

**BRITISH COLUMBIA CIVIL LIBERTIES  
ASSOCIATION**

***Anti-Terrorism Act***

**Written Submissions to the  
House of Commons  
Standing Committee on Justice and Human Rights  
on Bill C-36**

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## **INTRODUCTION**

The British Columbia Civil Liberties Association (“BCCLA” or “Association”) has prepared the following submissions which we believe will assist the Committee in carefully reviewing the provisions of Bill C-36, the *Anti-Terrorism Act* (“Act”). These submissions are intended to augment our oral presentation before the Committee on October 30, 2001.

The enormity of the Bill is only out-shadowed by the ways in which it fundamentally modifies the legal principles and civil liberties which define what it means to live in a free and democratic society. The Association urges the Committee to take whatever time is necessary to completely and carefully review the Bill’s 146 provisions and their impact on our free and open society.

The Association will first set out the principles which we say must guide the Committee in reviewing the legislation. We then turn our attention to those provisions which we find most objectionable or problematic from a civil liberties perspective even though other provisions may also cause us concern. As much as possible, the Association has tried to provide concrete proposals for how the *Act* can be amended to address those concerns.

## **GUIDING PRINCIPLES**

It is crucial to our commitment to the ideals of an free and open society that this process should represent the very beginning, not the end, of a debate about balancing security and civil liberties. To say that civil liberties can be qualified when an open society encounters extraordinary threats to its institutions is almost a truism. No rights are absolute, and security is a fundamental condition of the exercise of all other rights. But saying this much settles no issues at all. We still require some principled basis from which to assess the appropriate limits of government action.

One guiding principle should be evident and unassailable:

Restrictions to established basic rights and freedoms are justified only if they are necessary ultimately for the sake of those very same rights and freedoms.

Any retreat from this principle signals a retreat from what we have accomplished as a society, from what is arguably our most remarkable moral and cultural contribution to history, one that

has been bought not only with the most careful thought and effort but with great personal sacrifice as well.

Two fundamentally important implications follow from this principle. First, restrictions on basic rights and freedoms must be no greater than are reasonably necessary to address the problems at hand. In this respect, the onus is clearly on the government to demonstrate where existing institutions of law enforcement are inadequate to protect our basic institutions of rights and freedoms. Second, if restrictions on established basic rights and freedoms can ultimately be justified only for the sake of those rights and freedoms, there must be some evident commitment that the restrictions will come to an end. As outlined below, the Association takes the position that the Government's Bill has failed to meet those two principles.

Before detailing the objections and concerns that the BCCLA has with specific provisions of the *Act*, we wish to outline two threads found in the *Act* which significantly challenge the basic legal principles which have helped define what it means to live in a free and democratic society. First, the *Act* displaces the role of Parliamentarians in determining and describing our fundamental rights. For instance, while ministerial authorizations of intercepts of private communications under s. 273.65 of the amended *National Defence Act* require "satisfactory measures" to be in place to protect the privacy of Canadians, the nature and scope of those protections is left in the discretion of the Minister. Examples of this displacement of the role of Parliament in lawmaking are also found in the provisions which allow the schedules to the amended *Canada Evidence Act* and *Official Secrets Act* to be amended by regulation.

Of even greater concern is the thread which displaces judicial involvement in supervising discretionary decision-making of the Executive which may affect the rights and obligations of persons. For instance, the *Act* grants the Attorney General of Canada the authority to issue certificates prohibiting the disclosure of information. No judicial review of those certificates is available, even for the limited purpose of determining whether the criteria for issuing the certificate, as broad as they are, have been met. When we remember that the certificate could prohibit the disclosure of exculpatory evidence to a person subject to criminal prosecution, this displacement of the supervisory role of the judiciary is chilling.

The provisions of the amended *National Defence Act* which would allow for the intercept of private communications without judicial authorization is another example of the displacement of the supervisory role of the judiciary, a role which exists to protect the rights of persons from violation by the state.

These two threads found in the legislation highlight the need for careful consideration of all the provisions of Bill C-36. Terrorist do not only attack buildings and people. They aim to undermine the very foundations of free and open societies. In responding to terrorism, we cannot allow the fundamental footings of our free and democratic society to be perilously weakened. We must stay the course by bringing into force only those measures which are necessary, effective and true to our cherished legal principles. And we must resist proposals which endanger our very way of life.

## **PART I      CRIMINAL CODE**

### **Introduction**

The proposed amendments to the *Criminal Code* contain seven provisions of concern to the Association:

- 1) The definition of “terrorist activity” [s.4 of the *Act*; s.83.01 of the amended *Criminal Code*];
- 2) The “investigative hearing” [s.4 of the *Act*; s.83.28 of the amended *Criminal Code*];
- 3) The “recognizance with conditions” [s.4 of the *Act*; s.83.3 of the amended *Criminal Code*];
- 4) The amendment of s.810.01 of the *Criminal Code* to include a “terrorist offence” [s.22 of the *Act*; s.810.01 of the amended *Criminal Code*];
- 5) The amendment to the law of first-degree murder [s.9 of the *Act*; s.231(6.01) of the amended *Criminal Code*];
- 6) The creation of a distinct offence for mischief related to religious property [s.12 of the *Act*; s.430(4.1) of the amended *Criminal Code*]; and
- 7) The creation of a provision for the deletion of material from computers that is hate propaganda [s.10 of the *Act*; s.320.1 of the amended *Criminal Code*].

**1. The Definition of “Terrorist Activity” [s.4 of the Act; s.83.01 of the amended Criminal Code]**

The definition of “terrorist activity”, especially as expressed in the (b) portion of the definition, is far too broad. It includes activities which are not part of the public’s perception of terrorist activities, including many acts of non-violent civil disobedience. Those acts, while possibly criminal in nature, should not be swept up into the definition of terrorism and thus subject persons committing those acts to the force of the other proposed provisions. Many of the provisions aimed at the prevention and prosecution of terrorist activities are not objectionable on their own, but become so when the definition of what constitutes a terrorist activity is drawn too broadly.

The Association also notes that this definition is broader than the definition adopted by the United Kingdom, which is attached to these written submissions as an Appendix.

The (b) definition of “terrorist activity” reads as follows:

- (b) an act or omission, in or outside Canada,
  - (i) that is committed
    - (A) in whole or in part for a political, religious or ideological purpose, objective or cause, and
    - (B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the person, government or organization is inside or outside Canada, and
  - (ii) that is intended
    - (A) to cause death or serious bodily harm to a person by the use of violence,
    - (B) to endanger a person's life,
    - (C) to cause a serious risk to the health or safety of the public or any segment of the public,
    - (D) to cause substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (A) to (C) and (E), or
    - (E) to cause serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of lawful advocacy, protest, dissent or stoppage of work that does not involve an activity that is intended

to result in the conduct or harm referred to in any of clauses (A) to (C).

This definition, especially when the underlined portions are read alone, is wide enough to include the taking over of a bridge during an unlawful protest, in circumstances where none of the harms described in sub-subsections (a) to (c) are intended or caused.

There are two ways in which the definition can be made less objectionable. First, the underlined portions of subsection (b)(i)(B) can be deleted. Second, the entirety of subsection (b)(ii)(E) can be deleted. The BCCLA suggests that when subsection (b)(ii)(E) is deleted in its entirety, the definition of terrorism, while still very broad, is less objectionable.

Furthermore, the Association recommends that the definition of “terrorist activity” be subject to a sunset clause. Defining terrorism has proven remarkably difficult in all jurisdictions and the challenge has produced a variety of results. The impact of any such definition should again be the subject of debate by lawmakers.

### **Recommendation #1**

The BCCLA recommends that the definition of “terrorist activity” be amended by deleting subsection (b)(ii)(E) from the definition. The BCCLA also recommends that the Committee consider whether the second portion of subsection (b)(i)(B) is necessary or overbroad.

Furthermore, the Association recommends that the definition of “terrorist activity” be subject to a sunset clause.

## **2. Investigative Hearing Procedures [s.4 of the Act; s.83.28 of the amended Criminal Code]**

This provision is a severe transgression of the principle that individuals, as autonomous agents, get to choose when to speak and to whom. While the investigation and prevention of large-scale terrorist acts may justify this extraordinary measure, this challenge to the legal right to remain silent in the presence of the state should not, without justification, become a fixture of our free and open society. The BCCLA recommends that this provision be subject to a sunset clause.

Furthermore, this extraordinary measure requires the additional safeguard that the oral examination of the person should only take place before a judge and not simply before a peace officer.

The order described in s.83.28(5) can require the person to answer questions put to them “by or on behalf of the peace officer” (subsection (8)). Those questions can also be put to the person not under oath (subsection (5)(a)). Those provisions suggests that the order can require the person to answer questions out of the presence of a judge. The BCCLA takes the position that in order to protect both the legal rights of persons not to answer certain questions, because of privilege or the operation of law, and the psychological integrity of persons forced to answer questions in these circumstances, all questioning of such persons must be conducted in the presence of a judge. The BCCLA suggests that either s.83.28(5) of the *Act* be amended to make this requirement explicit or an “Idem” be added to the section which would state that any examination of the person must be conducted in the presence of a judge.

Subsections (5)(c) and (12) also creates a new means for the state to seize personal property, including intimate letters and journals, which is outside the warrant provisions of the *Criminal Code*. It is unclear why the warrant provisions of the *Criminal Code* are inadequate for this purpose or what the justification is for this expanded power of seizure.

## **Recommendation #2**

The BCCLA recommends that this provision be subject to a sunset clause.

The BCCLA also recommends that either s.83.28(5) of the amended *Criminal Code* be amended to make explicit the requirement that any examination of the witness take place in the presence of a judge or an “Idem” be added to the provision which would state that any examination under this section must be conducted in the presence of a judge.

Furthermore, the BCCLA recommends that the Committee carefully consider whether the new means of seizing personal property contained in the section are necessary and justified.

**3. The “Recognizance with Conditions” [s.4 of the Act; s.83.3(8) of the amended Criminal Code]**

The Department of Justice has admitted that the threshold for arrest under this section is lower than that under the provisions currently contained in the *Criminal Code*, which require reasonable grounds that the person has committed or is about to commit an indictable offence.

It is unclear why the lower threshold contained in this section is necessary. Again, if this lower threshold for short-term detention and subsequent release on conditions is justified in times of crisis, it should not remain in our free and open society longer than is necessary. The BCCLA recommends that this provision be subject to a sunset clause.

Before a peace officer can lay an information before a judge under s.83.3(2), the peace officer must:

- (a) believe[s] on reasonable grounds that a terrorist activity will be carried out; and
- (b) suspect[s] on reasonable grounds that the imposition of a recognizance with conditions on a person, or the arrest of a person, is necessary to prevent the carrying out of the terrorist activity.

The BCCLA also suggests that the judge, in determining whether to place the person on a recognizance, should be satisfied that the criteria in both (a) and (b) above have been established by the evidence. Presently, the wording of s.83.3(8) suggests that only subsection (b) above must be proven before the judge.

**Recommendation #3**

The BCCLA recommends that this provision be subject to a sunset clause.

That BCCLA suggest that s.83.3(8) be amended to read as follows:

The provincial court judge before whom the person appears pursuant to subsection (3) may, if satisfied by the evidence adduced that the peace officer:

- (a) has reasonable grounds that a terrorist activity will be carried out; and
- (b) suspects on reasonable grounds that the imposition of a recognizance with conditions on a person, or the arrest of a person, is necessary to prevent the carrying out of the terrorist activity

order that the person enter into a recognizance to keep the peace and be of good behaviour for any period that does not exceed twelve months and to comply with any

other reasonable conditions prescribed in the recognizance, including the conditions set out in subsection (10), that the provincial court judge considers desirable for preventing the commission of a terrorism offence.

**4. Amendment of s.810.01 of the *Criminal Code* to include a “terrorist offence” [s.22 of the *Act*; s.810.01 of the amended *Criminal Code*]**

Section 22 of the *Act* amends s.810.01 of the *Criminal Code* to make that provision applicable to “a terrorist offence”. The BCCLA suggest that this amendment is unnecessary given that the proposed s.83.3 of the amended *Criminal Code* will already provide for placing a person on a recognizance where there are grounds to believe that a terrorist activity will be carried out and there is a reasonable suspicion that the imposition of a recognizance on the person, or their arrest, is necessary to prevent the carrying out of the terrorist activity.

**Recommendation #4**

The BCCLA recommends that s.22 of the *Act* be deleted. In the alternative, the BCCLA recommends that s.22 of the *Act* be subject to a sunset clause.

**5. Amendment to the Law of First-Degree Murder [s.9 of the *Act*; s.231(6.01) of the *Criminal Code*]**

The Government’s proposed amendment to the law of first-degree murder contained in s.9 of the *Act* suffers from both procedural and substantive failings.

Amendments to the law of first-degree murder are a most serious matter. The stigma and punishment attached to those offenders convicted of this most serious offence require any proposed changes to undergo the most careful, deliberate consideration. The BCCLA submits that this is simply not possible in the context of the enormity of Bill C-36. The BCCLA therefore recommends that s.9 of the *Act*, which amends the law of first-degree murder, be deleted.

It is also unclear whether s.9 of the *Act* is necessary or proportionate. This amendment would deem as first-degree murder any indictable offence which causes death and where the act or omission constituting the offence also constitutes a terrorist activity. By operation of the definition of “terrorist activity” and s.7(3) of the *Criminal Code*, this would include a simple

assault on an internationally protected person which causes the death of that person, even where the assailant had no intention to cause death. The BCCLA doubts whether this provision would pass scrutiny under s.7 and s.12 of the *Charter*, as the stigma and punishment for first-degree murder may be out of all proportion to the intent of the offender. The BCCLA also notes that the Bill already proposes that an offender who commits an indictable offence where the act or omission is also shown to be a terrorist activity is liable to imprisonment for life [s.4 of the *Act*; s.83.27 of the amended *Criminal Code*].

### **Recommendation #5**

The BCCLA recommends that s.9 of the *Act* be deleted.

#### **6. The Creation of a Distinct Offence for Mischief Related to Religious Property [s.12 of the *Act*; s.430(4.1) of the amended *Criminal Code*].**

Section 12 of the *Act* creates a new offence of causing mischief to or in relation to religious property. The BCCLA is opposed to criminal offences based on political, religious or ideological motives. It is the harm caused and not the motive which should be the subject of the criminal sanction. The vulnerability of a particular group whose property has been attacked may be relevant to sentencing. The BCCLA notes that s.718.2 of the *Criminal Code* already requires judges to consider, as an aggravating factor in sentencing, whether the offence was motivated by bias, prejudice or hate on the basis of, amongst others, religion.

The Government's proposals in the *Act* to strengthen the hate propaganda and mischief sections of the *Criminal Code* must be recognized as, at best, an ineffectual sop and, at worst, a red herring to divert attention from more pressing issues about the protection of fundamental freedoms. Indeed, in coming days, the principal threats to Muslim Canadians' basic freedoms and equality are not likely to come from private Canadian citizens but from government itself.

As with the proposed hate propaganda provisions, this amendment is not necessary to prevent or investigate terrorism and should not have been included in this very large Bill.

### **Recommendation #6**

The BCCLA recommends that s.12 of the *Act* be deleted.

#### **7. Deletion of Material from Computers that is Hate Propaganda [s.10 of the *Act*; s.320.1 of the amended *Criminal Code*]**

Even without the Association's general objections to hate propaganda legislation, this new provision is objectionable. It extends the hate propaganda laws to cover information persons must actively seek out on personal websites rather than information that is published or disseminated. Of even greater concern, this provision reduces the level of proof from beyond a reasonable doubt to a balance of probabilities. This lower standard of proof will greatly assist the agents of censorship while making it much more difficult for the accused to defend their material on the basis of truth, opinion on a religious subject or public interest, where a reasonable doubt will no longer suffice.

Furthermore, this proposed amendment to *Criminal Code* is not necessary to prevent or investigate terrorism and should not have been included in this very large Bill.

### **Recommendation #7**

The BCCLA recommends that s.10 of the *Act* be deleted.

## **PART II OFFICIAL SECRETS ACT**

### **Introduction**

The proposed amendments to the *Official Secrets Act* raise the following two objections and one concern:

1. The list of departments, boards, agencies or offices contained in the Schedule to the amended *Official Secrets Act* should not be subject to amendment by regulation;
2. A right of appeal should exist for a person designated as "a person permanently bound to secrecy", pursuant to s.10(1) of the amended *Official Secrets Act*; and
3. The amendments would be of grave concern if the public interest defence contained in s.15 of the amended *Official Secrets Act* were removed.

**1. Amendment of the Schedule [s.29 of the Act; s.9 of the amended *Official Secrets Act*]**

Section 9 of the amended *Official Secrets Act* would allow the Schedule to the amended *Official Secrets Act* to be amended by regulation. The statutory designation of a person as a “person permanently bound to secrecy” is a severe infringement on their freedom of expression. The list of entities which classify as “security or intelligence” agencies should not be subject to amendment by regulation but should be subject to classification by Parliament.

**Recommendation #8**

The BCCLA recommends that s.9 of the amended *Official Secrets Act* be deleted.

**2. The s.10(1) Designation**

Because of the severe restrictions on the freedom of expression imposed on a person designated by the deputy head as a “person permanently bound to secrecy”, the person should have the right to appeal the designation to the Federal Court, to ensure that the criteria set out in s.10(1) of the amended *Official Secrets Act* have been properly met.

**Recommendation #9**

The BCCLA recommends that a right of appeal exist for any person who has been designated as a “person permanently bound to secrecy” pursuant to s.10(1) of the amended *Official Secrets Act*.

**3. The Public Interest Defence**

The offences set out in ss.13 and 14 of the amended *Official Secrets Act* would be of grave concern if the public-interest defence contained in s.15 of the amended *Official Secrets Act* were removed.

**PART 3 CANADA EVIDENCE ACT**

**Introduction**

The proposed amendments to the *Canada Evidence Act* raise the following two objections:

1. Section 38.13 of the amended *Canada Evidence Act*, which allows the Attorney General of Canada to issue a certificate prohibiting disclosure of information in any proceeding, is not necessary. If this mechanism for protecting information is adopted into Canadian law, the certificate must be subject to judicial review; and
2. The list and description of entities contained in the Schedule to the amended *Canada Evidence Act* should not be subject to amendment by regulation.

**1. Certificate Prohibiting Disclosure [s.43 of the *Act.*; s.38.13 of the amended *Canada Evidence Act*]**

Section 38 of the *Canada Evidence Act* already provides a mechanism for the protection of information where its disclosure would be injurious to international relations or national defence or security. The Government has not demonstrated why this provision is inadequate and the Attorney General must be given the authority to issue a certificate to prohibit disclosure of the information. The BCCLA therefore recommends that s.38.13 of the amended *Canada Evidence Act* be deleted.

Should the Government insist on introducing this novel mechanism into Canadian law, the BCCLA says that there must be specific, harm-based statutory criteria that shall be met before the certificate can be issued. Furthermore, the reasonableness of the certificate must be subject to judicial review. Judicial oversight of all government action is a fundamental and irreplaceable component of the proper relationship between the three arms of government and the citizens they serve. This is especially true where the action results in the prohibition of the disclosure of evidence which may, in some cases, assist an accused in his defence against criminal prosecution.

**Recommendation #10**

The BCCLA recommends that s.38.13 of the amended *Canada Evidence Act* be deleted. In the alternative, the BCCLA recommends that specific, harm-based statutory criteria be set out for the certificate and that the issuing of the certificate be subject to judicial review for reasonableness. The BCCLA also recommends that this provision be subject to a sunset clause.

**2. Schedule [s.43 of the Act; s.38.01(8) of the amended *Canada Evidence Act*]**

The list and description of entities contained in the Schedule to the amended *Canada Evidence Act* should not be subject to amendment by regulation. Parliament should decide whether the enlargement of the list of entities in the Schedule is justified.

**Recommendation #11**

The BCCLA recommends s.38.01(8) of the amended *Canada Evidence Act* be deleted.

**PART 4 PROCEEDS OF CRIME (MONEY LAUNDERING) ACT**

The BCCLA has, at this time, no comment on the proposed amendments to the *Proceeds of Crime (Money Laundering) Act*. The Association has not been able to fully consider all the Bill's provisions due to the enormity of the Bill and the limited time available to prepare our response. The Association says that this practical reality – which faces all parties, including this Committee – militates in favour of the entire *Act* being made subject to a sunset clause.

**PART 5 AMENDEMENTS TO OTHER ACTS**

**1. *Access to Information Act, Privacy Act and Personal Information Protection and Electronic Documents Act.***

Sections 87, 103 and 104 of the *Act* authorize the Attorney General of Canada to issue a certificate prohibiting disclosure of information and making these *Acts* inapplicable to that information. Those provisions are unnecessary and unjustified.

The three amended *Acts* pose no threat to national defence or international relations, as they contain completely adequate provisions to deal with the protection of such information.

Therefore, the amendments are not necessary and the BCCLA recommends that the provisions be deleted.

The BCCLA is especially disappointed that the Government has proposed that the supervisory jurisdiction of the Information Commissioner and the Privacy Commissioner can be completely

ousted by a discretionary act of the Attorney General. This fundamental change in the law of access and privacy is not justified and especially disturbing in its impact on privacy rights. Where these ministerial certificates are issued, privacy laws cease to apply in their entirety. Of even greater concern is the possibility that such entities as the Canadian Security Intelligence Service or the Royal Canadian Mounted Police will be placed outside the realm of privacy law by operation of these provisions.

Should the Government insist on introducing this novel mechanism into Canadian law, the BCCLA says that there must be specific, harm-based statutory criteria that shall be met before the certificate can be issued. Furthermore, the reasonableness of the certificate must be subject to judicial review. Finally, these provisions must be subject to a sunset clause.

### **Recommendation #12**

The BCCLA recommends that ss.87, 103 and 104 of the *Act* be deleted. In the alternative, the BCCLA recommends that specific, harm-based statutory criteria be set out for the certificate and that the issuing of the certificate be subject to judicial review for reasonableness. The Association recommends that these provisions be subject to a sunset clause.

#### **2. *National Defence Act***

##### A. Protecting Canadians' Privacy Rights [s.102 of the *Act*; s.273.64 and s.273.65 of the amended *National Defence Act*]

The amending provisions speak of protecting the privacy of Canadians where intercepts of private communication are authorized by the Minister (s.273.64(2); s.273.65(2)(d), (4)(e)). However, no statutory protections are provided. The nature and extent of the protections is at the discretion of the Minister. The BCCLA submits that this is inadequate. The amendments must provide for and define the "satisfactory measures" which will be afforded to Canadians during these invasions of their private communications by the state. At a minimum, the protections should mirror those provided for in the *Privacy Act*.

### **Recommendation #13**

The Association recommends that the amendments to the *National Defence Act* set out the minimum privacy protections afforded Canadians in these circumstances, protections mirroring those contained in the *Privacy Act*.

#### B. Judicial Authorization needed for Intercept of Private Communications [s.102 of the Act; s.273.65 of the *National Defence Act*]

The Government has not justified why the interception of private communications should not be permitted only on judicial authorization. Moreover, the BCCLA understands the Ministerial authorization provided for in subsection (3) includes intercepts of domestic communications. Unlike the authorization described in subsection (1), the authorization in s.273.65(3) does not require that “the interception be directed at foreign entities located outside Canada”. There is no justification for displacing the principle of judicial authorization for intercepts of private communications in this circumstance.

### **Recommendation #14**

The BCCLA recommends that any intercepts of private communications require judicial authorization, especially where those intercepts may include domestic communications or communication by a Canadian or person within Canada.

## **PART 6 REGISTRATION OF CHARITIES – SECURITY INFORMATION**

The BCCLA has, at this time, no comment on the provisions contained in or the enactment of the proposed *Charities (Security Information) Act*.

## **PART 7 COORDINATING, REVIEW AND COMMENCEMENT PROVISIONS**

The BCCLA takes that the position that the entirety of this *Act* must be subject to a sunset clause and a Parliamentary review in no more than four or five years. Because of the enormity of the *Act*, it is impossible to adequately assess the impact these new provisions will have on the legal principles and civil liberties which define us as a free, open and democratic society. Provisions

which have so far attracted little or no attention may prove to be highly challenging to the legal principles and civil liberties we cherish in Canada.

In the alternative, the BCCLA recommends that those provisions which introduce novel or contested legal mechanisms into Canadian law be subject to sunset clauses and the entire *Act* subject to Parliamentary review in no more than three years. Those provisions would include:

- 1) The definition of terrorism;  
[s.4 of the *Act*; s.83.01 of the amended *Criminal Code*];
- 2) The investigative hearing;  
[s.4 of the *Act*; s.83.28 of the amended *Criminal Code*];
- 3) The recognizance with conditions;  
[s.4 of the *Act*; s.83.3 of the amended *Criminal Code*];
- 4) The amendment of s.810.01 of the *Criminal Code*;  
[s.22 of the *Act*; s.810.01 of the amended *Criminal Code*];
- 5) The ministerial certificates for prohibition of disclosure of information; and  
[s.43 of the *Act*; s.38.13 of the amended *Canada Evidence Act*]  
[s.87 of the *Act*; s.69.1 of the amended *Access to Information Act*]  
[s.103 of the *Act*; s.4.1 of the amended *Personal Information Protection and Electronic Documents Act*]  
[s.104 of the *Act*; s.70.1 of the amended *Privacy Act*]
- 6) The ministerial authorizations for intercepts of private communications  
[s.102 of the *Act*; s.273.65 of the amended *National Defence Act*].

Should a demonstrated need for those provisions exist at or near the expiry of their force, Parliament can again choose to provide those measures to law enforcement agencies.

#### **Recommendation #14**

The BCCLA recommends that the entire *Act* be subject to a sunset clause in no more than three years. In the alternative, the BCCLA recommends that the above-noted provisions be subject to a sunset clause and the entire *Act* be subject to a Parliamentary review within three years.

## **SUMMARY**

The BCCLA thanks the Committee for the opportunity to present our thoughts on this important piece of legislation. We hope that both our personal attendance before the Committee and these written submissions will assist the Committee in carrying out their review of the *Act*. We look forward to the Committee's report on this challenging set of legislative proposals.

## **APPENDIX**

***Terrorism Act (U.K.), 2000, c. 11, s.1.***

Terrorism  
interpretation.

## PART I

### INTRODUCTORY

1. - (1) In this Act "terrorism" means the use or threat of action where-
  - (a) the action falls within subsection (2),
  - (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and
  - (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.
- (2) Action falls within this subsection if it-
  - (a) involves serious violence against a person,
  - (b) involves serious damage to property,
  - (c) endangers a person's life, other than that of the person committing the action,
  - (d) creates a serious risk to the health or safety of the public or a section of the public, or
  - (e) is designed seriously to interfere with or seriously to disrupt an electronic system.
- (3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.
- (4) In this section-
  - (a) "action" includes action outside the United Kingdom,
  - (b) a reference to any person or to property is a reference to any person, or to property, wherever situated,
  - (c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and
  - (d) "the government" means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.
- (5) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.