

Reflections on Charities and the *Anti-Terrorism Act*

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Oral Presentation to the Special Senate Committee on the *Anti-Terrorism Act*
June 2005

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I am honoured to have been invited to address the *Special Committee on the Anti-Terrorism Act* which was authorized by the Senate on Monday, December 13, 2004 to undertake a comprehensive review of the provisions and operation of the *Anti-terrorism Act*, (S.C. 2001, c.41). This invitation is an honour which I have not sought; but appearing here today is a responsibility that I cannot refuse. In the past few years I have spoken at seminars on terrorism and charities at Oxford University, UCLA, Beijing, London and Washington, DC. My reluctance in appearing is because this experience has taught me that when discussing terrorism it is always easier to contribute sound and fury to the public discourse than wisdom. While I have considered views rooted in a great deal of international experience, my considered views do not provide simple solutions.

This Special Committee is charged with considering a subject fraught with extreme complexity but the issues are frequently reduced to a simplistic “you’re either with us or against us in the fight against terror” mantra. All too often the public discourse is carried on in such emotional and confrontational terms that it is difficult for reason to survive the rhetoric and wisdom to trump the passion and zealotry of the argument. Canada acted quickly after the events of September 11, 2001 in passing the *Anti-terrorism Act*. It is prudent of the Senate to consider whether the passage of time has shown some of its provisions to be ill conceived or too draconian. The Committee is to be commended for soliciting the analysis and experiences of organizations and citizens who have been impacted by this legislation.

Most of the public discourse on terrorism suffers from too much attention being paid to the events of September 11, 2001. This undue focus on 9/11 lends credence to the allegations that the *Anti-terrorism Act* is only a legislative exercise to keep President Bush happy because Canada is genuflecting on cue whenever the “war on terror” is brought up, and otherwise this legislation is to be ignored. However, my experience with terrorism is not confined to watching television clips of that sad day. I spent ten months in South Vietnam in 1970 and 1971 where my work for an NGO involved many hours daily driving in Saigon traffic. Consequently, while still a university student I learned that my survival might depend on how alert I was to young people riding motorcycles with C-4 taped to their bodies as human bombs. In 1973 and 1974 I worked in even more dangerous circumstances in Mindanao in the southern Philippines with an NGO trying to build peace between the fighting Muslims and Christians. Terrorism is seldom more graphic than seeing the head of a Muslim put up on a pole at the entrance to a Christian village. The dynamic of such terrorism was proven the following day when the Muslims retaliated by disemboweling a pregnant Christian woman to incite more hatred and increase the level of violence.

More relevant than my exposure to terrorism in many parts of the globe is the fact that I am from Vancouver. In my own city in Canada I have witnessed the violent strife between warring factions in Sikh temples. You all know a current Cabinet Member, the Honorable Ujjal Dosanjh, who as a young immigrant was beaten to within an inch of his life in an act of terror in Vancouver perpetrated by those who wanted to bring to Canada the very political and religious extremism he had sought to escape by immigrating to Canada. Canadians too often forget that the largest single act of terrorism prior to 9/11 was the bombing of Air India flight 182 on June 23, 1985, the twentieth anniversary which is later this week. That bomb originated in Vancouver and the alleged perpetrators were deeply involved with registered charities. Consequently, it was not a complete surprise when I was told by senior officials in India in the late 1980's that their banking legislation regulating the flow of charity money into India, which at the time I considered draconian, was primarily aimed at money from Canadian donors destined for Khalistan.

UN Security Council Resolution 1373 required Canada to pass legislation to prevent the international flow of charity money to fund terrorism. However, the focus should not be solely on the destination of the money. The legislation must give regulatory officials in Canada the tools necessary to protect Canadians in ethnic communities from being forced to fight and fund political and religious battles that they sought to escape by emigrating to Canada. Canada fails these immigrants when our charities become social organizations that coerce Canadians to maintain ethnic and religious hostilities and prolong prejudices and practices that have no place in our country under the *Charter of Rights and Freedoms*. It is important to realize that donors to charities that misuse their funds for terrorist or other purposes may be victims who have been failed by the regulatory regime in Canada rather than being villains "funding", "facilitating" or "contributing to" terrorism. Reading the relevant provisions of the *Criminal Code*, it is difficult to apprehend any appreciation of the possibility that such donors may be victims rather than villains. This Committee should review the *mens rea* requirements with this concern in mind.

Regulators are given extraordinary powers in the *Charities Registration (Security Information) Act*. I have no way of knowing the extent to which these powers are useful or have been used judiciously. There is nothing in my personal professional experience that has given me cause to complain about the utilization of these powers. My concern is that the public discourse around this legislation seems to be focused entirely upon its efficacy in the international war on terror. The question to be considered is whether these powers are being used as effectively as possible to guarantee to ethnic and religious donors that they are not being coerced into funding through Canadian charities causes and activities that they sought to leave behind in their countries of origin when they immigrated.

Registered charities are the single social organization in which immigrants are most likely to invoke and experience all four of the fundamental freedoms set out in the *Charter of Rights and Freedoms*, namely, freedom of conscience and religion; freedom of thought, belief, opinion and expression; freedom of peaceful assembly; and freedom of association. Surely, it is incumbent upon the *Anti-terrorism Act* to protect those fundamental freedoms within Canada to the extent that they are being threatened by forces intent on promoting terrorist activities. The focus should not be only on preventing funding to protagonists in the "international war on terror".

My criticisms of the *Anti-terrorism Act* focus mainly on the provisions in the *Criminal Code*. I believe the definition of “terrorist activity” should be amended to remove the stated requirement that the act be “committed in whole or in part for a political, religious or ideological purpose, objective or cause”. In October 2003 I was invited by the Charity Commission of England and Wales to consultation meetings in Botswana with senior representatives of governments in the southern region of Africa seeking to enforce UN Security Council Resolution 1373. I was shocked to learn how bitter and cynical many of these governments are about the anti-terrorism legislation enacted since 9/11. Representatives from Sierra Leone, Ivory Coast, and other countries told me with great emotion how often they had pleaded for assistance from the United Nations and the West by way of both UN resolutions and practical military help to stem the horrible terrorism inflicted by mercenaries and others raping both women and countries in their pursuit of the riches from blood diamonds and other natural resources. The notion that airliners flying into office buildings qualified as terrorism provoked open contempt. To them, terrorism was mercenaries and gangs using crude machetes to cut off the arms and legs of children to intimidate and torture those who were not cooperating in their quest to steal their natural resources. These government officials were disgusted to learn that such brutal terrorism was not even caught by *Canada’s Anti-Terrorism Act*. There was a sense of outrage that oppressors engaging in acts of the most basic and cruel terrorism for reasons of pure personal financial benefit need not worry about Canada’s legislation because the prosecutor will never be able to prove to the court that there is a political, religious or ideological motive.

The Canadian definition of terrorism lends credibility to the cynical view on the “street” in many parts of the globe that the only terrorism that matters to “the world” is the terrorism which threatens the United States or Israel. Many millions of people in the world believe that the war on terror is in reality a war on Islam. Support for the “war on Islam” view is bolstered by the inclusion of a religious purpose requirement in the Canadian definition. In my opinion, winning “hearts and minds” is a more important objective in winning the war on terror than all the draconian powers to “freeze”, “seize” and “forfeit” property, issue security certificates and revoke charitable registration, and even imprison offenders. This means that the legislation must be analyzed in terms of whether it helps or hurts in the public discourse on terrorism and the need to combat it.

The first point of contention in almost every argument in the public discourse on terrorism is the mantra that “one person’s terrorist is another person’s freedom fighter”. The Honourable Irwin Cotler, Minister of Justice and Attorney General of Canada appeared before this Special Committee on February 21, 2005 and argued that this mantra was a “false moral equivalency” that must be jettisoned in favour of a “Zero Tolerance Principle”. While this was stirring rhetoric, it is beyond my intellectual capacity to reconcile a “Zero Tolerance Principle” with the definition that he introduced into the *Anti-terrorism Act* that only includes terrorism “committed in whole or in part for a political, religious or ideological purpose, objective or cause”.

I spend a great deal of my life flying around the world in airplanes so my personal contribution to the international war on terror is eating airline meals with plastic knives. It is important to determine whether the *Anti-terrorism Act* is merely Canada’s parliamentary participation in the great public relations

exercise known as the international war on terror, sort of like the legislative equivalent of requiring airline passengers to eat their meals with plastic knives, or whether it is a genuine made-in-Canada response to a problem of concern to ordinary Canadians.

It is not possible in the time allocated for my opening statement to address the many other issues that are raised by the *Anti-terrorism Act*. Some of these issues will come up in the questions which you will have for me. However, my over-arching concern for the review of this legislation is that the review concentrate on how this legislation plays out in the public discourse on terrorism and not only on its technical provisions. It is only by drawing the ethnic and religious communities which feel the most vulnerable into the public discourse that you will obtain the intelligence necessary to calibrate this legislation appropriately. It is possible that some of the public discourse is being manipulated by misrepresentations made by those who should have legitimate fear of this legislation. They win to the extent that some of the over- reaching and draconian provisions in the *Anti-terrorism Act* enable them to denigrate the legitimacy of the legislation by ridicule. It is important for this Special Committee to remedy those provisions that contribute to Canadians denying or ignoring the possibility that some registered charities may be part of the problem while affirming that the vast majority of registered charities are part of the solution.