in nature or to mitigate against the impact that such disasters create. However, governments---at all levels-- cannot afford either to prevent the full gamut of threats or to make society resilient against them. Consequently, it is important that all threats natural and man-made--be prioritized in some way so that governments across the country can respond in an appropriate and cost-effective manner on a regional basis. At present, there is no body at any level of government that attempts to prioritize the full range of threats. There should be such a body.

Responding to the broad array of threats is not primarily the responsibility of the Federal Government. All levels of government share to a larger or lesser extent the responsibility for preventing and mitigating against threats. Some argue that the private sector, which owns more

than 80 per cent of the critical infrastructure in the country, also has a primary responsibility both for thwarting threats and making their assets resilient against them. This means that there is a critical need to share information and intelligence not only between the various levels of government but between the various levels and the private sector. Such information and intelligence need to be of both a tactical and strategic nature. Both are of particular importance when it comes to the strategic planning that many elements of the private sector perform. Historically, federal institutions when dealing with such national security threats as terrorism have been reluctant not only to share information with provincial and municipal governments but with the private sector. Since September 11, 2001 there have been a number of information and intelligence--even of a classified nature--sharing initiatives at the regional level between some of these various elements. But these are the exception rather than the rule. Furthermore, this sharing has not extended across the full range of threats. The focus appears to concern those phenomena likely to produce an immediate or sudden disaster, not those where the consequence has tended to be more systemic or endemic in nature. Information and intelligence need to be much more broadly shared than it currently is. The lack of efficient and effective means for sharing information and intelligence stems from three factors. One is the lack of regional institutions at the provincial level to provide the role. The second is the lack of funding available for such institutions. The third has its origins in the mandates that federal organizations possess. The Canadian Security Intelligence Service, for example, is limited in its mandate to informing the Government of Canada and other intelligence agencies. The new Department of Public Safety and Emergency Preparedness is ideally suited to provide funding and support such regional centres.

The production of information and intelligence about various types of threats is also problematic. Research that I have recently conducted in one region of Canada indicates that those conducting threat analyses do not share either a common lexicon or methodology. Arguably, the seriousness of a threat depends on examining the threat from two points of view: threats from and threats to. Threats from approaches focus on the agent of the action, and concentrate on such matters as the capacity of the entity or phenomenon and the likelihood of that entity taking action or a phenomenon occurring. By contrast, threats to approaches focus on the vulnerability of those who might be affected or victimized by the act or phenomenon. From talking to respondents involved in analysing threats, it is clear that threat and vulnerability analyses are often used interchangeably. This is quite important when contemporary terrorism is evaluated. Loosely linked and fairly autonomous networks like Al-Qaeda have proven to be particularly hard to penetrate and obtain a precise picture of the threat they actually pose and to whom. Consequently, threat assessments have sometimes tended to focus more on the vulnerability of particular societies in terms of both their human content and critical infrastructure, and the activities they perform, rather than the strategies, capacities and intentions of terrorists. This has fostered worse case scenarios rather than more likely ones. Arguably, effective risk assessment depends on knowing both the strategies, capacities and the intended targets and methodologies of terrorist groups, as well as the vulnerability of potential targets. It appears that some organizations are not doing rigorous risk, threat and vulnerability analyses. It would likely be useful to review the processes and methodologies that organizations involved in producing threat analyses employ.



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Arguably, terrorism has many underlying causes. Not the least of these are autocratic government, corruption, ethnic strife, poverty and religious conflict in numerous countries abroad. Though there are no quick fixes to alleviate these problems, the Canadian Government would be wise to do what it can to ameliorate them through well-crafted foreign policies, carefully and strategically directed foreign aid, and well supported peacekeeping operations.





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## 4.0 Robert Martyn, Department of History, Queen's University

### 4.1 What has been the impact of the Anti-Terrorism Act on Canada?

If Canada has changed dramatically in the post-September 11<sup>th</sup> world, it is largely of our own doing. There has been no discernable increase in actual risk to Canadians at home. The predominant change has been in awareness of the existence of terrorism. Beyond the circle of security-related officials and academically interested scholars, Canadians have been largely disinterested in terrorism. News reports of periodic aircraft hijackings or suicide bombings brought the issues to our attention, yet it remained 'someone else's problem'.

Terrorism is fundamentally an issue of perceptions, to which I will return momentarily. For now, suffice to say, Canadians have developed a schizophrenic perception of terrorism. Canada's population settlement corresponding with our US border makes the influence of American media an almost inescapable reality. The American emphasis on the terrorist threat, be it to justify the Iraq war or the upcoming Presidential election, leaves one with an unremitting sense of great anxiety. Given that it takes a great amount of input to change an opinion that is already formed, this sense of doom is contrasted by Canadians' self-comforting belief that we live in a 'fireproof house, far from flammable materials'. We're peacekeepers; the world loves us.

Canadians are therefore accepting that something must be done, but more in order to reassure the Americans than because we face any significant threat. As Allan Gotlieb, former Canadian Ambassador to the United States, noted, what we do regarding security "opens doors like no other key". One of the measures demonstrating our resolve in facing the threat is the Anti-Terrorism Act.

If the primary purpose of the Anti-Terrorism Act is reassuring the Americans that Canadians are 'doing our bit', then the law is likely proving effective. However, for actually providing increased security to Canadians, it gives every impression of failing the test for a number of reasons. In order to provide for any legislation in this area to prove effective, it must be included as part of an overarching, coordinated national security policy, which Canada presently lacks, notwithstanding government assurances that one is in the offing.

As for the efficacy of the Act itself, there seems to be a mixed response. This legislation has induced Canada to ratify the two outstanding United Nations anti-terrorism conventions (Suppression of Terrorist Financing, and Suppression of Terrorist Bombing, Conventions), in addition to the Safety of United Nations and Associated Personnel Convention. These are important steps in supporting the UN as it slowly, even tentatively, begins accepting that its member states have responsibilities to act forcefully, and pre-emptively, against terrorist threats. International collaboration is one of the keys to combating terrorism. Notwithstanding the UN's dubious reputation in solving large-scale crises, it remains a viable forum for exchanging opinion and informing a global audience.

Domestically, the Act provides more potentially advantageous means for investigating and convicting terror-related activities. While national-level security personnel have lauded these measures, recently published accounts admit that no one has yet been brought to trial, nor any terrorist acts thwarted, by virtue of this legislation. This will be one aspect of Canada's response that may require more time to assess.

As it stands, two groups in particular are attending to the fallout from the legislative changes: legitimate charitable organizations, and human-rights consortia. Various charities have begun bearing the burden of increased bookkeeping scrutiny inherent in the Act's terrorism funding clauses. Although the Act compels the Crown to prove a charitable organization's fundraising supports terrorism, groups are actively ensuring due diligence to avoid any wrongful accusations of terrorist affiliation; even suspicion of such activity could harm their requisite public support.

The other assemblage monitoring the Act are those closely attuned to human rights issues. There is widespread concern regarding the potential for abuses by those in authority, tied in with unease about a lack of transparent oversight. We have witnessed numerous examples from the Americans of basic liberties being denied, coupled with the accusation of non-patriotism to anyone who questions such activities. Although there is no manifest reason why Canadian security officers must act in the same manner, there exists potential that some of these concerns may come home to roost at a later date.

Amongst average Canadian citizens then, and even small city law-enforcement professionals, there appears to be a complete absence of awareness regarding the Anti-Terrorism Act or its ramifications. It appears therefore that the Act's effects are only visible at the Federal level, where its utility in showing the Americans that we are 'doing our part', or amongst civil rights observers concerned for potential abuses.

#### 4.2 What emerging trends in terrorism do you foresee and what threats do they pose to Canada? In discussing these trends and threats, please describe what you consider terrorism to be.

Defining terrorism is one of the thorny issues which continues to cloud rational debate and stymie effective responses. In his book, *The Terrorist Trap* (Bloomington: Indiana University Press, 1994), former-RAND analyst Jeffrey Simon asserts that there are at least 212 common definitions of terrorism. Even a particular terrorist group such as Al Qaeda, which despite being at the centre of the American's massive and multifaceted 'war on terror,' continues to defy definition; is it an enormous international organization or merely a more nebulous association of like-minded fellow travellers? For the purposes of this submission, however, only some commonly agreed attributes are necessary to understand likely terrorist trends. Terrorism will be regarded as deliberate violence, threatened or actual, intended to create and exploit fears for the advancement of a belief or cause.

Regardless of ones definitional details, it is essential to remember that terrorism is merely a *tactic*. While repeating a mantra of "fighting a war on terrorism" makes for simplistically effective propaganda, it is as logically flawed as saying the Second World War was a 'war against blitzkrieg', or perhaps a 'war on kamikaze attacks' - - these were merely tactics, not the





overarching goal. Considering it as more than this runs the risk of developing ineffective responses. It is merely a socio-political method of acting, regardless of the perpetrators motivation.

If the 1968 ‘skyjackings’ marked terrorism’s transition from the national to the global stage, then 2001’s World Trade Centre/Pentagon attacks provides the benchmark of two specific evolutions: motivation and tactics. The decline in Marxism as a viable political theory has been accompanied by the disappearance of large, visible Marxist terrorist groups, such the Japanese Red Army. This is not to say that left-wing terrorism has vanished, merely that other motivators have become more visible, due to the declining relative strengths. While always present to some degree, right-wing causes, ‘single-issue’ groups such as animal rights or anti-abortionists, and anarchist/nihilist factions now provide more readily discernible impetus for terrorism.

The most visible trend, however, is the rise in religious fanaticism. There have been an increased number of attacks attributed to Christian, Judaic, or Hindu extremism. The lion’s share of attention, however, has gone to the currently pre-eminent threat of some Islamic adherent’s self-declared *jihad* against the ‘Western infidels’. This, notwithstanding terrorist attacks against non-Western targets, or other Muslims deemed insufficiently dutiful believers. The United States has become the ‘lightning rod’ for this increased animosity, due to its global power and the domineering presence of Western culture. By association with the Americans and their perceived values, other nations and their citizens become ‘legitimate’ targets in the terrorist mind.

One final trend requiring mention, related to the elimination of political bipolarity, is the decline in state sponsorship. The expansion of personal and financial mobility has altered terrorist funding, such that money is now equally likely to come from traditional criminal activities, such as drug trafficking, or from fundraising in otherwise uninvolved countries. Again, this is not new phenomenon; Boston has traditionally been seen as the greatest source of financial support for Irish terror. The non-state linkages are now merely more visible and/or important, depending on the terrorist group.

The other aspect of terrorism’s recent evolution has been the change in tactics. While the number of terror attacks has declined, the number of victims has increased dramatically. Terrorists traditionally attacked ‘identifiable enemies’ such as uniformed soldiers/police, or national corporations, but there now seems to be less constraint against killing non-involved people. Shootings and bombings, because of simple technologies, remain the most common methods. However, the definition of ‘bombing’ must be expanded; whereas previously hijackers would blow-up aircraft after disembarking the passengers, airliners are now destroyed in flight, if not used as bomb itself by being flown into a building. Remembering that terrorism is about conveying a message, as an audience becomes blasé to global mortality, the ‘shock value’ must be increased to get adequate media attention to affect large audiences.

The ability to kill large numbers of victims is aided by escalating technical competence. Groups are becoming quite adept at using Internet, encrypted communications, and international financing to further their aims. The potential for increasingly destructive weapons, such as chemical or biological weapons, is also enhanced by ready access to information. Their scarcity,

however, argues against them being used against a Canadian target in the near term. A terrorist group with such a capability is more likely going to use it in a strike against a target with quite obvious American symbolic value, in order to maximize the message being conveyed.

Yet Canada remains inherently vulnerable for a number of reasons. As a western nation, often globally perceived as ‘just like America’, we are threatened by the same disenfranchised terrorists that despise the US - - Tim Hortons' mugs, or “I Am Canadian” t-shirts notwithstanding. Anarchist and nihilist groups pose a great threat, in that countering their irregular strategy and often absence of political demands cause security forces to rely almost exclusively on luck (e.g. – voluntary surrender, or stumbling upon perpetrators at some point in the planning or execution of their attack). Fortunately, they seem to display little activity within Canada.

In general terms, any attack directly against Canada would likely be intended to target US interests, or be intended primarily for an American audience. A cause and effect example would be bombing the Ontario/Quebec power grid. While physically occurring in Canada, it would disrupt the American economy along the eastern seaboard, and the industrial areas of Pennsylvania and Ohio. It would also reach the US consciousness because Canada enjoys global media connectivity. Such an act however, would generally lack the requisite spectacle of a similar attack conducted directly on US soil.

Our porous border with the US makes us an obvious transit route, and hence, terrorism risk. Our multi-cultural society provides a potential recruiting ground for supporters of various militant causes. Support can take the form of fundraising, providing cover or identity documents, or even recruiting active terrorists. This is particularly troublesome with second- or third-generation residents who may thus escape detection. But perhaps this matter provides the greatest threat to Canada. In the absence of a clear and credible threat, any risks may be more closely tied to an overly stringent domestic response. While the section following addresses potential Canadian reaction, it seems appropriate to sound a note of caution against a very real risk in alienating perceived ‘immigrant communities’ by specifically targeting these citizens with measures considered unjust or draconian. The ensuing anger and perception of alienation can readily serve to boost terrorist recruiting - - but now with resentment specifically against Canada.

#### **4.3 How should our country respond to these trends and threats? Please feel free to include measures at any level, such as social, economic, political, or legal or a combination of these levels.**

The history of anti-terrorism is habitually one of reaction. It is simply not physically or economically viable to pre-empt all possible terrorist options, even if one were willing to accept any resultant costs - - for these costs will run the gamut from financial drain, to curtailed civil rights for all citizens, to alienating sufficient sectors of your society that not only are the initially targeted terrorist groups likely to acquire more support, but you risk creating more than enough animosity to spawn new groups.

Canada, therefore, should take a multi-tiered approach in our response to terrorism. No single government sector holds a magic solution; cooperation amongst the various justice, intelligence,



health, international development, and financial bodies is absolutely necessary. This is where the aforementioned overarching national security policy is required. National security must be comprehended with its myriad of interconnections. It is not predominantly a matter between the Departments of Foreign Affairs and National Defence, it is a matter increasingly referred to as ‘human security’, where clean water is of equal importance to passport controls.

Key to Canada’s response, regardless of the level, is communications. Because terrorism’s strength is rooted in perceptions and beliefs, it is essential that any government action be explained to the populace - - foreign and domestic. Secrecy is anathema to the consensus required in any situation where Canadians will be asked to make sacrifices, be it government spending on foreign aid, or increased security constraints on travellers.

Part of this requisite openness is access to government discussions on ‘what is to be done’, before it is presented to the voters as a *fait accompli*. Acknowledging that some issues, such as intelligence sharing with friendly nations, requires varying degrees of confidentiality, maintaining public support will necessitate some manner of oversight. If the recent intelligence-related turmoil in the US is any indication, this oversight must be deemed trustworthy and effective. Even with this openness, however, engaging the public may be one of the more difficult tasks, in that western society seems almost defined by a short attention span. Assuming the anti-terrorism will comprise a war of attrition, we must somehow attempt to avoid impatience. The public must accept that there will be no clear, decisive closure along the lines of 1918’s ‘eleventh hour, of the eleventh day, of the eleventh month’. Honest communications, tied to achievable and justifiable goals are therefore vital.

At the highest, macro-level, Canada must support a complete package of conventions and efforts to ameliorate the impoverishing conditions that serve as a ‘breeding ground’ for the disaffection that leads to terrorism. As an aside, two related contentious issues with this aspect are in the marketing. Assistance must be provided with respect, so as not to engender bitterness at what may be perceived as a demeaning paternalistic attitude. This will require conscious effort at cultural empathy across the span of Canadian responses. Conversely, any aid programs must be seen domestically as competent, with visible results, in that some segments of society disparage humanitarian projects that are perceived as financially benefiting only the executor. This will require increased openness and communications efforts in situations where some opinion-makers could spin our efforts as providing aid to those that are conducting terrorist attacks against us.

The various anti-terrorist efforts are already seeing calls for increased domestic and international cooperation. While the situation is reportedly working well in the spheres of security and intelligence, some areas still require improvement. Mind you, non-terrorist activities, such as SARS or BSE, may have done more to impel inter-government and international cooperation than the threat of terrorist attack. Responsible government agencies must now assure that complacency does not set in.

Domestic activities should be appropriate to Canadian circumstances. While great sympathy was felt towards the Americans in the aftermath of September 11th, Canadians by and large see many possible security-related constraints as unnecessary. This is not to dismiss US concerns. In much the same way as the hijacking of El Al airliners in the 1970s was often deemed ‘an Israeli

problem’, we cannot now wash our hands of the requirement to act in defence of common western liberal ideals.

The Anti-Terrorism Act may be seen as merely cosmetic legislation to ensure trade with the US remains unimpeded. Whether it meets Canadian needs has yet to be proven. In the absence of any direct terrorist attack within Canada, its restrictive clauses and the as yet unrealized potential for abuse, may cause it to be seen as conflicting with Canadian moderation. In the end, it may be the government’s pragmatic concern for re-election, rather than effective anti-terrorism measures, which will determine our future course. The most effective measures for Canada in countering terrorism must include a multi-tiered approach, which includes an effective intelligence system with positive information sharing and trustworthy oversight, supporting balanced international development, and adhering to principles of liberal ideology. Tying all of this together must be a competent communications arrangement in order to counteract the terrorists primary reason for their behaviour - - exploiting our fears and uncertainties in order to make a political statement.

#### 4.3.1 Background Material

This submission was informed by numerous discussions and informal interviews with police, military, and security personnel, academics and students. Additional perspectives were gained thorough the routine perusal of unclassified publications monitoring terrorism trends, (notably, relevant Canadian Security and Intelligence Service’s *Commentary and Perspectives*, and the US State Department’s annual *Patterns of Global Terrorism*). Additionally, the following sources were consulted. The opinions expressed herein, however, remain solely those of the author.

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## 5.0 Kent Roach, Faculty of Law, University of Toronto

### 5.1 What has been the impact of the Anti-Terrorism Act on Canada?

The *Anti-terrorism act* was built on the premise that the ordinary criminal law was inadequate to deal with the threat of terrorism after September 11, 2001. Both with respect to the murder of a cabinet minister during the 1970 October Crisis and with respect to the bombing of Air India, Canada had relied on the ordinary criminal law which prohibits participation in crimes such as murders and bombings, as well as conspiracies and attempts to commit such crimes. The ordinary criminal law functioned under the traditional principle that motive was not relevant to a crime and that a political or religious motive could not excuse the commission of the crime. In contrast, the new Anti-terrorism act requires proof that terrorist crimes were committed for religious or political motives. Although this was defended as a means to restrict the ambit of crimes of terrorism, it also requires police to investigate the religion and politics of terrorist suspects. In my view, the motive requirement should be repealed.

In the 2002 case of *Suresh v. Canada*, the Supreme Court implicitly rejected the broad definition of terrorism found in the ATA and defined terrorism for purpose of the immigration law as any “act intended to cause death or serious injury to a civilian, or to any person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act by its nature or context is to intimidate a population or to compel a government or an international organization to do or abstain from doing any act”. The Court described this definition of terrorism, taken in part from the 1999 International Convention on the Suppression of the Financing of Terrorism, as “the essence of what the world understands by ‘terrorism’”. It should also be noted that the Court adopted this definition of terrorism in the course of rejecting challenges that the law was unconstitutionally vague and unjustifiably restricted freedom of expression and freedom of association and it left open the possibility that Parliament might chose to alter its definition of terrorism. At the same time, concerns about over breadth in the definition of terrorism could be eased by adopting the *Suresh* definition of terrorism into the ATA. On the other hand, defining terrorism under the Immigration Act by virtue of the ATA would expand the definition of terrorism used under that act and result in special dangers given the absence of due process protections under immigration law.

The ATA also criminalized a broad array of activities in advance of the actual commission of a terrorist act. These include the provision of finances, property and other forms of assistance to terrorist groups and participation in the activities of a terrorist group, and instructing the carrying out of activities for a terrorist group. There is not always a requirement of a proximate nexus to any planned act of terrorism and the fault element for some of the offences such as s.83.19 has been unduly truncated. Thought should be given to the repeal of sections such as 83.19(2) and 83.18(3) and (4). In addition people can be prosecuted for inchoate forms of committing what are inchoate crimes well in advance of any act of terrorism and even for threats that they will commit terrorism. The criminalization of threats of terrorism should be reconsidered especially since expressions of political or religious views will be protected under s.83.01 (1.1) if they constitute threats of terrorism. At the same time, many of the financing provisions in the ATA

are necessary to comply with the 1999 Convention on the financing of terrorism which Canada has signed.

Like the emergency regulations enacted during the October Crisis, a central feature of the new *Anti-terrorism act* is the ability of the executive- the cabinet of elected ministers known in law as the Governor in Council- to designate groups and even persons as terrorists. So far over 30 groups have been listed as terrorists in this fashion. Executive designation of a group as a terrorist is designed to be conclusive proof in a criminal trial that the group is in fact a terrorist group because of the definition of a terrorist group in s.83.01 includes “a listed entity”. This should be repealed to require proof beyond a reasonable doubt in a criminal trial that the group is in fact a terrorist group.

Thought should also be given to requiring some form of advance notice before a group or individual is listed and stigmatized as a terrorist. There is a limited form of ex post judicial review of whether the Cabinet’s listing decision was reasonable, but it is unlikely that such reviews would be successful or remove the stigma of being officially listed as a terrorist. The procedure for judicial review is also open to criticism. Ample allowance has been made for in camera and ex parte hearings in order to protect information that if made public “would injure national security or endanger the safety of any person”. There are also provisions that allow a judge to use information obtained in confidence from another government or international organization without even disclosing a summary of the information to the applicant. Thought should be given to the repeal of this section, s.83.06. Executive designation of terrorist groups is a common feature of many international and national anti-terrorism schemes. Nevertheless, it can be criticized as a challenge to judicial powers to decide in a particular case who is a terrorist. Both the judiciary and the person being listed often have a limited role in executive determination of who is a terrorist. Listing decisions also present a risk that people will be penalized for associating with individuals and groups formally listed as terrorists. This can be seen as a form of informal and largely unregulated sanction as landlords, financial institutions and others are encouraged by the act not to deal with those who may be officially listed as terrorists. For example, s. 83.08(2) exempts from civil liability those who refuse to deal with property provided that they took “all reasonable steps to satisfy themselves that the relevant property was owned or controlled by or on behalf of a terrorist group”. Section 83.1 requires all Canadians to report information about a transaction with terrorist property and provides that “criminal or civil proceedings lie against a person for [such] disclosure[s] made in good faith”. In addition, over 300 groups and over 300 individuals have been listed as terrorists under regulations enacted under the *United Nations Act*. United Nations Suppression of Terrorism Regs SOR 2001-360 Oct 2. 2001. These lists are distributed to financial institutions and within government and there have been cases i.e. Liban Hussein of people being wrongly included on such lists.

Another important feature of the Anti-terrorism act was its expansion of police powers. One provision provides for preventive arrest when there are reasonable grounds to believe that a terrorist activity will be carried and there is reasonable suspicion to believe that the arrest or the imposition of conditions is necessary to prevent the carrying out of the terrorist activity. The period of preventive arrest under the Canadian law is shorter than in the United Kingdom and is limited to 72 hours. At the same time, the effects of a preventive arrest can last much longer as



the suspect can be required by a judge to enter into a recognizance or peace bond for up to a year with breach of the bond being punishable by up to two years imprisonment and a refusal to agree to a peace bond punishable by a year's imprisonment. Governments are required to prepare reports on the use of the measure and in the first year of the act, no preventive arrests were made. This may represent restraint on the part of Canadian police, a preference for keeping terrorist suspects under surveillance or difficulties identifying terrorist suspects.

A second new investigative power is a power to compel a person to answer questions relating to terrorist activities either in the past or the future. The suspect cannot refuse to answer on the grounds of self-incrimination but the compelled statements and evidence derived from them cannot be used in subsequent proceedings against the person compelled. In addition, there is judicial supervision of the questions and a right to counsel. The investigative hearing provision has been used at least once in relation to the Air India investigation. The person compelled to testify has challenged the constitutionality of the procedure. It was upheld at the first instance, but an appeal has been heard but not yet decided by the Supreme Court of Canada. In my view, it is unlikely that the Court will strike the novel law down given that was carefully designed to comply with Canadian constitutional standards with respect to self-incrimination. At the same time, however, it is questionable whether this provision is necessary or will be effective. Even if constitutional, investigative hearings represent an undesirable incursion on the adversarial traditions of criminal justice and one that could spread in an attempt to combat other serious crimes.

Some might be willing to run this risk in order to facilitate a terrorist investigation. But this raises the question of whether investigative hearings will be an effective investigative tool. Authorities already have the power to offer people associated with terrorists' incentives to co-operate such as reductions of possible charges and witness protection. An uncooperative person, perhaps a terrorist, is not likely to co-operate simply because they are threatened with contempt of court or a prosecution for refusing to co-operate at an investigative hearing. This poses a dilemma that runs throughout anti-terrorism law. On the one hand they may be too tough should they be applied against those who attract the attention of the state because of their involvement in religions or politics that the authorities view as a threat or because of their associations with individuals or groups thought to be terrorists. On the other hand, they are likely not tough enough to deter or stop committed terrorists, who as we saw on 11 September, are sometimes prepared to die for their cause.

Although most of the post September 11 debate about anti-terrorism measures in Canada has focused on the *ATA*, it is in fact Canada's immigration laws that have been used with respect to suspected terrorists. To my knowledge no charges have been laid under Canada's *ATA*, no preventive arrests have been made and the investigative hearing provision has been used only once. In contrast, non-citizens suspected of involvement in terrorism have been detained and deported under Canada's immigration laws. The high profile arrest of 21 men under Operation Thread conducted pursuant to the immigration law seems not to have fulfilled its promise of intercepting a suspected al Qaeda cell. In some respects this follows patterns of reliance on immigration laws in both the United States and the United Kingdom, but in those countries, there have also been criminal prosecutions in relation to the provision of material support for terrorism and other terrorism crimes. In contrast, Canada has so far relied almost totally on immigration

law. So far the utility of the ATA as an anti-terrorism device seems limited while its broad definition of terrorism and broad definition of crimes of terrorism remains troubling. At the same time, its powers have been rarely used.

**5.2 What emerging trends in terrorism do you foresee and what threats do they pose to Canada? In discussing these trends and threats, please describe what you consider terrorism to be.**

Canada was not immune from the effects of terrorism before September 11. In response to kidnappings by two cells of terrorists associated with the Front de Liberation du Quebec in 1970 it invoked extraordinary emergency powers to declare that organization to be illegal and to detain suspected supporters and associates of that organization. It is also prosecuting under the regular criminal law two men accused of participating in the 1985 bombing of an Air India aircraft, an event that killed 329 people in one of the world's most deadly acts of terrorism before September 11. Although the multicultural nature of Canada is one of its greatest strengths, it also means that conflicts from throughout the world could be fought in part in Canada.

The war in Afghanistan has not eliminated al Qaeda and Canada's participation in it may make Canada a target. Some of the immediate risks include terrorist hijacking or destruction of airplanes and the targeting of critical infrastructure such as powerlines and pipelines. There is also the risk of chemical, biological or even nuclear terrorism. Events such as Walkerton and mad cow reveal vulnerabilities in the safety of water and food supplies. If these supplies are vulnerable to accidental poisoning without immediate detection, they are also vulnerable to deliberate poisoning by terrorists or others. The problems experienced during the black out in August of 2003 also suggest that various governments may have trouble responding to a variety of emergencies, including those caused by terrorism. Effective emergency response may be an important means to reduce the harms caused by terrorism once it has occurred.

**5.3 How should our country respond to these trends and threats? Please feel free to include measures at any level, such as social, economic, political, or legal or a combination of these levels.**

There are reasons to doubt the effectiveness of the criminal law as an instrument to deter acts of terrorism. Even before the enactment of the ATA most acts of terrorism were already punished as serious crimes such as murder, hijacking and the use of explosives. In addition, charges of conspiracy, counseling and attempts to commit such crimes could be laid. The ATA may increase the severity of punishment, particularly with respect to financing and other forms of preparation to commit terrorism but deterrence depends on both the severity and the certainty of punishment as well as assumptions that potential terrorists are rational actors. Even those who argue that terrorism can be deterred concede that terrorists will have goals other than avoiding punishment and that at time even harsh punishment may advance their political goals. The criminal law will probably be most useful when it is directed at third parties, such as financial institutions, that may provide services to terrorists. These entities may well be encouraged by criminal law reforms to change their behaviour especially if they are provided with official lists of terrorists. At the same time, there may be problems of over-deterrence and inflicting harms on the innocent if errors are made in determining who is a terrorist. In the United Kingdom,





prosecutions of suspected IRA terrorists have been tainted with some high profile miscarriages of justice and the Department of Justice has chosen not to establish a Criminal Case Revision Commission as is now used to investigate claims of wrongful conviction. It is also problematic to rely on non-state actors effectively to punish and outlaw those suspected of involvement in terrorism, as is done with respect to many of the terrorism financing provisions.

Reliance on immigration law in an attempt to decrease the risk of terrorists can also be both over-inclusive and under-inclusive. Policies such as the safe third country agreement may turn away many more legitimate refugees than deflect those associated with terrorists. Similarly there is a cost in using broad based strategies like more restrictive visa policies which will restrict many more legitimate visitors than terrorists. The type of long term and preventive detention that is allowed under Canadian immigration law may be successful in incapacitating terrorists. Nevertheless, many of those detained will eventually be deported from Canada and given the international nature of terrorism and the ability to plan acts of terrorism from foreign lands, it is not clear that deflection or deportation of suspected terrorists to other countries will actually increase security. It may simply displace the problem.

Reliance on military force such as Canada's participation in the war against the Taliban regime in Afghanistan may also not decrease the risk of terrorism. To be sure, the disposition of state sponsors of terrorism may disrupt terrorist networks such as Al Qaeda but it may also disperse them and send them deeper underground. The use of the military will also result in loss of innocent lives and may have costs in terms of human rights. Canadian troops in Afghanistan participated in the transfer of some prisoners to Guantanamo Bay where they have been kept in what a respected British judge has criticized as a "legal black hole" without access to habeas corpus, treatment as prisoners of war, and facing possible trial by military tribunals. A Canadian citizen, Omar Khadr, is detained at Guantanamo Bay and alleged to have killed an American medic in combat on the Afghanistan/Pakistan border. Should he be charged with that killing he may face the death penalty even though he was 16 years of age at the time of the alleged offence.

What then ought Canada and other countries do to respond to the very real risk of terrorism? Clearly doing nothing is not an option because an act of biological, chemical or nuclear terrorism or the poisoning of food or water supplies in the United States would very soon affect Canada. In my view, Canada ought to have placed greater emphasis on administrative and environment controls that would help secure sites and substances that can be used to commit acts of terrorism. Some of these controls, including increased protection and surveillance of critical infrastructure such as pipelines and increased control over dangerous chemical materials are included in the *Public Safety Act* which has been introduced three times in Parliament but still has not yet been enacted. It is unfortunate in my view that the *ATA* that defines as crimes of terrorism much that was already illegal before September 11 was a priority while administrative measures to reduce the damage that could be caused by terrorists were not. At the same time, the criminal law approach taken in *ATA* as well as the immigration law approach was partially encouraged by the terms of United Nations Security Council Resolution 1373 which specifically called for criminalization of financing and other forms of participation in terrorism and better border controls.

A more administrative and environmental approach designed to prevent terrorists from gaining access to substances whether they be airplanes, explosives, and chemical or nuclear materials might have a number of benefits. In some ways these are softer strategies that do not rely upon punishment and detention to the same extent as criminal and immigration law. They also may work a fail-safe should it prove impossible to deter or identify or incapacitate all of the terrorists. Measures such as more effective screening of all passengers and baggage on aircraft through technology may also limit the damage to values such as liberty, privacy and equality. It is better to screen all passengers with technology designed to respect privacy than to profile only a few passengers because they are perceived to be of the same race, religion or national or ethnic origins as some terrorists. Profiling is a strategy that is both over and under inclusive and alienates communities that may assist authorities in identifying terrorists. The Criminal Code should be amended to prevent profiling on prohibited grounds of discrimination while making clear that a known suspect can still be identified on such grounds.

It is also prudent to rely on environmental and all hazards measures such as better airline security and securer cockpits than to rely on increased punishment for crimes committed while hijacking a plane, as the ATA does. Some measures such as better monitoring of public health and the safety of food and water could also provide protections not only against the risks of terrorism but also the risk of diseases and accidental contamination of food and water. Better emergency preparedness may also serve a similar all risk functions as it better prepares society to deal with the effects of not only acts of catastrophic terrorism but a wide range of natural and man-made disasters such as earthquakes and black outs. As the prestigious American National Research Council concluded in a post 9/11 report, we should invest in strategies that will make us safer not only from terrorist attacks, but from disaster, disease and accidents. Such strategies also present less of a risk, both for the targets and for society, of targeting the wrong people.

The Canadian government is recently taken steps towards such a comprehensive all risks approach to public safety. Motivated not only by the risks of terrorism revealed on September 11 but also the SARs crisis, black outs and contamination of food and water, a new government has created a new Ministry of Public Safety and Emergency Preparedness with this new Minister being responsible for chairing a new Cabinet committee on Security, Public Health and Emergencies. This new administrative has the potential to develop a more comprehensive and rational approach to the various risks that Canadians face to their well-being. It could allow for cost effective distribution of limited resources with a premium placed on strategies that protect Canadians not only from terrorism but other harms. At the same time, the new Ministry has traditional responsibilities for policing, security intelligence and new responsibilities for the border and for security aspects of immigration that may allow it to follow the pattern established after September 11 of relying on immigration law to respond to the risks of terrorism. This would allow the detention and deportation of suspected terrorists through procedures that offer less due process protections than even the enhanced criminal law provided by the ATA.



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## 6.0 Martin Rudner, Paterson School of International Affairs, Carleton University

### 6.1 What has been the impact of the Anti-Terrorism Act on Canada?

The Anti-Terrorism Act, which came into force in December, 2001, provided a three pronged response to terrorist threats facing Canada: it enacted a legal definition of terrorism and of specific, terrorism-related activities as criminal offences; it provided for the public designation and outlawing of terrorist groups; and instituted measures designed to better equip intelligence and law enforcement agencies to identify, prosecute, convict and punish terrorist operatives and co-conspirators in Canada. These latter measures included extraordinary powers of preventive detention and to compel testimony in investigative hearings on terrorism. The Act also authorized electronic surveillance of the communications of Canadians suspected of being associated with terrorist groups, and implicitly the monitoring of financial transactions against terrorist financing and money laundering (which was to be made explicit in the Public Safety Act).

An assessment of the impact of the Anti-Terrorism Act should consider the two separate but related aspects of the legislation: its criminal law provisions and its intelligence enabling provisions. (A third aspect of the Act, its provisions regarding the disclosure of official and secret information, seems to have little if any direct relevance to the counter-terrorism effort, as such.) The statute also included provisions for the non-disclosure of sensitive evidence in judicial proceedings, thereby amending existing rules of evidence so as to meet the standards of the Stinchcombe decision of the Supreme Court of Canada.

The impact of the criminal law and enabling provisions of the Anti-Terrorism Act may be evaluated on two levels of impact analysis: the specific effects of the legislation on the detection, arrest, prosecution and punishment of terrorists; and its wider ranging repercussions for public safety and national security. To date there have been no actual prosecutions of terrorists under the Act, neither have there been any reported preventive detentions or elicitation of compulsory testimony. However, that does not imply that the criminal law provisions of the Anti-Terrorist Act have not been of value and effective as part of the legislative armoury deployed to combat terrorism in this country. Based on the experience of other jurisdictions, the availability of strong legal instruments gives investigators and prosecutors important leverage for persuading terrorist suspects to open up, enabling them to elicit information in return for more lenient treatment. The new array of measures available under the Anti-Terrorism Act furnishes the authorities with lawful means of leverage to penetrate the tightly knit, clandestine cells that are characteristic of contemporary Islamicist terrorist networks.

It is pertinent to note in this regard that the effectiveness of anti-terrorism legislation ought not to be measured solely by the incidence of prosecution and convictions. Canada's Anti-Terrorism Act is also designed and intended to enhance the lawful collection of intelligence on terrorist threats. The intelligence approach to counter-terrorism differs from that of law enforcement.

Intelligence does not seek to directly achieve arrests, prosecutions and punishment. Its primary functions are to identify and provide warning of threats, and to garner information on those individuals and groups who threaten our national security and public safety. Intelligence is therefore predisposed towards the continued monitoring of suspected threats rather than the immediate arrest and prosecution of suspects, which is the remit of law enforcement agencies. Hence the impact of the Act in enabling an enhanced intelligence capability against terrorist threats has to be assessed in its own terms, in the lawful gathering of high value information about threats to public safety and national security, rather than merely by reference to the prosecutorial record.

The Anti-Terrorism Act has significantly enhanced the operational capacity of the intelligence services. In particular, its enabling provisions for the collection of communications intelligence on terrorist suspects and groups, and for the monitoring of financial transactions, have bolstered up intelligence capabilities to discern the intentions and operational plans of terrorist cells and networks. The interception of terrorist communications and the tracking of terrorist financing have reportedly yielded high value intelligence resulting in the disruption of terrorist activities and plans in this country and abroad.

It also seems clear that the Anti-Terrorism Act has had a powerful deterrent effect on individuals and groups in this country that may otherwise have identified with the now-banned terrorist organizations. The Act outlawed incitement, recruitment, fund-raising, money laundering, and participation in terrorist activities. While clandestine actions doubtless continue in Canada, as elsewhere, being illegal may have weakened the propensity of people in the relevant communities from supporting and encouraging these organizations and behaviours. As a result, the resonance of the terrorist cause in the Canadian communities may have diminished. Likewise, those elements in the affected communities who share the view that terrorism constitutes a threat to the moderate mainstream of Islam may derive support and encouragement for their own resistance to extremist subversion of communal institutions.

The dichotomy between the functions of intelligence and law enforcement can sometimes impede the coordinated, coherent counter-terrorism effort envisaged in the legislation. As we have noted, intelligence is traditionally, even obsessively, guarded about protecting its sources and methods. Intelligence services are usually reluctant to prosecute suspects, for fear of compromising their sources and methods in open court. Indeed, they have traditionally preferred to allow suspects to avoid trial and punishment rather than disclose sensitive evidence. Knowing this, terrorism suspects can sometimes be cagey about talking. Law enforcement, for its part, seeks to bring offenders to trial, and must always comply with the rules of evidence and judicial procedures. There can be friction between these two distinct missions, and the resultant tensions between the differing functions of Intelligence and Law Enforcement can impede cooperation and create chinks in the national security armour. The price of failure can be high: an intelligence failure may allow a perilous threat to materialize; anything that jeopardizes the gathering of admissible evidence can compromise the prosecution of terrorists under law, while any deficiency in law enforcement could culminate in a security failure to prevent devastating terrorist acts.



## 6.2 What emerging trends in terrorism do you foresee and what threats do they pose to Canada? In discussing these trends and threats, please describe what you consider terrorism to be.

Terrorism denotes militant acts of violence on the part of state and non-state organizations directed at individuals and institutions, violence calculated to cause death, mass fear and public demoralization. Terrorist violence is conducted by militant civilian cadres, as distinct from organized military forces, who are not subject to the conventional laws of war. Unlike criminal violence, the aim of terrorism is to advance a radical political or ideological agenda.

A distinction exists between the global and domestic dimensions of terrorism. Global terrorism, like that manifested by Al-Qaeda and its affiliated network, is international in its reach and targets institutions and individuals of many nationalities in pursuit of transcendental ideological or religious objectives. Domestic terrorism, by way of contrast, targets institutions and people of a particular nationality. It seeks to force changes of government policy, or of a regime, or even of the state itself. The presence in Canada of elements belonging to terrorist organizations like the Liberation Tigers of Tamil Eelam (LTTE), Hamas, or the Armed Islamic Group (GIA) represent overseas arms of domestic terrorism in those other countries, Sri Lanka, Israel/Palestine and Algeria, respectively. The analysis that follows will relate primarily to contemporary global terrorism, as manifest in Sunni Islamic militant networks identified with Al-Qaeda, whose network of cells is widely dispersed across Canada and the world. Indeed, Al-Qaeda publicly declared war on crusaders (*i.e.* Western Christian societies) and Jews, and specifically listed Canada among its targeted countries.

Al-Qaeda's public letter to America of November, 2002, defined the ultimate objective of its terror explicitly as the forced Islamization of the United States of America, which would in turn bring all other countries, Western as well as Muslim, under the sacralized dominion of a globalized, triumphant, militant Islam. The declared targets of its militant *Jihad* encompass, specifically, political democracy, secular values, liberal social principles, the State of Israel, and other perceived enemies of Islam in the Balkans, Chechnya, Kashmir, Southeast Asia and elsewhere. Al-Qaeda's major operational assets consist of a widely-dispersed network of loosely structured affiliates and tightly knit cells embedded in local Muslim communities in many countries across Europe, Asia, Africa, Australia and New Zealand, and the Americas. These affiliates and cells are capable of recruiting and deploying thousands of trained, committed operatives almost anywhere in the world, including Canada.

Islamic terrorist groups have successfully lured well-educated professionals, including medical doctors, engineers, lecturers and other middle-class professionals into militant *Jihadist* circles. These professionals provided intellectual depth and leadership to terrorist cells and networks. Although some of these individuals studied at prestigious universities in the West, they seem to have put their expertise at the disposal of terrorist organizations to enhance the destructiveness of planned attacks. Recently, there is evidence that Al-Qaeda is seeking to recruit disaffected individuals of European and North American (non-Arab, non-Muslim) origin, including females, blacks, married people, homeowners, in a bid to avoid stereotypical profiles and thus evade detection. Al-Qaeda has demonstrated considerable resourcefulness in creating a fresh cadre,

such as Canadians, who could more readily enter and sojourn in the United States or other targeted countries.

International terrorist organizations like Al-Qaeda and its affiliates maintain a presence in Canada. This Canadian presence gives them local facilities for incitement and propaganda for their cause, and resident cells for recruiting operatives and fighters, raising and transferring funds, fabricating false identities and document forgery, procuring weaponry and material, establishing safe houses and sleeper cells for future operations, and supporting infiltration across the border to the United States or operations overseas. Al-Qaeda has recruited young Canadians from Muslim communities for combat with the Taliban in Afghanistan and for terrorist operations in South and Southeast Asia, Arab countries, Israel, the United States, and elsewhere. Local cells have resorted to criminal activities, fraud and people smuggling in support of their parent terrorist networks. Nor has Canada itself been exempt from terrorist targeting: terrorist cells affiliated with Al-Qaeda have plotted attacks in Canada and against Canadian individuals, groups and institutions. Their ostensible aim was to intimidate, wreak vengeance, or gain public attention for their cause.

The counter-terrorism coalition led by the United States has captured or eliminated most of the top echelon Al-Qaeda leadership, arrested some 3,000 operatives in more than 100 countries, frozen some US\$120 million in its financial accounts, and closed 50 training camps in Afghanistan. Nevertheless, the militant terrorist network remains intact and operational across the world. Indeed, Al-Qaeda is known to adapt and rework its global terror *Jihad* so as to gainsay its successes and rebound from its defeats. As countries facing terrorist threats adopted preventive and pre-emptive measures to harden themselves against attack, Al-Qaeda began to shift the vector of its onslaught to soft targets in places like Indonesia, Kenya, Morocco, Pakistan, the Philippines, Saudi Arabia, Thailand, and Turkey. With hitherto complacent governments becoming all the more vigilant, Al-Qaeda is likely to redirect its attacks towards other, even softer and vulnerable targets. At the same time, Al-Qaeda's tactics seem to have accentuated economic targets. As well as causing horrendous casualties, Al-Qaeda's terrorist onslaught has wrought a terrible financial toll onto its target countries in terms of physical destruction, capital losses, market upheaval, business disruption, and the high recurrent cost of protection. Infrastructure, civil aviation and trade have been particularly targeted, and the resulting economic damage has been massively costly and long lasting.

Both these trends in global terrorism, towards the targeting of softer jurisdictions and economic interests, suggest that Canada may become increasingly vulnerable and at risk. Given its openness and relative complacency, its proximity to the United States, and its close economic integration into a North American market, especially in high-value energy and transportation infrastructure, Canada looms as an assailable target in Al-Qaeda sights.

One of the more alarming aspects of the global terrorist onslaught is the evidence of Al-Qaeda attempts to deploy radiological, chemical and biological weapons of mass destruction (WMD). Terrorist plotters affiliated with Al-Qaeda and suspected of conspiring to launch biological, chemical or radiological attacks have been caught in the US, UK, and Italy. There is cause for concern that Canada may be vulnerable both as locale for illicit terrorist access to radiological, chemical or biological technologies and as a possible target for WMD attack. A Canadian



charitable front for Al-Qaeda, the now-closed Benevolence International Fund, was suspected of having been linked to attempts to procure nuclear and chemical weaponry. There is a danger that terrorists seeking WMD capability may dispatch students or researchers to enroll in universities or join research institutions in countries like Canada in order to gain access to dual-use chemical, biological, radiological or nuclear technologies and weapons-related expertise. This could cost Canadians dearly.

### **6.3 How should our country respond to these trends and threats? Please feel free to include measures at any level, such as social, economic, political, or legal or a combination of these levels.**

The evolving threat of global terrorism cannot be treated purely and simply as a matter of law enforcement. Rather, global terrorism must be fought as a form of warfare that is asymmetric warfare. Canada's response to the aforementioned threats and trends must deploy all the instruments of an asymmetric warfare effort, including an effectual legislative armoury, proactive intelligence collection, vigilant law enforcement, critical infrastructure protection, and government policies designed to promote and defend the values and interests of a Canadian community engaged in a new and unfamiliar situation of counter-terrorism conflict. The following list of priority concerns addresses a set of inter-related issues that in my opinion ought to be considered in Canada's response to the global terrorist threat of asymmetric warfare.

#### **(A) Public Confidence Building**

It is incumbent upon Government to reinforce the confidence of the general public in the capacity of the authorities to protect Canadians and secure the national interest against the threat of global terrorism. For any democracy facing terrorist threats, flagging public confidence in national security matters can complicate and even impede the exercise of lawful authority under anti-terrorism legislation and the administration of justice. The public must have confidence in the capacity of its Government to respond effectively and appropriately to the threats posed by contemporary global terrorism in a manner consistent with Canadian constitutional values and law.

A confidence building effort would serve to (a) familiarize Canadians with the reality of the terrorist threat to this country and its interests; (b) promote knowledge about Canada's Security and Intelligence Community, their policy and review mechanisms, and their lawful functions; (c) and encourage a public discourse about the principles and issues of national security, human rights and democracy. Various outreach mechanisms to address these matters already exist in Canadian society in academe, in non-governmental organizations and institutions, in the legal profession, and through the media. What is called for is a Government initiative to introduce policies and programs to access these mechanisms to help build public knowledge, and therefore confidence, in the counter-terrorism effort.

Public confidence in the Security and Intelligence Community, and in its counter-terrorism effort, depends very much on an assurance of public accountability for the secret intelligence agencies and law enforcement services. In the intelligence domain, accountability is best assured by the existence of appropriate mechanisms for oversight and review. Governments in

democracies have introduced various dimensions of intelligence oversight, executive, financial, judicial, and legislative. In the Canadian experience, intelligence review agencies like the Security Intelligence Review Committee (SIRC), CSIS Inspector General, and CSE Commissioner have contributed to public accountability through their respective, specially focused review functions. However, Parliamentary oversight in Canada has been relatively weak and segmented, certainly by way of comparison to other Westminster-based systems like those of the United Kingdom or Australia. In so far as terrorist asymmetric warfare may call for counter-terrorism actions that could touch on sensitive cultural, social, or human rights concerns, it is important for public confidence that Parliamentary oversight of the Security and Intelligence Community not just be done, but be seen to be done effectively, in the overall interest of national security and democratic governance.

#### **(B) Protect the Arab/Muslim Diaspora**

Canada's Arab and wider Muslim communities are especially vulnerable to the Global terrorist onslaught. Not only do Islamicist terrorist groups and cells embed themselves in their otherwise peaceable communities, but militant recruitment, fund-raising, incitement, and operational activities serve to radicalize community institutions and subvert the moderate communal leadership. Canada's Arab and Muslim religious and educational institutions depend overwhelmingly on foreign sources, mainly on Saudi Arabia and Pakistan, for clergy, teachers, textbooks, theological tracts, and even finance. This dependency situation makes for a vulnerable diaspora that must be protected against extraneous malevolent influences, which can threaten Canadian multicultural values, public safety and national security.

Many if not most Arab and Muslim religious and educational institutions in this country and elsewhere have been financed largely by Islamic charitable organizations based in Saudi Arabia. An estimated US\$70 billion in Saudi funding was disbursed across the Muslim and Western world to set up and run mosques, schools and related communal institutions. The leading charitable donors, the International Islamic Relief Organization, Muslim World League, World Association of Muslim Youth, and Al-Haramain Islamic Foundation, tended to use their financial largesse to promote Saudi Arabia's stringent Wahhabi form of Islam. Saudi funding brought with it teachers, clerics and materials that infused diaspora mosques, schools, publications and other communal institutions with an extremist, intolerant and militant Islamic purview, characteristic of the Wahhabi creed. Certain of these charities, and most notoriously the International Islamic Relief Organization, Muslim World League and Al-Haramain, were also suspected of funnelling money, arms and personnel to Al-Qaeda and affiliated terrorist organizations. In the aftermath of last year's terrorist attacks in Saudi Arabia itself, the Saudi government has clamped down on Islamic charities and began to exercise tighter controls on disbursements. Be that as it may, it behoves the Canadian authorities to continue exercising diligence in monitoring financial flows, personnel movements, provocative activities and incitement, so as to protect the integrity and probity of Arab and Muslim religious, educational and communal institutions in this country.





### (C) Curbing Terrorist Recruitment

Islamic terrorist organizations have recruited Muslim Canadians for operations in this country and abroad. A heightened vigilance must be sustained to monitor and forestall terrorist recruitment in Canada from among the Arab/Muslim communities and also others. It is incumbent upon the Security and Intelligence Community to undertake lawful surveillance and conduct investigations to detect the subversion of our educational, religious and other institutions, and to prevent the recruitment and dispatch of Canadians for terrorist missions. Although signals intelligence (SIGINT) and financial intelligence may be useful tools to discern communications and financial flows, the task of penetrating tightly knit, clandestine Islamic terrorist cells requires a human source intelligence (HUMINT) capability to infiltrate and monitor clandestine activities, including recruitment and operational planning.

Careful controls on identity documents and passports and trans-border movements can also help militate against the mobilization and deployment of recruits by terror networks.

### (D) Closing Chinks in our Armour

Legal and operational steps need to be taken to close any chinks in our counter-terrorist armour. In view of recent trends on the part of Global terrorist networks to widen recruitment and to acquire Chemical, Biological, Radiological and Nuclear (CBRN) capability, it is imperative that urgent attention be directed at making Canada and its laboratories less vulnerable to infiltration by terrorist recruits and trainees. While stricter border controls have already been instituted under existing legislation, it has become clear that these can be bypassed by applicants to fraudulent educational institutions, like the so-called visa schools. Once in Canada, there exists no security procedure to monitor student transfers to other institutions, or access to university and other research laboratories, even those working on dual-use CBRN technologies. Unlike in the United Kingdom, for example, Canada's intelligence authorities currently have no mechanism to alert universities and laboratories about otherwise qualified applicants whose access to sensitive CBRN technologies could pose a threat. The vulnerability is great, and the risks potentially devastating. Urgent action must be taken to equip the intelligence and law enforcement authorities with the lawful means to respond appropriately, in cooperation with the educational institutions, to threats in these domains.

### (E) Hardening of Prospective Targets

Global terrorism constitutes an ongoing threat to Canada and its interests. Canada was declared a target by Al-Qaeda, and remains targeted still. Any assessment that Canadians are relaxing their guard or becoming complacent is likely to elevate this country's vulnerability to attack. Softer country targets, notably those with vulnerable economic and infrastructure assets, and in particular those sectors and institutions that are closely integrated with the United States, remain especially at risk.

The hardening of target countries requires, first and foremost, a well-crafted legislative armoury that addresses the scope and extent of the terrorist threat, coupled with a broad spectrum of intelligence and law enforcement capabilities. To be effective, their counter-terrorism efforts

must be backed by political will and supported by a security culture cognizant of the danger posed by terrorism to our democratic values, and committed to defending these values in a situation of asymmetric conflict. The elements of hardening include a proactive intelligence effort to penetrate terrorist cells and networks, intercept their communications, disrupt their finances, monitor clandestine activities, defeat illicit operations, actively protect critical infrastructure, and bring violators to justice. It is noteworthy that targeted countries that have undergone a counter-terrorism hardening since September 11th, including the United States and United Kingdom, have managed, so far, to avert further terrorist strikes in their respective jurisdictions.

The hardening of prospective targets has to be international as well as domestic. Global terrorism recognizes no territorial boundaries, and its networks are veritably trans-national. Al-Qaeda operations, for example, tend to be globalized in scope: terrorist funds raised in one jurisdiction are laundered and banked in another, usually in the United Arab Emirates; operatives recruited in a third country may be trained in a fourth, like Taliban Afghanistan or Somalia, and deployed in another, where weaponry and explosives have been acquired; meanwhile, operational planning can take place in yet another place, in Southeast Asia or Europe, to command attacks on the targeted country.

This globalized threat environment creates an urgent requirement for the systematic sharing of pertinent intelligence information on terrorist threats among all components of Canada's Security and Intelligence Community, as well as with allies and partners in the counter-terrorism coalition. Canada's legislation on intelligence sharing is still vaguely defined; the relevant provisions of Bill C-17 (formerly C-55), the Public Safety Act, have not (yet) been enacted into law.

Intelligence sharing is a vital element in counter-terrorism, but is also a sensitive issue as regards privacy rights, civil liberties, and the rights of Canadian citizens traveling abroad. Precisely because of the need to strike an appropriate balance between these discrete concerns, it is important that intelligence sharing within the Security and Intelligence Community, at least, be put on a sound statutory footing that reflects accepted principles and society's requirements.

### 6.3.1 Concluding Comments

The asymmetric warfare currently being waged against Global terrorist networks has catapulted Canada's Security and Intelligence Community to the forefront of our counter-terrorism effort. Security intelligence, vital for effective counter-terrorism, is necessarily secretive and intrusive into society. However, these secret and intrusive intelligence collection services can be, and are, managed lawfully and accountably in a manner consistent with statute, government policy and democratic values. A balance must be obtained between the protection of Canada's democratic values, and the upholding of those values in our laws, policies, and conduct.

Canada is not alone in facing the asymmetric threats of global terrorism. For the United States and other allies like Great Britain or Australia, national security represents a predominant concern of Government and public, trumping all other matters. Even if Canada sees itself as a follower and not a leader in the international counter-terrorism campaign, this country cannot



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allow itself to be targeted, neither can we tolerate having our territory, people and institutions become staging grounds for terror attacks on neighbours, allies and friends. Surely our neighbours and friends will not simply stand by passively should Canada become a window of vulnerability to their national security and public safety interests. They will doubtless act to protect themselves, even if those actions cause collateral damage to a wide spectrum of Canadian interests, economic and social. We did not invite terrorism to our land, terrorism has come to us: we must cope and deal effectively with these threats in the interest of our national security, public safety and democratic values. Either we do it ourselves, or it will be done to us.





## 7.0 Lorne Sossin, Faculty of Law, University of Toronto

### 7.1 What has been the impact of the Anti-Terrorism Act on Canada?

In my view, the impact of this Act has not been significant in terms of enforcement. Recourse to the Act has been marginal. This cuts both ways. Critics who said it was unnecessary largely have been vindicated by this fact, but so have supporters who said it would not be abused or applied in inappropriate settings. If the impact is not to be found in enforcement, where is it to be found? The answer, I believe, is in the debate surrounding the passage of the Act.

This debate revealed at least three important insights which, taken together, I suggest constitute the real impact of the *Anti-Terrorism Act*.

First, the debate established that there is no consensus on the meaning of terrorism. The Supreme Court adopted a consensus position drawn from international law sources in its definition of the term in *Suresh v. Canada* (2002) (in deciding that the reference to "terrorist" in s.19 of the *Immigration Act* was not unconstitutionally vague), but this was a very different definition than that adopted under the *Anti-Terrorism Act*. Some scholars see terrorism as fundamentally non-state based violence deployed against civilian populations to further political causes. The image of rogue organizations hijacking planes in the 1970s, the Israeli's killed in the Munich Olympics, the suicide bombers in Israel, Afghanistan and Iraq and most of all the perpetrators of the attacks on September 11, 2001 epitomize this image. For others, however, state sponsored terror is the archetype, and the role of Libya, Iran and Iraq in funding and organizing terrorist campaigns is emphasized. Finally, to many sovereign states, internal organizations seeking autonomy or secession by violent means are labelled as terrorists, and examples of this range from the violence in Chechnya to Sri Lanka. The point is that the terms "terrorist" and "terrorism" have no objective or clinical meaning. Distinguishing between Nelson Mandela the freedom fighter and Nelson Mandela the terrorist is a matter of perspective and conviction, not statutory interpretation. Infusing these terms with meaning is more a matter of political preference and social/historical context than legal criteria.

Second, the *Act* posited that providing less due process in investigations involving suspected terrorists would lead to more effective means to combat terrorism (leaving aside the concern noted above about the scope of these terms). The debate surrounding the *Act* reflected fundamental scepticism regarding this claim. Procedure not only guarantees a measure of transparency and accountability for the exercise of state authority, which leads to fewer arbitrary or discriminatory acts, it also minimizes the risk of error. If the subject of an investigation into terrorist activity has an opportunity to know the case against them, and refute it in a meaningful way, the likelihood to action taken on poor intelligence, false identifications or mistakes is reduced. There has yet to be a compelling argument put forward to justify the limiting of the review of ministerial certificates or curtailing the potential for parties subject to investigations to be given meaningful opportunity to refute the evidence against them.

Third, the *Act* posited that the threat of terrorism justified curtailing civil liberties. The government's justification of its trade-off between enhanced investigative and detention powers

and the loss of civil liberties and privacy rights focused on its "*Charter*-proofing" of the Act. However, the debate surrounding the Act made clear that whether or not it would survive a *Charter* was beside the point. To a significant majority of observers (at least by my count), the very fact that countries such as Canada showed such readiness to jettison fundamental civil liberties (e.g. the authorization of preventative detention) in the face of terrorist threats reflected an abnegation of the very values stand so starkly opposed to the logic of terrorism (i.e., The rule of law, etc). The *Anti-Terrorism Act*, in other words, represented an admission of defeat in the "war against terrorism".

**7.2 What emerging trends in terrorism do you foresee and what threats do they pose to Canada? In discussing these trends and threats, please describe what you consider terrorism to be.**

In light of the comments above relating to the contested nature of the terms "terrorist" and "terrorism", I adopt a working definition of terrorism which is admittedly subjective and proceeds by way of analogy to concrete settings rather than by way of abstract categories. I take terrorism to indicate violence by state or non-state parties, directed more or less indiscriminately at particular populations, intended to achieve particular political goals (e.g., the decision to grant autonomy or sovereignty to a region, or to remove troops or settlements from a region, or to change a secular system of government to a religious system, etc.).

The emerging trend, from my vantage, is an emphasis on less organized and more diffuse forms of terrorist activity in the wake of the disruption of terrorist networks during the past two years. Canada's liberal immigration and refugee policies, its geography, its cultural, ethnic, linguistic and religious make-up and its multicultural urban area all may contribute to making our country vulnerable to potential infiltration by terrorist groups. However, I see no particular, increased threat to Canada as a result of the current trend (with the exception of the increased, direct threat to Canadian troops serving abroad in conflict regions such as Afghanistan).

**7.3 How should our country respond to these trends and threats? Please feel free to include measures at any level, such as social, economic, political, or legal or a combination of these levels.**

I believe the threat of terrorism to be complex and therefore to call for multi-faceted responses. This is not a one-dimensional problem. Below I identify a range of strategies, which I believe reflect appropriate responses to this problem:

- 1) The view that poverty and despair breed terrorism is not always true (consider the oft-cited fact that the 9/11 hijackers were mostly middle-class), but it is true enough to indicate that any anti-terrorist strategy must confront root causes. This means giving careful thought to our policy of foreign aid and its goals. While Canada, with its limited resources, cannot make a difference everywhere, it can make a significant difference in targeted areas with focused programs.
- 2) Anti-terrorism measures at border-crossings, airports, etc., reflected a crude profiling of potential threat indicators. Some people were taken off planes because



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they wore a turban and had brown skin, other officials singled out either Muslims or Arabs or both for heightened scrutiny. Profiling is not necessarily undesirable when the criteria are objective and reasonably transparent. For example, to single out people for scrutiny who travel on one-way tickets for which they paid cash is not odious but to single out all Arabs or foreign nationals from particular countries is. Training, the transmission of guidelines, effective supervision and legal safeguards, etc., are areas where coherence in profiling can be enhanced and the risk of unfair or arbitrary mistreatment minimized.

- 3) Cooperation with foreign governments at all levels of law enforcement and national security intelligence is a key facet of combating terrorism. This already has been a priority in government policy both before and after 9/11, but the Arar incident reveals significant uncertainty as to how this actually plays out both between different branches of the Canadian government and between Canadian and foreign governments. The public inquiry into this incident is a step in the right direction, but of course inquiries have no power to change or make more accountable how the sharing of national security information with other governments takes place. There will need to be a political, diplomatic and possibly a legal response in addition to receiving the recommendations contained in the report following the inquiry.
- 4) Rather than send the message contained in the *Anti-Terrorism Act* which is that procedural fairness, civil liberties and privacy rights are "expendable" in the interest of national security, law reform should pursue precisely the opposite terrain. The question ought to be: how best can the exercise of executive authority in the interests of national security be monitored, constrained and supervised to ensure it is carried out according to the rule of law and in a fashion consistent with the fundamental values of Canadian society? The track record of unbridled executive authority in Canada is not a happy one. Some of the darkest stains on Canada's record (e.g., the internment of Japanese Canadians, etc.) resulted from excessive responses to perceived external threats to national security. Measures such as the *Anti-Terrorism Act* should be viewed as cautionary tales.







## 8.0 James Stribopoulos, Faculty of Law, University of Alberta

### 8.1 *What has been the impact of the Anti-Terrorism Act on Canada?*

In the fall of 2001, when Justice Minister Anne McLellan tabled Bill C-36 for second reading in the House of Commons, she took the opportunity to explain the Government's reasons for introducing this legislation. McLellan noted that the events of September 11 "challenged Canadians' sense of safety and security and it is *this* that we must address as our first priority" (Hansard, Oct. 16/01). From the outset, then, redressing Canadians collective sense of "insecurity" in the wake of September 11 was acknowledged as a fundamental objective behind the *Anti-Terrorism Act*.

In response to the question posed – what has been the impact of the *Anti-Terrorism Act* on Canada – I intend to briefly consider whether the Act has achieved the primary goal that provided its inspiration: namely, increasing Canadians collective sense of security. I focus on this discrete issue for a couple of reasons. First, although a number of entities have now been designated "terrorists groups", to date (at least to my knowledge) there has not been a single prosecution with respect to any of the substantive offences created by the Act. Second, the most controversial investigative powers introduced by Bill C-36, investigative hearings (s. 83.28 & 83.29) and preventative arrests (s. 83.3), have not yet been used by law enforcement (See *The Anti-Terrorism Act, Annual Report Concerning Investigative Hearings and Recognizance with Conditions, 2001-2002*, available on line at <http://canada.justice.gc.ca/en/terrorism/annualreport.html>). The report for 2003 is still not available. That said, the only case from 2003 that I am aware of involves the Air India prosecution and an order compelling a mystery witness in that case to testify at an investigative hearing. That witness has challenged the constitutionality of s. 83.28 before the Supreme Court of Canada, which has stayed the order pending its judgement (see *In the Matter of an Application Under s. 83.28 of the Criminal Code*, S.C.C. Bulletin, December 12, 2003).

I do not mean to suggest that simply because law enforcement has not formally relied upon the special investigative powers conferred, or the substantive offences created, by the *Anti-Terrorism Act*, that the Act has not had any impact. To the contrary, I think the Act has had a considerable effect upon both the approach taken by Canadian law enforcement towards their functions in the post 9-11 world, and on the perception of Canadians regarding their sense of security. My thesis, however, is that in both respects its impact has been less than positive. Let me begin by placing my concerns in context.

In the Fall of 2001, when the Government introduced Bill C-36 in the House of Commons, Anne McLellan indicated: "Canadians can rest assured that we kept in mind the rights and freedoms guaranteed in the *Charter* when drafting our proposals" (Hansard, id.). And, as respected legal scholars have acknowledged, McLellan's claim that the *Anti-Terrorism Act* accords with the Supreme Court's jurisprudence regarding the minimum standards prescribed by the *Charter* appears to be accurate (see Kent Roach, *September 11: Consequences for Canada* (McGill-Queen's Press: 2003)). As some commentators have noted, compared to the legislation enacted

in other nations, the *Anti-Terrorism Act* represents a restrained response to the threat posed by terrorism (see Stanley A. Cohen, “Safeguards in and Justifications for Canada’s New Anti-Terrorism Act” (2002) 14 Nat’l J. Const. L. 99; David Jenkins, “In Support of Canada’s Anti-Terrorism Act: A Comparison of Canadian, British, and American Anti-Terrorism Law” (2003) 66 Sask. L. Rev. 419). Proponents of the Act have complained that the entire debate surrounding its legitimacy proceeds from a flawed premise. For example, Irwin Cotler has argued that the debate wrongly reduces down to a zero sum analysis that devolves into a misconceived contest between national security versus civil liberties. In his view, what the Act actually involves is “human security legislation” which is designed to fulfill the central promise of the global human rights movement, namely, safeguarding the right to life, liberty and security of the person for everyone (See Irwin Cotler, “Terrorism, Security and Rights: The Dilemma of Democracies” (2002) 14 Nat’l J. Const. L. 13).

The focus of those who support the *Anti-Terrorism Act* is throughout on its express terms. On the surface, the offences and powers it served to create are constitutional. Similarly, compared to the legislation passed in other countries, the Act does seem like a much more even-handed response to the terrorist threat. Finally, given that the Act confers upon law enforcement the tools that are claimed as necessary to apprehend and prosecute terrorists, individuals who are determined to destroy us, one is hard pressed to contest the claim that the Act enhances human security, and in the process our most fundamental of rights (the right to life and security in our persons). Putting these claims in proper perspective, however, requires looking beyond the express terms of the *Anti-Terrorism Act* and considering how it has influenced the behaviour of Canadian law enforcement and, in direct response, the perception of Canadians.

Make no mistake, the enactment of the *Anti-Terrorism Act* signalled the beginning of Canada’s commitment to the “war against terrorism” (McLellan, Hansard, id.). The difficulty with the rhetoric of war, however, is that it is inevitably bottomed upon an “us” versus “them” view of threat posed by terrorism. As George Bush told the world shortly after September 11: in the war against terror, “you are with us or you are with the terrorists”. Professor Stephen Toope has noted the danger inherent in this sort of rhetoric:

If ‘we’ are cast as wholly good and our ‘opponents’ as wholly evil, various consequences flow, almost ineluctably. Most obviously, the enemy is dehumanized. Common humanity is always a casualty of war, but the absolutely evil enemy bears no consideration (Stephen J. Toope, (2002) 65 Sask. L. Rev. 281).

It would be naive to think that those charged with the responsibility of enforcing the *Anti-Terrorism Act* are somehow immune from the rhetoric of war that swept over North America in the aftermath of September 11. The *Anti-Terrorism Act*, like most criminal laws, says very little about what criteria are to be applied in deciding who to target for investigation. Instead, law enforcement has considerable discretion in this regard. Simply because no one has yet been charged with any of the terrorism offences created by Bill C-36, and none of the special investigative powers created by the Act have yet been used, does not mean that law enforcement has not been actively engaged in the investigation of suspected terrorists. It is important to acknowledge that in this war the “them” are invariably Muslim, and predominately Arab. The



definition of “terrorism”, which requires a consideration of the “political, religious, or ideological” (s. 83.01(1)(b)(i)(A)) motivation of a suspect individual or group not only serves to encourage, but also serves to legitimize, the somewhat inevitable focus on Muslims and Arabs. As a result, the risk that members of these groups will be unfairly targeted for investigation is great. To deny this reality regarding the larger impact of the *Anti-Terrorism Act* is to delude ourselves about the truth of the war on terrorism that we are presently waging.

A number of commentators have warned about the potential for racial profiling that has been created by the *Anti-Terrorism Act* (see, for example: Sujit Choudhry & Kent Roach, “Racial and Ethnic Profiling: Statutory Discretion, Constitutional Remedies and Democratic Accountability” (2003) 41 Osgoode Hall L. J. 1; Reem Bahdi, “No Exit: Racial Profiling and Canada’s War Against Terrorism” (2003) 41 Osgoode Hall L. J. 293). Of course, proponents of the Act can take comfort in the absence of any empirical evidence to support such claims. It is important to remember, however, that this is always the refuge of those who deny the existence of profiling practices, whether in conventional criminal law enforcement or in the anti-terrorism context. But the anecdotal evidence is there; if we care to look, and it suggests that the cost of waiting for solid empirical grounds to be concerned may be just too great. As Professor Toope noted in his article:

...I am told by eminently reliable sources that the two immigration detention centres in Montreal, which are normally half-occupied, are full to bursting with people, most of whom fit specific ethnic and religious profiles. One of my own students, a Sikh, has twice been singled out for full body searches at Canadian airports, when no ‘white’ passengers were searched. .... the federally appointed watchdog supervising CSIS recently warned that the ‘rights and liberties of Canadians’ could be trampled upon in the war on terrorism.

In response, proponents of the *Anti-Terrorism Act* can point out that nothing in the express (and seemingly constitutional) terms of the Act licenses racial profiling practices. At the same time, however, critics will note that there is also nothing in the Act to specifically prohibit such tactics (See Choudhry & Roach, *supra*). More generally, the Act also fails to provide any meaningful checks on police practices ostensibly undertaken under its authority. Under the terms of the Act, an investigation (no matter how prolonged and intrusive it might happen to be) that does not culminate in a preventative arrest, an investigative hearing, or formal charges, is shielded from any meaningful review. In effect, in most cases, there will be no opportunity to assess either the targets chosen, or the tactics employed, by law enforcement. Shirley Heafey, Chair of the RCMP Public Complaints Commission, recently complained that under the authority of the *Anti-Terrorism Act* the RCMP derived newfound authority to engage in national-security investigations, while her body was not granted the powers it requires to provide an effective check on such practices (see Carly Weeks, “RCMP Complaints Body Powerless, Chair Says, *Globe and Mail*, January 27, 2004, Pg. A9). Not surprisingly, however, in this new era in which the RCMP is playing a central role in waging the war against terrorism, that organization is “digging in its heels” in opposition to increased civilian oversight (see Jeff Sallott, “Closer Scrutiny of RCMP by Independent Body Urged”, *Globe and Mail*, February 11, 2004, A9). In taking this position the RCMP has noted that increased oversight is unnecessary because “the courts get a chance to review police procedures when criminal cases come to trial” (Id.).

However, in the context of anti-terrorism investigations, as we have seen over the last two years, these cases rarely culminate in criminal charges and a public prosecution before the courts. As a result, absent effective external oversight, violations of civil liberties by Canadian law enforcement officials engaged in fighting terrorism will continue to go largely unchecked.

On a related point, in response to Professor Toope's concerns, supporters of the Act might note that observations about its immigration implications are misplaced. It is indeed true that the *Anti-Terrorism Act* does not authorize the round up and deportation of illegal immigrants. But again, this ignores that the war on terrorism – and the *Anti-Terrorism Act*, which is the centrepiece of that war in Canada – provides the larger backdrop against which immigration officials are acting in exercising their authority under Bill C-11, the *Immigration and Refugee Protection Act*. That Act, introduced in the Spring of 2001, but passed into law in the wake of September 11, “casts a wide-net over non-citizens rendered inadmissible on security grounds, expands the detention power over designated security risks, and reduces access to independent review over Ministerial security decisions” (Audrey Macklin, “Borderline Security” in R. Daniels et al. (eds.), *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill* (Toronto: U of T Press, 2001) 383). It is impossible to disentangle the activities of immigration officials under the *Immigration and Refugee Protection Act* from the activities of law enforcement officials under *Anti-Terrorism Act*, and the importance of both pieces of legislation to the ongoing war against terrorism. Quite simply, when investigative efforts undertaken in the name of enforcing the *Anti-Terrorism Act* come up short of furnishing the necessary evidence for a full blown criminal prosecution, those who are considered “suspect”, but who are non-citizens, will invariably be dealt with under the *Immigration and Refugee Protection Act*. Under that Act, the Government can deport suspected terrorists, and thereby conveniently avoid the onerous procedural and evidentiary requirements of a domestic criminal trial.

Although the concerns outlined above may seem alarmist, they are shared by a majority of the population. Canadians have followed the events of the last two years closely, and what they have seen troubles them greatly. Rather than witnessing the use of the *Anti-Terrorism Act* to ferret out and prosecute terrorists, they have instead watched in horror the ordeal of Maher Arar and his family. The idea that a Canadian citizen could be deported from the United States to face torture in Syria based on “intelligence” supplied by Canadian law enforcement, is something that Canadians find deeply troubling. Although Mr. Arar's case is the most extreme example, Canadians do not view it as an isolated occurrence. The round up last summer, pursuant to immigration security certificates, of nineteen non-citizens who were initially portrayed as a potential “sleeper cell for Al-Qaeda” (a claim that was subsequently admitted to be unjustified) also comes to mind (see Marina Jimenez, “Case of Nineteen Terrorists Unravelling”, *Globe And Mail*, August 20, 2003). There can be little doubt that these events have served to transform Canadians' perceptions about the war against terrorism. Although in the immediate aftermath of September 11 a majority of Canadians polled supported law enforcement officials giving special attention to “individuals of Arabic origins” (Ekos Research Associates, “Security, Sovereignty, and Continentalism: Canadian Perspectives on September 11”, September 27, 2001). Since then, public attitudes appear to have shifted considerably. According to a recent Ipsos-Reid poll, 52 per cent of Canadians agree that Arab-Canadians are being unfairly targeted because of their race (see Colin Freeze, “Majority Says Arar Treated Unjustly, Poll Finds” *Globe and Mail*, February 7, 2004, A4).



Canadians are becoming increasingly concerned that the war on terrorism has resulted in the unfair treatment of ethnic and religious minorities. At the same time, there would appear to be a growing distrust of law enforcement more generally in the wake of a number of other scandals involving Canadian police (see Clifford Krauss, “Misconduct Charges Sully Image of Canadian Police”, *The New York Times*, February 1, 2004). For example, in a poll conducted in January of this year, 38 per cent of *Globe and Mail* readers responded negatively when asked if they trust their local police force. Events in the anti-terrorism context have undoubtedly contributed to this growing fear of official power. For example, the RCMP’s recent reliance on the *Security of Information Act* to secure a warrant to search a journalist’s home, to further an investigation into a document leaked by a “security source” relevant to the Arar case, was widely perceived as an abuse of power and provoked a public outcry (see Graham Fraser, “RCMP Raid Sparks Outrage” *Toronto Star*, January 22, 2004).

An argument could of course be made that an increased fear of law enforcement is a small price to pay for an increased sense of security from terrorism. But polling also reveals that Canadians continue to be quite fearful of terrorists. In that same recent Ipsos-Reid poll in which respondents were questioned about their concerns regarding police profiling practices, 62 per cent of Canadians also responded that they believe terrorists are operating within Canada (see “Majority Says Arar Treated Unjustly, Poll Finds”, supra). This returns us to where we began, and the question of whether the *Anti-Terrorism Act* has achieved its goal of restoring Canadians collective sense of security in the wake of September 11. The answer, in light of recent polling, would appear to be no. Canadians are still quite fearful of terrorism and terrorists. So, in that sense, we are arguably no further along than we were in the immediate aftermath of the terrorists’ attacks of 2001. At the same time, given growing concerns about abuses by law enforcement engaged in the war against terrorism, Canadians are arguably feeling even more insecure than they were two years ago. Today, not only do we fear the terrorists, we also increasingly fear our own law enforcement apparatus. In effect, fears about terrorism from below have been transplanted to equally compelling concerns about institutionalized terror from above (See Oren Gross, “Cutting Down Trees: Law-Making Under The Shadow of Great Calamities” in R. Daniels et al. (eds.), *The Security of Freedom: Essays on Canada’s Anti-Terrorism Bill C-36* (Toronto: U of T Press, 2001) 39).

## 8.2 What emerging trends in terrorism do you foresee and what threats do they pose to Canada? In discussing these trends and threats, please describe what you consider terrorism to be.

For the purposes of my response I will accept the definition of “terrorist activity” now found in s. 83.01(1)(b) of the *Criminal Code*. By design, terrorism defies categorization and prediction. The very object of the enterprise is surprise. To employ varied tactics, to use unexpected operatives, to select disparate targets and geographic locations. All of that said, the one

discernible trend that seems to have emerged since September 11 is to strike so-called “soft” targets. Crashing passenger planes into the World Trade Centre Towers, the Pentagon, and a field in Pennsylvania in September 2001, bombing a nightclub in Bali in October 2002, bombing the English consulate, a bank, and two synagogues in Istanbul in November 2003, a series of bombings in the Philippines in 2002 (many directed at shopping malls).

In light of their goals, the decision of terrorists to focus their efforts on civilian targets is understandable. If your object is to instil fear in a population, the uncertainty created by the sheer randomness of a terrorist attack assists in realizing this end. It is the prospect that terrorists could strike anywhere, at anytime, and against anybody, that makes the threat they pose so terrifying. If terrorists were to restrict their attacks to government targets, the psychological impact on the population would be diminished. In addition, a government target normally carries with it increased risks, given a greater likelihood of security measures and personnel. In contrast, a civilian target is almost always entirely free of any danger of detection and armed resistance. In addition, many non-governmental targets, like office buildings, nightclubs, and shopping centres, carry with them the added incentive of a very high number of potential victims concentrated in one location.

Undoubtedly, like any other nation, Canada is not immune from the threat of terrorism. The Air India bombing taught us that difficult lesson long ago. Today, it should not be forgotten that Canada, like many American allies, is amongst the nations specifically threatened by Osama bin Laden on the tapes that he has purportedly recorded and released since September 11 (See Peter Cheney, “Terrorist Tapes Name Canada”, *Globe and Mail*, July 15, 2002). As a result, it would be naive to ignore the danger that terrorists might choose to attack Canadian targets abroad, or even here at home. It would seem, however, that the threat is probably greatest abroad. I say this because I believe that if terrorists actually manage to make their way to Canada, their preference, assuming that they are able to cross the border, would in all likelihood be an American target. I think the case of Ahmed Ressam, the so-called “Millennium Bomber”, best illustrates this point. As a result, I think Canada’s vulnerability is greatest overseas. If terrorists ultimately become focussed on harming Canada, I suspect that one of our embassies or consulates will prove the preferred target.

All of that said, if our experience with terrorism over the last two-and-one-half years has taught us anything, it is that the behaviour of terrorists cannot be accurately predicted. The bitter lesson of September 11 is that terrorists are capable of great ingenuity in conceiving of ways by which to destroy us. Prior to the attacks on the World Trade Centre and the Pentagon, the idea of crashing commercial airliners into buildings was completely unimaginable, even to those writing Hollywood screenplays. The larger lesson from this experience is that we should expect to be shocked again in future, to see attacks that are entirely unprecedented in both their method and their target. As we go forward, there is very little about terrorism that we can meaningfully predict, other than that we are destined to see more of it in future. As Hannah Arendt noted:

It is in the very nature of things human that every act that has once made its appearance and has been recorded in history of mankind stays with mankind as a potentially long after its actuality has become a thing of the past. No punishment has ever possessed enough power of deterrence to prevent the commission of



crimes. On the contrary, whatever the punishment, once a specific crime has appeared for the first time, its reappearance is more likely than its initial emergence could ever have been (Hannah Arendt, *Eichman in Jerusalem: A Report on the Banality of Evil* (Markham: Penguin Books, 1977) at 273).

### 8.3 How should our country respond to these trends and threats? Please feel free to include measures at any level, such as social, economic, political, or legal or a combination of these levels.

The trend in terrorism toward striking “soft” targets increases our vulnerability, and makes our potential exposure so vast that it is nearly impossible to talk of reducing the threat without also directly addressing its causes. There is, however, very little consensus on what in fact causes terrorism, and therefore how to go about stopping it.

In one camp, for example, are people like Alan Dershowitz, who see terrorism as a rational, goal-seeking behaviour. In Dershowitz’s view, terrorism has worked because we in the West have encouraged it. In order for terrorism to be eradicated, he claims that we must change how we respond to it. He argues that we need to adjust our international and domestic policies and practices. Principally, we must stop rewarding terrorism and ensure that it carries significant disincentives. In effect, he argues that a disciplined and unrelenting zero tolerance approach, if employed consistently over time, will serve to deter and eventually eradicate terrorism. (See Alan Dershowitz, *Why Terrorism Works: Understanding the Threat, Responding to the Challenge* (New Haven: Yale University Press, 2002)). In effect, Dershowitz offers us an approach that promises continued confrontation, with a promise of some distant final victory. Since September 11, the United States has committed itself to this war-paradigm in dealing with the threat of terrorism.

A competing perspective comes from those who speak of the “root” causes of terrorism. This camp argues that understanding what causes of terrorism requires coming to terms with the larger implications of globalization. Most importantly, the increased polarization between the developed and the developing world. On this view, terrorism can be traced back to the economic and cultural alienation of developing nations that have been left behind by the globalization movement. This is the environment in which extremism will take root, gain momentum, and in time, transform into terrorist activity. This view of terrorism is controversial in the West, especially in North America. For example, when former Prime Minister Chrétien made the connection between terrorism and global disparities in wealth during an interview, he was strongly criticized both in Canada and the United States for blaming the victim (See S. McCarthy, “Fox Hounds P.M. Over Remarks”, *Globe and Mail*, September 13, 2002; T. Nichols, “Chrétien’s State of Denial Is Dangerous” *National Post*, September 25, 2002; R. Fife, “Chrétien Soft on Terrorism, Wall Street Journal Readers Told”, *National Post*, September 27, 2002).

Sound observations about terrorism have been made by those in both camps. As is often the case in life, the truth would seem to be somewhere between the extremes of both perspectives. As

Professor Toope has perceptively noted,

... I do not subscribe to a facile 'root causes' argument that would seek to 'explain' terrorism with reference to the various good reasons that diverse people have to feel angry and frustrated. Terrorism is wholly immoral and unjustifiable. My point is rather that there are many reasons for various people around the globe to hate some of what America and its Western allies stand for. We must somehow come to understand the sources of that hate, and not to dismiss it as 'envy' or 'fundamentalism' or any other neat label. Part of our security lies in our understanding of the threat we face, a threat that we have sometimes fed through the heaping on of bitter grievance (Stephen J. Toope, "Fallout From '9-11': Will a Security Culture Undermine Human Right?" (2002) 65 Sask. L. Rev. 281 at 293-94).

In this light, the best approach for Canada would seem to involve a combination of efforts. On an international level, we should be working towards reforming institutions that serve to aggravate the disparities that fuel the alienation that feeds terrorism. To be effective, this will require reforming the World Bank and the International Monetary Fund, supporting debt relief, and increased aid to countries in the developing world. In addition, we must continue to support the international legal order, and work consistently at counselling the United States against unilateral action. The global war on terrorism must be completely reconsidered, in light of the lessons learned in Iraq. If we want to reduce the risk posed by terrorism, we will have to transform the current war of arms into a war of minds.

In the interim, we must also take steps to minimize the threat posed by terrorism, appreciating always that we can never truly eliminate it. On an international level, remaining vigilant about security at our embassies and consulates would seem sensible. And, despite the fact that the dangers are not as great on a domestic level, there are important steps that we can take at home to reduce the potential impact of a terrorist attack should it occur. Unlike largely symbolic legislative efforts, real protection will require a significant and sustained dedication of resources. We must invest heavily in those key aspects of our infrastructure that are integral to the protection of human life. A number of examples spring to mind. Given the obvious implications of a nuclear disaster (think of Chernobyl), no effort or expense should be spared in safeguarding our nuclear power plants. Similarly, as the Walkerton disaster demonstrates, contamination of our water supply, especially in a large urban area, could exact a considerable toll in lost lives. As a result, we must also invest in safeguarding our water purification facilities. This requires more than just securing facilities; it means that we must also ensure that adequate resources are dedicated to protecting the integrity of water purification and testing procedures. Finally, as our recent experience with SARS demonstrates, we require federal oversight over a national infectious diseases policy. We must invest in our health care system, to ensure that there are adequate facilities, and trained health care professionals, to effectively contain any infectious disease outbreak that terrorists might one day unleash on us.





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## 9.0 Don Stuart, Faculty of Law, Queen's University

### 9.1 What has been the impact of the Anti-Terrorism Act on Canada?

I stand by views I expressed in several speeches and to Parliamentary committees trying to stop the freight train as Bill C-36 was rushed through Parliament after the horrors of the 9-11 attack. My thoughts coalesced into a paper published as "The Anti-Terrorism Bill C-36: An Unnecessary Law and Order Quick Fix that Permanently Stains the Canadian Criminal Justice System", (2002) 14.1 National Journal of Constitutional Law 153.

As a criminal law teacher and scholar in Canada since 1970, I see the massive new criminal law powers placed into our permanent criminal laws by Bill C-36 as not necessary to respond to the outrage of September 11. More resources for intelligence and investigation and evidence may have been needed but not new laws. The definition of terrorist acts and the process for listing terrorist groups is, as many argued in vain, far too wide. The new terrorism offences cynically cut across fundamental principles that there should be no State punishment without meaningful fault and act requirements. Dragnet police and C.S.I.S. powers, including extraordinary and un-Canadian powers of detention on suspicion and compelling testimony before judges were not needed or properly justified. Bill C-36 puts in place many unfettered Ministerial powers, such as the power to define terrorist groups, authorize electronic surveillance and file fiats against use of sensitive material (not just that relating to national security). These powers contravene fundamental hallmarks of our justice system such as the rule of law, the presumption of innocence and the need for State proof guilt beyond a reasonable doubt in a trial before an independent and impartial judge.

Bill C-36 endangers freedoms of vulnerable minorities and protesters. Arab and Muslim Canadians voiced their concerns with dignity but were walked over in the quick passage of the bill. The history of repressive regimes such as apartheid South Africa, where I spent my first 21 years, vividly points to the dangers that these powers may be abused and extended.

The quick passage of this Bill, hastily drafted without external consultation, is a consequence of a broader systemic problem of law and order quick fix politics. This is evidenced in anti-gang legislation that has been counterproductive and not narrowly targeted.

So as far as we have been told, and nobody other than state officials really know, the Bill has not been used, except for one instance of compelled testimony before a judge. Concerns very similar to mine have, however, been expressed by a person in a much better position to know than me: Reid Morden, former Director of CSIS, as reported in The Globe and Mail, November 27, 2003.

So it is time to take stock and seriously review the wisdom of this legislation free of far-fetched political bromides as the "global war on terrorism". Canada is not at war in the sense that it was in World War Two.

**9.2 What emerging trends in terrorism do you foresee and what threats do they pose to Canada? In discussing these trends and threats, please describe what you consider terrorism to be.**

There can be little doubt that various disparate and some loosely associated groups and individuals will continue to pursue sporadic acts of violence. Often but not always these will be for religious and political purposes. There may be repeats of monumental attacks such as those of 9-11. A likely target will very likely continue to be the United States.

A workable definition of a terrorist is one who intentionally attempts or uses force to overthrow or destabilize a government. Under President Bush the United States has repeatedly shown utter disrespect for the United Nations, international norms such as the Geneva Convention and for any nation, which takes a different view on war and world politics. When the United States sets out to destabilize or bomb a country in the name of freedom citizens of that country could rightfully characterize those United States actions as themselves those of terrorists. Was Nelson Mandela a terrorist or a freedom fighter? Violence begets violence.

Our proximity to the United States makes Canada vulnerable to terrorist attacks but thus far the threat has not materialised. In the meantime thousands of Canadian have lost their lives through such causes as cancer, suicides, vehicle accidents and domestic violence. There the risks are proven and very real. An international law and order agenda should not deflect us from our truly major challenges.

**9.3 How should our country respond to these trends and threats? Please feel free to include measures at any level, such as social, economic, political, or legal or a combination of these levels.**

There may be a case for more resources for security intelligence services. Intelligence appears to have largely failed us so far and have, furthermore, resulted in well-known cases of wrongful targeting. It would appear that most of the targeting has been under pre-existing immigration and refugee laws which, stunningly, do not even bother to define terrorism. The case of Mr. Arar and the belated setting up of a Judicial Inquiry points to little concern for the protection of racially targeted Canadians.

A recent public opinion poll says that 37% of Canadians say that Ottawa's security response to terrorism has not gone far enough (The Globe and Mail, January 29, 2004). Opinion polls as to the invocation of the War Measures Act in 1970 were strongly in favour. Yet 18 years later Parliament recognised that it had been an oppressive overreaction and replaced it with the carefully drafted Emergencies Act of 1988, with remedies for those wrongfully targeted. Hopefully Parliament will not wait for 18 years before deciding that Bill C-36 is a dangerous and unnecessary blight on our justice system. The Act ought to be repealed in its entirety.



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## 10.0 Wesley K. Wark, Department of History/ International Studies, University of Toronto

### 10.1 What has been the impact of the Anti-Terrorism Act on Canada?

In the immediate aftermath of September 11, the Canadian government attempted to bolster its national security capabilities through two major undertakings. One was the omnibus anti-terrorism legislation of Bill C-36. The other was the December 2001 security budget introduced by then Finance Minister Paul Martin. Bill C-36 must thus be seen and judged as one of the early and most significant pillars of the Canadian response to the new security environment ushered in by the Al Qaeda attacks.

Bill C-36's impact can be assessed in five major areas. These are:

1. the extension of government powers to act against perceived terrorist threats;
2. the creation of new operational entities and mandates to assist the government in counter-terrorism work;
3. the generation of a significant (if unresolved) public debate on the nature of the terrorist threat to Canada and the appropriate balance to be sought between protection of civil liberties and the pursuit of national security in an altered threat environment;
4. international perceptions of Canadian approaches to anti-terrorism; and
5. the reality, or illusion, of deterrence.

In addition, Bill C-36 provided an opportunity for the government to take action on some aggravating issues that had long been in limbo and which were only loosely linked to anti-terrorism concerns. I would include in this category amendments to the official secrets act and alterations to the provisions of the Access to Information Act. These parts of Bill C-36 were inevitably overshadowed by other, more dramatic issues, and garnered little critical attention at the time.

I'll briefly address each of the five major impacts in turn.

#### 1. Extension of Government Powers

Bill C-36 gave the government new, and controversial, legal tools to combat terrorism. These tools included the power to list proscribed terrorist groups and criminalize forms of association with such groups; the power to hold investigative hearings and to compel testimony; preventative detention (recognizance with conditions); and restrictions on disclosure rules under the Canada

Evidence Act. In addition, Bill C-36 gave the government new mechanisms to act against charities that might serve as fronts for terrorist financing.

In truth the direct impact of this package of new powers is difficult to measure at this stage (January 2004) owing to two factors. One is that the government moved slowly and with great caution (critics would argue too great caution) after December 2001 in creating a list of proscribed terrorist entities. Whether this was the intent of such a process, controversy was largely forestalled, with the exception of the eventual decision to place Hezbollah on the list. The other factor is that many of the most controversial elements of Bill C-36 have not been used, or tested in court. One exception is the retrospective and surprising effort to use the investigative hearings provision in connection with the Air India trial. The other is the issuance of search warrants in January 2004 against Ottawa Citizen reporter Juliet O'Neill under the provisions of the Security of Information Act component of Bill C-36 (I will return to this matter later).

Some of the most controversial legal powers provided for in Bill C-36 need to be seen as measures to confront a national security emergency, even if the government of the day shied away from describing them in such a light, presumably for fear of drawing too many parallels with the old War Measures Act and its history. Perceived as emergency powers, for use in extraordinary circumstances, Bill C-36 gave the government, in my view, necessary tools to combat terrorism. The level of safeguards built in to the Bill and the acquiescence of the Bill's drafters to the demand for a sunset clause (of five years) for parts of the Bill (preventative detention and investigative hearings) were appropriate. The greatest test of Bill C-36's legal provisions will come when and if the emergency for which they were intended arises—only then will we see whether the combination of laws and good judgement exist to safeguard Canadians' security and liberty. Until that unlooked-for day, Bill C-36's impact can only be measured indirectly.

## 2. New Operational Entities and Mandates

Bill C-36 did not provide for any sweeping reform or reorganization of the Canadian security and intelligence community, although there were many public calls for such measures. In a more modest fashion, the Bill instead provided for (long overdue) enabling legislation for the Communications Security Establishment (CSE) and an extension of the mandate of the recently created Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). Both measures escaped much public commentary at the time, partly owing to the secrecy and obscurity that surrounds the two government agencies. But these measures in fact made CSE and FINTRAC crucial, front-line agencies in the government's anti-terrorism operations, CSE as an intelligence gatherer and FINTRAC as an investigative body charged with monitoring the flows of terrorist financing. Issues of counter-terrorism capabilities on the part of both CSE and FINTRAC, of mandates and jurisdictional overlaps with other parts of the security and intelligence community (especially the Canadian Security Intelligence Service--CSIS), and of accountability for new powers were not satisfactorily addressed by the Bill and remain, in my view, problems. These are complex matters beyond the remit of this brief paper, but to take one issue, the powers of the Commissioner for CSE are too narrowly focused on reviewing the legality of CSE operations and do not approach the scope of the review body for CSIS, the Security Intelligence Review Committee.



### 3. Public Debate

Probably the most significant impact of Bill C-36 was the debate that it generated within Canadian society. This debate focussed only on some aspects of the Bill, particularly on the issue of the definition of terrorism, and on some of the more draconian powers provided for by the Bill (especially investigative hearings and preventative detention). The debate was shaped by media coverage and was provided focus by the hearings into the Bill held by both House and Senate justice committees in the late Fall of 2001. The legal community of Canada, especially legal scholars, were particularly active in fostering the debate and in calling attention to the issue of the search for balance between security and civil liberties. The Law Faculty of the University of Toronto sponsored a major conference on Bill C-36 in November 2001 and rapidly published the proceedings.<sup>5</sup> A second major conference was held in Montreal early in 2002, following the adoption of the Bill. Its proceedings are shortly to be aired by the CBC flagship radio programme, Ideas.

The most concrete achievement of the debate was to introduce a sunset provision of five years for some aspects of Bill C-36 (83.28, 83.29 and 83.3). More broadly, the debate allowed Canadians to reflect on the threat posed by terrorism, on government powers, and on the appropriate balance between national security concerns and civil liberties. Inevitably, the debate was unresolved by the time Bill C-36 was passed into law in December 2001 and much of its force was spent with the passage of time and the enactment of Bill C-36. Unfortunately, in my view, the government of the day chose not to try to structure or inform the public debate by providing any kind of national security strategy white paper or document, or by engaging in significant reform of the security and intelligence sector. Such measures are now promised by the new Martin government, two years after the passing of Bill C-36, in a series of pronouncements made in late December 2003.

Arguably, the failure of the then government to show strategic thinking about the new security environment helped to sustain currents of opinion in Canadian society that suggested that Bill C-36 was an unwarranted assault on civil liberties and was targeted against ethnic minorities, especially the Muslim community of Canada.

The debate over Bill C-36 was healthy, necessary and wise, but suffered from a lack of public knowledge about government intentions, capabilities and power. The mandated Parliamentary review of Bill C-36 should, with the passage of time, allow for a more wide-scoped reflection on Canadian anti-terrorism.

### 4. International Perceptions

Globalization means that states and societies live in a global fish bowl. Canadian measures under Bill C-36 are bound to attract attention of two kinds: one pondering the kind of democratic and multicultural society that Canada is; the other wondering about Canadian capabilities in a global war on terror. The net effect of this attention is difficult to measure. Exactly how much attention has been paid by the global community to Bill C-36 is something that, so far as I am

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<sup>5</sup> Ronald Daniels, Patrick Macklem and Kent Roach, eds. The Security of Freedom: Essays on Canada's Anti-Terrorism Bill (Toronto: University of Toronto Press, 2001).

aware, has not been studied in a public fashion. But it is important and should be something to be studied by the Canadian government itself. Canada prides itself on a positive international image and counts the intangible benefits that flow from this in fields such as immigration, trade and tourism. If Bill C-36 has negative connotations for Canada's image abroad this is something we should know. This could be measured by studies of the foreign media, by post-mortems and research reports drawing on official exchanges and diplomatic and consular reporting, even by monitoring changes to patterns of immigration, trade and tourism.

International perceptions of Canadian counter-terrorist capabilities are important for deterring terrorism and for maintaining Canada's place in major alliance groupings, not least the alliance web that links key partners in the fields of security and intelligence. Canada must expect to face on-going questions about its national security capabilities and about its ally-worthiness. Such questions will only partly be answered by international perceptions of the effectiveness of Bill C-36, but the Bill is certainly a contributing factor. The Canadian government needs to be alert and sensitive to foreign perceptions of its capabilities, especially on the part of traditional allies such as the United States and the U.K.

## 5. Deterrence

One of the classic functions of good laws is deterrence. Has Bill C-36 contributed to the deterrence of terrorist activities in Canada or against Canadian interests? There have been some suggestions from CSIS that it has forced terrorist groups and individuals to alter their behaviour within Canada and helped encourage greater public mindedness about security threats. The truth of this claim is impossible to know. Nor can deterrence really be measured except through its failure.

Certainly Bill C-36 reflected a government intention to increase its powers to combat terrorism and the attention that flowed from this may, more than anything else, have contributed to an altered threat environment in Canada. No country wishes to be thought of as a terrorist "safe haven". Bill C-36 suggested a government policy of getting tough with the terrorist threat, which at least stood in marked contrast to pre-September 11 policy. Irwin Cotler, while still a backbench MP, called in writing for a new "zero tolerance" policy towards trans-national terrorism.<sup>6</sup> A government lead in this direction would help clarify the public confusion surrounding the distinction between terrorists and freedom fighters, a distinction that continues to bedevil discussions of terrorism and counter-terrorism policy.

Bill C-36 may have contributed only marginally to deterrence of terrorist threats. But its absence would have lessened the deterrent capabilities of the Canadian government.

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<sup>6</sup> Irwin Cotler, "Thinking Outside the Box: Foundational Principles for Counter-Terrorism Law and Policy," in Daniels et al, eds. The Security of Freedom, p.113.



## 10.2 What emerging trends in terrorism do you foresee and what threats do they pose to Canada? In discussing these trends and threats, please describe what you consider terrorism to be.

No one has a crystal ball when it comes to terrorism. Emerging trends will be seen clearly, alas, only in retrospect. But this sobering thought aside, there are a number of general observations or predictions which can still usefully be made. One is that global terrorism will be the number one security threat for the foreseeable future. A second is that terrorism will continue to proliferate globally, irrespective of the fortunes of Al Qaeda. A third is that no prediction is safe about the weapons and scale of violence to be employed by terrorist groups. WMD use or “super-terrorism” cannot be ruled out, while more traditional methods of the gun and the bomb will continue to be employed. A fourth observation is that terrorism will continue to target both military and civilian entities and will, in the aftermath of September 11, also be attracted to highly symbolic targets. A fifth observation is that even without state sponsorship, trans-national terrorist groups will have the capacity to engage in sophisticated financial, propaganda, recruitment and operational activities and will show variable, but sometimes high, levels of operational security.

It is impossible to predict whether Canada itself will be a target for terrorist attacks. Prudence suggests it might. That prudence is a reflection of three facts: one is that Canada is a multicultural society with a considerable immigration inflow. It is inevitable that some forms of homeland violence and extremism will follow the immigration flow. A second fact is that Canada has, in the aftermath of September 11, visibly and rhetorically joined the war on terrorism. Our words and deeds, above all our military presence in Afghanistan, make us a target, whether abroad or at home, for terrorists. The third fact is that CSIS, in public statements over the years, has asserted that there is a significant terrorist presence in Canada. That presence does not necessarily signify active operations. Terrorist entities are no doubt involved in fund-raising, propaganda, recruitment, transit activities and so forth, not directly targeting Canada. But it would be imprudent to say the least to assume that terrorist organizations and individuals do not, or would not, plan for direct attacks on Canadian targets. Nor could Canada afford to allow a terrorist attack to be mounted from Canada against the United States or any other country. Even prior to September 11, the Ahmed Ressam case should have reminded us of this.

As state sponsorship of terrorism declines or is restricted, and as terrorism continues to proliferate globally, the chances of Canada being drawn into the orbit of terrorist operations only increases as trans-national groups seek new venues, bases, and targets.

Canada may not be a first tier target for major terrorist operations now or in the future. But that distinction is not comforting and provides no basis for policy, strategy, laws or capabilities.

### 10.3 How should our country respond to these trends and threats? Please feel free to include measures at any level, such as social, economic, political, or legal or a combination of these levels.

We now live in a “worst case” universe, post-September 11. US national security strategy, and indeed intelligence assessments in both Washington and London, are based on this presumption. We have to assume the reality of threats to national security and provide for the maximum possible capacity to know, pre-empt and respond to such threats. “Maximum possible” is, of course, a slippery phrase and encompasses such limiting factors as public sentiment, preservation of democratic norms, and fiscal probity. It is obviously no good to have unwanted, financially ruinous capabilities, just as it is no good to have inadequate ones. “Maximum possible” means, in the world of real politics, “sustainable”.

Criteria for a sustainable Canadian response to terrorist threats can be outlined. A more extensive and detailed discussion is beyond the scope of this paper.

The following is a checklist of requirements:

1. A national security strategy for dealing with trans-national terrorism. We currently don't have such a strategy, though it is promised by the new Martin government.
2. A capacity to translate a national security strategy into coherent government planning. This requires effective Cabinet level coordination and effective inter-departmental coordination on security and intelligence issues. Historically, this has been lacking. Again, there are promises of major reforms by the new Martin government.
3. A capacity to act on Canadian policy through military, political and development aid instruments. Our military capacity is fatally weak and no real doctrine for military counter-terrorism exists; our diplomatic strength is questionable, and our overseas development capacity is under-resourced and ill-focussed. Promised and long-overdue reviews of defence and foreign policy may help.
4. A capacity to know. September 11 should have driven home one essential fact: that the first-line of defence against terrorism is good intelligence. While I doubt that this lessons is firmly understood in Ottawa, there are some encouraging signs of change, including increased spending on security and intelligence, a new mandate for CSE, greater resources for intelligence analysis, more intelligence sharing horizontally within government and vertically between different levels of government (federal, provincial, municipal). Measures to further raise the profile of intelligence in the federal government, to increase centralization and coordination of the intelligence effort, and to add capability, including the constitution of a foreign intelligence service, are still, in my view, required.





5. A capacity for alliance burden sharing. The global war on terrorism requires a Canadian capacity to share burdens, resources and intelligence with key allies and partners. Our ability to do these things is a measure of our ally-worthiness. We are, in my view, too dependent on traditional allies and on foreign intelligence services for information. We lack “informational sovereignty.” New investments in military capabilities, development aid, political reporting and intelligence are required for Canada to serve its own national security interests and to take part, as we deem appropriate, in global action.
6. Public knowledge. Popular support for government policies and spending priorities is crucial for any sustainable national security strategy. Yet public knowledge of terrorism, terrorist threats, Canadian capabilities and policies are all weak. Increased public knowledge can only be gained by long-term strategies, including new programmes for research, teaching and publication in Canadian universities on the subject of national security. Increased public knowledge can also flow from a greater willingness on the part of the federal government to engage in the public dissemination of information about terrorist and other national security threats through such means as declassified intelligence threat assessments, white papers and other public strategy documents, public briefings and appearances by knowledgeable officials and politicians, and increased levels of debate in Parliament. The announced decision to create a standing national security committee in the House of Commons is an encouraging step in the direction of greater public awareness of the issues. Attention needs also to be paid to the question of how and in what circumstances the Canadian public need to be alerted to changing levels of terrorist threats.
7. Border and travel security. Much attention has been paid since September 11 to the need to secure our borders, and provide for maritime and air travel security. Progress is evidently being made, while the Senate committee on National Security and Defence under the chairmanship of Senator Colin Kenny has provided an important service in monitoring progress in security practices in these fields. The greatest deficiencies appear to exist in the realm of maritime security, which includes not only the physical security of ports but also the ability to monitor and control maritime traffic into and out of Canadian ports. Maritime terrorism is already a reality and the prospects of more attacks to come, either on military targets or civilian ones, cannot be discounted. Neither can the scenario by which terrorists and terrorist weapons, including WMD, find entry into Canada through maritime channels be dismissed.
8. First responders. Being prepared for terrorism involves more than a focus on prevention and pre-emption. Canada must also undertake measures to allow for the best possible response in the immediate aftermath of a terrorist attack in Canada, or against Canadian entities overseas. This lesson seemed obvious in the immediate aftermath of September 11, but is likely to lose force as more and more time elapses. Adequate levels of equipment and training for first responders as well as medical resources and drug stockpiles all need to be part of a national plan, coordinated with provincial and municipal authorities. Exercises need to be run to test first responder capabilities in a variety of scenarios.

9. Root causes. The root causes of terrorism are a matter of great controversy. We need a made-in-Canada debate and, ultimately, policy on this issue. While this is taking shape, the Canadian role in Afghanistan needs to be pondered as a test case for action against “root causes” (failed states as terrorist havens; failed states as political, economic and religious breeding grounds for terrorism).

### 10.3.1 Addendum. Omnibus Problems in Bill C-36

The decision of the government to use Bill C-36 to opportunistically forward some legislation that had little direct bearing on anti-terrorism stored up problems for the future. Revisions to the official secrets act, now the security of information act, produced some unwarranted and ill-considered features. Without going into detail, I would highlight such problematic provisions as the broad definition of “special operational information,” the identification of large classes of individuals as persons “permanently bound to secrecy” and the very narrow codification of legitimate whistle-blowing.

Bill C-36 amendments to the Access to Information Act to allow for the use of certificates to prevent the disclosure of certain types of information also seem excessive, especially in the light of the very strong powers afforded to the government under the Access Act to protect legitimate secrets.

### 10.3.2 Conclusion

Bill C-36 represents the beginning of a process to address the threat posed by terrorism. But the inevitable focus in the Bill on legal instruments, in the absence of a declared national strategy on terrorism, and without attendant reforms in the security and intelligence sector of the federal government, left the engineering of Canadian anti-terrorism policy incomplete. It also left the necessary public debate on terrorism unresolved and somewhat polarized.



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## 11.0 Reg Whitaker, Department of Political Science, University of Victoria

### 11.1 What has been the impact of the Anti-Terrorism Act on Canada?

**T**o answer this question, it is first necessary to specify the objectives of the Anti-Terrorism Act (C-36).

Introduced as an emergency response to the 9/11 terrorist threat, C-36 has been taken at face value by many observers as a purely anti-terrorist instrument. While this is part of its purpose, it is only part. C-36 is also an omnibus act that addresses a series of security issues, some not directly related to the terrorist threat, as such. C-36 is actually a proto-National Security Act, which taken together with certain other statutes such as the CSIS and Security Offences Acts (1984), the Immigration and Refugee Protection Act and the amended Foreign Missions & International Organizations Act (2001), the Proceeds of Crime (Money laundering) Act, and the as yet to be enacted Public Safety Act, C-36 forms the statutory basis for the various elements of the national security state. Entire sections of C-36, most notably, the replacement of the old Official Secrets Act by a new Security of Information Act (invoked against the media in the Arar case to high controversy); a statutory foundation for the Communications Security Establishment (CSE); restrictions on the Access to Information, Privacy, and Personal Information Protection and Electronic Documents acts relating to public disclosure of national security information; and the provisions regarding non-disclosure of national security evidence in court, may be seen as cleaning up loose ends and unfinished reform agendas already in place prior to 9/11. While these measures may well facilitate the anti-terrorist actions of the Canadian state, they may best be seen as background conditions rather than as specific anti-terrorist measures in themselves. Further, their wider ambit and longer term implications preclude any early and quick assessment of their impact.

Some parts of C-36 specifically amend or modify existing powers to facilitate anti-terrorist actions. These include the provision permitting the CSE to monitor some communications in Canada and between Canadians, and the addition of terrorism to organized crime as targets for FinTrac, the money-laundering agency. These powers strengthen the capacity of existing agencies to monitor terrorist activity and organization. The actual effect of extended CSE monitoring is unknown. As yet there appears to be little return from tracking terrorist money laundering, for although FinTrac has reported a couple of dozen cases, to this date no criminal prosecutions appear to be undertaken.

Expanded powers of electronic surveillance (one of the central parts of the USA PATRIOT Act) were promised, but the Lawful Access process continues without having reached legislative form. The Public Safety Act, dealing mainly with questions of airplane safety and toxic and biological threats, first introduced as a companion piece to C-36 in the fall of 2001, is still somewhere in the legislative process.

The heart of C-36, as it relates exclusively to the anti-terrorist agenda, may be broken down into the following elements:

- legal definition of terrorism;
- new offences of “participating, facilitating, instructing and harbouring” terrorism;
- listing of terrorist entities, with charitable status implications;
- preventive arrest power;
- investigative hearing power.

The *legal definition of terrorism* has been the cause of considerable controversy; former CSIS Director Reid Morden has suggested that it could be misused by local authorities against non-terrorist protestors, but to date no such misuse has occurred, and is unlikely in light of the requirement for federal authorization. While any definition is inherently controversial, the Canadian definition has been most criticized for the inclusion of *motive* (“a political, religious or ideological purpose, objective, or cause”). This criminalization of motive is perhaps unnecessary and inherently risky, and may prove in future to be vulnerable to judicial challenge.

The *new offences of facilitating, etc.* set off many alarm bells for civil libertarians and strongly suggest proceeding on the basis of ‘guilt by association’. These can also be seen as reasonable tools for government to control activities and track networks designed to be fluid, decentralized, and resistant to investigation. Much will depend on the skill and restraint with which security intelligence and law enforcement use these new tools. So far as I am aware they have not yet been invoked in criminal prosecutions. Some of the alleged revelations from RCMP surveillance documents on Maher Arar do not inspire confidence that guilt by association is not indeed being employed. On the other hand, no criminal prosecution was undertaken, or apparently contemplated, against Arar in Canada. Whether reluctance to use facilitation, etc. offences, stems from lack of sufficient evidence, or restraint, is unclear.

The *listing of terrorist entities* has been a major public preoccupation of government since C-36’s enactment. First established with 7 entities in July 2002, the list has been augmented five more times, and now encompasses 34 entities. Listing has grave consequences for the entities and for their Canadian supporters, and the process has turned out to be highly partisan, with extensive lobbying campaigns for and against the addition of certain groups, the most controversial cases being Hezbollah and some Palestinian groups such as Hamas, and the Popular Front for the Liberation of Palestine. Lobbying for the extension to these groups was publicly advanced by pro-Israeli organizations and spokespersons, and extension was strongly opposed by many Muslim and Arab groups in Canada. In the case of Hezbollah, there was controversy in the media over the validity of evidence used to support the case for listing. One unfortunate consequence: the list has become a focus for interethnic and religious rivalries in Canada. There are also consequences for social and humanitarian assistance from both private and government sources to certain areas, such as the Shia community in south Lebanon and Gaza and the West Bank when dual-purpose organizations like Hezbollah and Hamas are no longer able to act as the appropriate conduits for Canadian humanitarian assistance in places where they are the main, if not only organizations maintaining institutions such as hospitals, schools, and other social services. Given a widespread perception (not unjustified by evidence) that policing terrorism involves a considerable degree of ethnic and/or religious profiling, and the invidious



targeting of Canadian Muslim and Arab communities as especially suspect, the controversies surrounding the listing of terrorist entities only adds to the perception on the part of some communities of bias on the part of a state that is dedicated officially to promoting multiculturalism.

The impact of the powers of *investigative hearing and preventive arrest* is remarkably limited, despite the controversy that attended their enactment, symbolized in the extraordinary addition of sunset clauses. To date there has been no use of the preventive arrest power, and the sole instance of the investigative hearing has been in relation to the investigation into the two decades old Air India case.

In *summary*, it is unclear that C-36 has enabled the government of Canada to step up significantly the domestic war on terrorism. Some of the more contentious clauses (preventive arrest and investigative hearing) appear to have been enacted more for symbolic than substantive reasons. Much of C-36 is only indirectly related to anti-terrorism. By closing some possible loopholes and replacing antiquated and ineffective national security-related statutes with modernized instruments, the federal government has potentially strengthened its hand, but to date the actual use of new powers in terms of public prosecutions or known investigations has hardly been dramatic. The legislation has stirred considerable controversy, particularly in targeted ethnic communities, but also among civil libertarians and in Parliament, where concern about the potential for misuse of enhanced powers has been growing.

Perhaps the single most important shortcoming of C-36 was the failure of the government to create an appropriately wide and comprehensive accountability, review, and oversight mechanism to cover all aspects and institutional manifestations of the national security policy function. The scandal that has grown around the case of Maher Arar, forcing a special public inquiry points to the weakness of the present fragmented, discontinuous, ‘jerry-built’ accountability structures and practices.

## 11.2 What emerging trends in terrorism do you foresee and what threats do they pose to Canada? In discussing these trends and threats, please describe what you consider terrorism to be.

I would define terrorism as political violence perpetrated by organized non-state actors, directed mainly against non-combatants, for the purpose of influencing or intimidating targeted governments and publics. The question of state sponsorship or support of terrorist activities is secondary to the distinguishing characteristic that terrorists are non-state actors who organize their actions across national boundaries and outside direct state jurisdiction.

The question of the political objectives of terrorist actions is an important one that leads to a major distinction that may be drawn between [a] terrorist actions that form part of a broader political program that is negotiable within acceptable international norms; and [b] terrorist actions that are either ends in themselves or are part of a broader program that is non-negotiable within existing structures and norms.

In the former category are political struggles that have involved at some times and circumstances terrorist methods but have ultimately resulted, or may result, in negotiated settlements or ongoing peace processes that will, if successful, ultimately eliminate terrorist activities. Examples are the IRA in Northern Ireland, the ongoing Israeli-Palestinian conflict, and the Tamil Tigers in Sri Lanka.

Examples of the latter category would include millennial groups like Aum Shinrikyo in Japan, and Al Qaida, responsible for the 9/11 attacks, and other jihadist and extreme Islamist networks. Although the latter may declare certain political objectives (a Palestinian state, removal of ‘infidels’ from Saudi Arabia, etc.), the broader aim appears to be a non-negotiable holy war without end against the West, and against what they consider traitor regimes in the Muslim world. With the 9/11 attacks, it would appear that these latter groups have abandoned all prudential constraint about the magnitude of civilian casualties, limited only by the technical capacity at their command. Since their aims are non-negotiable and not amenable to political settlement, the threat posed by such groups is exponentially greater than that posed by terrorist organizations in the former category, where a variety of political and diplomatic tools are appropriate, along with prudent but measured anti-terrorist security measures.

In the post 9/11 environment, the most difficult aspect of anticipating potential terrorist threats lies in the open-ended nature of the new terrorism. If the terrorists are indifferent to the negative reactions to their actions, if they display no interest in gaining sympathy from the targeted populations for their cause, if inflicting maximum death and suffering is their primary objective, then developing worst-case threat scenarios must be an intrinsic part of anti-terrorist planning. The 9/11 model, in which commercial airliners were employed as bombs is probably understood well enough now that security measures are sufficient, presuming these are effective and consistently applied. But scenarios in which weapons of mass destruction (nuclear, chemical, biological) are deployed by terrorists in new and unanticipated ways must be taken very seriously.

There are limitations on the potential use of WMDs. A key variable is the matter of the delivery and effective diffusion of WMDs, even assuming that terrorists have any reasonable chance of acquiring usable capability (in the case of nuclear technology, this is still at present only a remote possibility). Dispersing biological or chemical agents to maximize casualties is no simple task, as the anthrax episode in the US would indicate. Even communicable diseases like smallpox are not readily convertible into mass epidemics. The threat of so-called ‘dirty’ nuclear or radiological bombs is serious, given the relative ease with which such devices might be assembled, but the direct destructive locus is not large, although the economic damage might be considerable. However small the threat, however, the consequences of WMD terrorism are sufficiently grave that extreme precautions are required.

Another major threat category is critical infrastructures, and the extensive economic and public health damage that could result from aggressive disruption of essential service infrastructures. In certain cases, particularly nuclear power facilities, there exists a serious risk of double jeopardy: immediate disruption to supply, but as well the potential for a Chernobyl-type fallout catastrophe.



The WMD and critical infrastructure threats must be seen in the context of recent serious public safety and health threats that are non-terrorist in origin: the SARS epidemic, the BSE scare, the great Eastern North American power blackout, and the British Columbia forest fires. These and other potential threats pose similar problems to those posed by terrorist WMD/critical infrastructure threats, and could conceivably be experienced in conjunction with opportunistic terrorist attacks. All should be viewed along a spectrum of public safety concerns, among which terrorism is only one, and does not necessarily hold a privileged place.

Canada is not likely to be a prime target for international terrorist networks, which will continue to focus on American (and perhaps British) targets for maximum political effect. However, the recent displacement of Al Qaida-related attacks onto relatively 'soft' targets in Muslim countries like Bali, Morocco, Saudi Arabia, and Turkey (likely under autonomous control of local terrorist groups only loosely linked to or associated with Al Qaida) following the hardening of US homeland security, does suggest a warning to Canada. Opportunistic attacks on what are perceived to be soft targets could threaten Canada, if appropriate security measures are not enacted. In addition, critical infrastructures on Canadian soil are in many cases integrated into American systems and thus could attract terrorist attention mainly focused on the potential damage to the US.

Finally, of course, the Canadian economic stake in an open border with the US requires that Canada establish whatever levels of security are necessary to reassure Americans that their northern border is not a security risk. The Smart Border agreements are a good first step in this direction, but the idea of a 'North American security perimeter' must not be understood in a limited geographical sense. In today's integrated global context, an effective security perimeter is everywhere where goods or people originate that are destined for entry to the North American continent. Eventual worldwide pre-clearance of container traffic is one example of effective perimeter security. More generally, global anti-terrorist intelligence is the most advanced defence. Canada, without a central foreign intelligence agency of its own, makes only modest contributions to the counter-terrorist intelligence networks, and is highly dependent upon the cooperation of the US in particular. This makes Canada vulnerable to the limits and weaknesses of American intelligence (especially noticeable in human intelligence sources on Islamist terrorism) and to the interpretation placed upon intelligence by American foreign policy and American perception of their own national interest.

### **11.3 How should our country respond to these trends and threats? Please feel free to include measures at any level, such as social, economic, political, or legal or a combination of these levels.**

Given the lower direct threat level in Canada than the US, and given the range of non-terrorist public safety threats facing Canada, emulation of the US Homeland Security model with its rigorous focus on terrorism is probably not a wise policy direction. The creation by the Martin government of a new super-ministry of Public Safety and Emergency Preparedness under the direction of the Deputy Prime Minister, with its all-threats emphasis, is most definitely a step in the right direction. The Canadian parliamentary system of government permits greater flexibility in restructuring the administration than does the American system of the separation of powers. The federal government appears ready to take advantage of this to build a comprehensive public

safety framework appropriate to various threat contexts. Particularly important here is the development of a central threat assessment capacity to evaluate and prioritize potential threats, whether terrorist or non-terrorist, for the purpose of rationally allocating resources. Homeland Security in the US appears to a degree to have become hostage to pressures from private sector entrepreneurs with security technologies to sell and vested interests in promoting threat perceptions that validate expenditure in areas they are contracting in – a ‘security/industrial complex’ that operates in a manner not unlike the military/industrial complex that has existed since the beginning of the Cold War era and has distorted intelligence estimates of foreign threats for decades. Such interests and pressures do exist in Canada as well, and thus it is imperative that the government arm itself with the capacity to set its security agenda with as broad a base of inputs as possible and an analytical capacity to rationally prioritize requirements independent of vested interests.

Cooperation with the US is obviously essential, whether the issue revolves around anti-terrorist security measures or crisis management of integrated power grids. However, cooperation comes at a cost, mainly a cost to Canadian sovereignty and to Canadian conceptions of our national interest, where these depart, even in small measure, from US conceptions of their national interest. The Arar inquiry points to one serious level of Canadian concern with intelligence cooperation that may jeopardize Canadian citizens’ human rights. Another is the demand from various influential quarters that Canada ‘harmonize’ its immigration and refugee policies, among others, with the US, as the price of economic security for Canada. Given the disproportion in power, harmonization clearly means Canada adopting US policies and US standards, even where these may conflict sharply with Canadian values and practices, and with the Canadian Charter of Rights.

Yet another area of concern for Canada is the effect of American interpretations of the terrorist threat on Canadian foreign policy. Official US anti-terrorist doctrine does not accept the distinction between negotiable and non-negotiable terrorism that I made in answer to Question 2. The US-led War on Terrorism is premised on the notion that all forms of terrorism form a seamless web, which must be aggressively countered and defeated by force in all instances.

This has led to a close meshing of American with Israeli policy towards Palestinian national aspirations, which constitutes in my view the greatest single long-term weakness in the global war on terrorism, locking the West into a stance that alienates large sections of the Arab and Muslim world, and generates new recruits to Islamist extremist organizations. There are also considerable domestic pressures exerted on the Canadian government to align its policies in the Middle East with Israel and the US, the strength of which was demonstrated during the controversies over the listing of terrorist entities under C-36.

In broader terms, the Canadian emphasis on a human security agenda is appropriate to deal with the underlying conditions that give rise to negotiable forms of terrorism, and resolving violent regional conflicts through negotiation fits the Canadian preference for multilateral diplomacy and peace-building. It is probably true that an emphasis on the root causes of the extreme non-negotiable forms of terrorism may be misplaced in dealing with behaviour that has by now cut itself loose from its root causes and has become self-perpetuating. But the failure of the US to make the distinction between the two forms of terrorism is in the long run self-defeating. It has





also led to a worldwide corrosion of human rights protection as extreme measures are countenanced, and repressive regimes are given approval, and even support, by the US, in the name of fighting terrorism. These trends run directly counter to basic principles of Canadian foreign policy.

The potential conflict was sharply highlighted by Canada's independent course over the Iraq war. US doctrine insisted upon a connection between Al Qaida and the former Iraqi regime of Saddam Hussein, and a threat from Iraq's alleged WMDs, either directly or through transfer to Al Qaida. Imposed regime change was declared a key anti-terrorist measure that would justify unilateral intervention if necessary. Canada disagreed with this argument, as did many critics, inside and outside the US, who saw the Iraq war as a diversion from the war on terrorism.

The later revelation that Iraq possessed no WMDs and had no connection to Al Qaida has cast considerable doubt on the credibility of intelligence to demonstrate a basis for the Bush Doctrine of pre-emptive unilateral strikes against potential threats before they materialize. The tension here between the American and Canadian views of the terrorist threat should not be minimized, nor can it be glossed over. There is very good reason to believe that the American focus on so-called 'rogue states' is seriously skewing the appropriate focus on global terrorist threats without borders. Canada should not acquiesce in this hijacking of the anti-terrorist program, but it neither can nor should pull out of collective security arrangements. The trick for Canada is to continue to contribute to the elements of the campaign with which it agrees, while reserving its independence in areas where it disagrees. This is a difficult path to negotiate, but Canada does seem to have done so with some skill in the Iraq war, while contributing to the Kabul security force. It is notable that threats of economic retaliation have failed to materialize. Lessons for Canada's narrow margin of autonomy should be clear.

It is difficult to envisage how Canadian counter terrorism policy can diverge significantly from the American model, given the close integration and the level of Canadian intelligence dependency. We have however carved out some degree of autonomy by refusing to emulate some of the more extreme American repressive measures as they impact on both resident non-citizens and Canadian citizens. In this context, the contrast between the USA PATRIOT Act and C-36 is instructive, with Canada following a more restrained course of acquiring and using new and intrusive powers. Nor did Canada follow the American post 9/11 example of large-scale detentions of suspect aliens without charges and without counsel, which was not only in violation of human rights and exacerbated interethnic hostilities, but has turned out to be of highly dubious value as a counter-terrorist measure. It is important that Canada continue to follow its own, more moderate path, especially in light of the greatly troubled relations between the Arab and Muslim communities in the US and the majority that has resulted from aggressive ethnic and religious profiling as a security and law enforcement tool. Ethnic profiling is to some degree impossible to avoid altogether in a war against a form of terrorism with certain national, ethnic, and religious roots, and it would be false to suggest that Canada has avoided all the pitfalls of profiling (the quickly unravelled Project Thread that targeted almost two dozen Pakistani men is a sorry example of misused profiling). But the government has not for the most part heightened multicultural tensions, as unfortunately seems to be the case in the US, and this course should be maintained, despite pressures from the US and from supporters of American-

style profiling in Canada to tighten up allegedly ‘lax’ Canadian standards (despite the derisory record of such measures actually catching real terrorists in the US).

One measure that Canada should aggressively pursue to lessen some of the unwelcome external pressures is to beef up Canadian foreign intelligence capacity. There have been more resources put into this area post 9/11. The new Public Safety ministry and the naming of a national security adviser to the Prime Minister are encouraging steps. The idea floated from time to time that a new foreign intelligence agency should be created may not be viable at this time, in terms of cost, and in terms of the timeframe to get a new agency up and running effectively. CSIS is playing an expanding role abroad in tracking terrorism, as are other agencies like the CSE, and the RCMP from a law enforcement perspective. Putting these and other potential intelligence gathering bodies to work in a coordinated fashion to provide the government of Canada with enhanced made-in-Canada global terrorist threat assessments is, I believe, a highly important step. This would not only provide more intelligence from a Canadian national perspective, but it would also enhance Canadian exchange value in intelligence sharing with our allies, thus augmenting the quality of intelligence gained by Canada in exchange. This is an issue of Canadian ‘information sovereignty’, the strengthening of which should be seen as a positive contribution to the common struggle against terrorism.

The much discussed decline of adequate funding for the Canadian military is also a deficiency that needs addressing. The better that Canada can fulfill a peacekeeping role as part of multilateral anti-terrorist measures, the more we can maintain the requisite degree of autonomy and sovereignty in anti-terrorist policy.

A final recommendation, and again one that the new Martin government seems to have taken under advisement: the structures of accountability, oversight, and review should be strengthened, coordinated and made more comprehensive. The public has a profound stake in protection against terrorist attacks, and in public safety understood more generally. But government has a responsibility to be as transparent as is practically possible to make the war against terrorism a democratic enterprise with broad informed support. Canadians require that their governments provide safety and security, but they also require that this is done in an accountable, not arbitrary and oppressive, manner. I would particularly applaud the government’s initiative to establish a parliamentary committee on national security with access to secret information, and to make the opposition leaders in Parliament Privy Councillors for the purpose of sharing privileged material in the Arar Inquiry.



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## Appendix B – First Letter

Perspectives on the Impact of the Anti-Terrorism Act

(La version française suit ci-dessous.)

Sir/Madam:

The Department of Justice is interested in obtaining the views of scholars and other terrorism experts from across Canada on the impact of the *Anti-Terrorism Act*. Since you are an expert in this field, we are contacting you to determine whether you would be interested in submitting a response to three general questions. These questions relate to the definition of terrorism, your views on the impact of the *Act*, and the measures Canada ought to take in the future to address the threat of terrorism.

We have commissioned Professor Tom Gabor, a criminologist at the University of Ottawa, to coordinate this research project and to prepare a summary report based on the submissions received. If you are interested in preparing a submission, please contact Professor Gabor by email at (email address) by **January 9, 2004**.

Due to budgetary limitations, we may not be able to include in the research project all the individuals who express interest. Those selected to participate will be contacted by email on **January 12**, at which time the specific questions will be conveyed to them. Due to the project's tight time lines, we will ask that participating experts submit their responses to the questions to Professor Gabor by email before end of day on **January 26, 2004**. The recommended length of the response to each question is one to two single-spaced pages or a maximum of 800 words.

We hope you are interested in participating in this research project.

Stan Lipinski  
Director, Research and Statistics Division

## Points de vue concernant les répercussions de la Loi antiterroriste

Monsieur/Madame,

Le ministère de la Justice souhaite solliciter d'universitaires et d'autres experts dans le domaine du terrorisme de partout au Canada leurs points de vue concernant les répercussions de la *Loi antiterroriste*. Puisque vous êtes expert dans ce domaine, nous vous écrivons pour savoir si vous aimeriez répondre à trois questions de nature générale. Ces questions portent sur la définition du terrorisme, sur votre point de vue concernant les répercussions de la *Loi antiterroriste* et sur les mesures que le Canada devrait prendre à l'avenir pour contrer la menace terroriste.

Nous avons chargé le professeur Tom Gabor, criminologue à l'Université d'Ottawa, de coordonner ce projet de recherche et de rédiger un rapport de synthèse des réponses reçues. Si faire connaître vos idées à ce sujet vous intéresse, veuillez communiquer par courriel avec le professeur Gabor à l'adresse (email address) au plus tard le **9 janvier 2004**.

En raison des contraintes budgétaires, il se peut que nous ne puissions pas inclure au projet de recherche toutes les personnes qui ont exprimé le désir d'y participer. Nous communiquerons le **12 janvier** par courriel avec les personnes sélectionnées pour leur soumettre les questions précises. Comme il s'agit d'un projet dont les délais sont très serrés, les participants choisis devront faire parvenir leurs réponses au professeur Gabor par courriel au plus tard en fin de journée le **26 janvier 2004**. On recommande que la réponse à chaque question soit de 1 à 2 pages à simple interligne ou un maximum de 800 mots.

En espérant que vous vous intéresserez à ce projet de recherche, je vous prie d'agréer, Monsieur/Madame, mes salutations distinguées.

Le directeur de la Division de la recherche et de la statistique,

Stan Lipinski



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## Appendix C – Second Letter

(La version française suit ci-dessous.)

Sir/Madam:

Thank you for your interest in the Department of Justice research project on the impact of the *Anti-Terrorism Act*. We are pleased to inform you that you are one of the experts selected to participate in the research project.

We would like you to address the following questions in your paper, based on your knowledge of the literature and your own experience and expertise.

1. What has been the impact of the *Anti-Terrorism Act* on Canada?
2. What emerging trends in terrorism do you foresee and what threats do they pose to Canada? In discussing these trends and threats, please describe what you consider terrorism to be.
3. How should our country respond to these trends and threats? Please feel free to include measures at any level, such as social, economic, political, or legal or a combination of these levels.

While we recommend that your response to each question be approximately 1-2 pages (single-spaced), the total length of the final paper submitted to Professor Tom Gabor is up to the author. Emphasis should be placed on the content rather than the format of the submission. The submission should be an original work that specifically addresses the research questions.

We ask that you submit your paper to Professor Tom Gabor of the Department of Criminology at the University of Ottawa by **January 30, 2004**. You can transmit your paper electronically to him at (email address). Professor Gabor will prepare a report synthesizing the submissions, and the unedited versions of each paper will be appended to the report. Once the draft report is completed, we plan to share the report with you to obtain your feedback.

An honorarium of \$500 will be paid to you upon receipt of your submission within the agreed upon time frame. Please send a hardcopy invoice by mail to Professor Gabor at the contact address below and allow several weeks for payment. The invoice should contain the mailing address to which your payment should be sent.

Upon receiving this message, we ask that you confirm your intention to prepare a submission and that you agree with the terms mentioned above by sending an email to Professor Gabor. If you have any questions concerning this research project and the specific questions, please feel free to contact Professor Gabor or myself.

We look forward to hearing from you and to receiving your paper.

Sincerely,

Damir Kukec  
A/Research Manager, Research and Statistics Division



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Le 16 janvier 2004

Monsieur/Madame,

Je vous remercie de l'intérêt que vous avez manifesté pour le projet de recherche sur les incidences de la *Loi antiterroriste* qu'entreprend le ministère de la Justice Canada. Nous sommes heureux de vous informer que votre participation à ce projet de recherche a été acceptée.

Nous vous invitons donc à soumettre un document dans lequel vous répondrez aux questions suivantes en vous basant sur votre connaissance des ouvrages en la matière et sur votre expérience et votre expertise.

1. Quelles incidences la *Loi antiterroriste* a-t-elle eu sur le Canada?
2. Quelles nouvelles tendances prévoyez-vous dans le terrorisme et comment menacent-elles le Canada? En discutant de ces tendances et de ces menaces, veuillez expliquer comment vous définissez le terrorisme.
3. Comment notre pays doit-il répondre à ces tendances et ces menaces? Sentez-vous libre d'inclure des mesures à tout niveau, soit social, économique, politique ou juridique, ou à une combinaison de ces niveaux.

Bien que nous recommandions que votre réponse pour chaque question soit d'environ 1 à 2 pages (à simple interligne), il revient à l'auteur de chaque document soumis au professeur Tom Gabor de décider de la longueur totale du document. Veuillez noter qu'il faudrait mettre davantage l'accent sur le contenu que sur la forme du document. Le document doit être un texte original qui répond précisément aux questions formulées dans le cadre de ce projet de recherche.

Nous vous demandons de soumettre votre document au professeur Tom Gabor au Département de criminologie de l'Université d'Ottawa avant le **30 janvier 2004**. Vous pouvez lui envoyer votre document par courrier électronique à l'adresse (email address). Le professeur Gabor rédigera un rapport de synthèse à partir des documents soumis, et la version non révisée des documents soumis sera ajoutée en annexe à ce rapport. Une fois que l'ébauche du rapport sera terminée, nous vous en enverrons une copie pour obtenir vos commentaires.

Vous recevrez des honoraires de 500 \$ pour un document reçu à l'intérieur du délai convenu. Veuillez envoyer votre facture sur papier au professeur Gabor à l'adresse postale ci-dessous et compter sur plusieurs semaines avant de recevoir ces honoraires. Votre facture devrait inclure l'adresse à laquelle les honoraires doivent être envoyés.

Nous vous demandons aussi de confirmer, aussitôt que vous avez pris connaissance de ce message, que vous avez l'intention de soumettre un document et que vous êtes d'accord avec les conditions mentionnées ci-dessus. Veuillez envoyer votre confirmation par courrier électronique au professeur Gabor. Si vous avez des questions concernant ce projet de recherche ou les questions formulées dans le cadre de celui-ci, n'hésitez pas à communiquer avec le professeur Gabor ou avec moi.

Nous attendons avec impatience votre confirmation ainsi que votre contribution à ce projet et nous vous prions d'agréer, Monsieur/Madame, l'expression de nos sentiments les meilleurs.

Damir Kukec  
Gestionnaire en recherche par intérim  
Division de la recherche et de la statistique