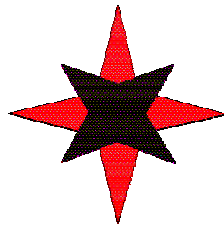


**SUBMISSION TO THE SUBCOMMITTEE
ON PUBLIC SAFETY AND NATIONAL SECURITY
OF THE STANDING COMMITTEE
ON JUSTICE, HUMAN RIGHTS, PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**



***SPEAKING TRUTH TO POWER:*
A QUAKER RESPONSE TO
THE ANTI-TERRORISM ACT**

February 28, 2005

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Introduction:

Canadian Friends Service Committee (CFSC) is the peace and service arm of Canadian Yearly Meeting of the Religious Society of Friends (Quakers), one of the historic peace churches. Since our beginning in 17th century England wracked by civil war, we Quakers have held a deep concern for civil liberties, religious freedom, and social justice. This has led us, across time, to “speak truth to power”, to articulate our concerns to the state and to do so from a place of spiritual conviction.

During the first decades of Quakerism, adherents were subject to public vilification, unjust arrest, imprisonment, and, on occasion, torture. Distrusting the peaceable Friends (now usually called "Quakers") as a threat to society, the English Government enacted laws that prohibited our worship and our witness in the world. Quakers were fortunate to have access to due process before a justice of the courts, and influential supporters, so that in many cases the charges against them were thrown out, or they were found innocent. Others were less fortunate.

Our concern for the vulnerable in society and our pacifist witness against war and violence comes from this history. Moreover, this experience over the past 350 years, in a range of countries, of the violation of our civil liberties, of our rights of conscience and religion is at the root of profound concern about Canada's *Anti-terrorism Act*, approved in December 2001.

Impact on charities:

While Quakers, like many Canadians, believe that we are ultimately answerable to a power greater than the state, that is, to God, we have a tradition of abiding by the laws of our democratic society. When the *Anti-terrorism Act* was passed, aware of society's need to address the issue, CFSC began researching how to comply with the legislation, and its potential implications with regards to charities, those engaged in public witness, and minorities. However worthy an end, it has always been entirely against our witness to support violence as a means toward it. We would, therefore, never knowingly do so. Nevertheless in view of the *Anti-terrorism Act* we re-examined our practices and took measures to improve our stewardship of CFSC resources, and to ensure due diligence. In the process we were deeply distressed to find that it is literally impossible to achieve a level of diligence that would reliably protect us from prosecution under the *Act* as it is presently written.

The *Charities Registration Act* was amended through the *Anti-terrorism Act*. It now gives authority to the Solicitor General and Minister of National Revenue to issue a certificate to a charity if there are reasonable grounds to believe that they are involved directly or indirectly in supporting "terrorist activities" (the certificate can terminate charitable status and result in the charity's assets being seized). This may be based on a real or perceived relationship with a "listed entity", that is, an organization that has been identified by the government as undertaking or supporting terrorist activities. Ministers can rely on information collected from government agencies or institutions but this information is not available to the legal counsel, or to the organization that has been issued the certificate.

The Minister would then refer the certificate for judicial review; the decision by the court is absolute. There is no appeal process. The certificate would be valid for three years and the organization cannot apply for charitable status within that time period. A certificate may be issued if a charity:

- Has made, makes or will make available any resources, directly or indirectly to a listed entity
- Has made available any resources, directly or indirectly to an entity that was and continues to be engaged in terrorist activities or activities in support of them
- Has made available any resources, directly or indirectly to an entity that engages in or will be engaged in terrorist activities or activities in support of them

Even if a certificate is not issued and a charity is not charged with a Criminal Code offence, an unwitting violation may result in a charity losing its charitable status without the protection of due process of law. The charity may also face a freeze, seizure, restraint or forfeiture of its assets, and its directors could face penalties such as fines, or even imprisonment.

The definition of “terrorism”:

While we agree that the transfer of funds to indisputably violent groups should be stopped, a difficulty arises in defining the term "terrorist". In the present absence of impartial, standardized criteria for the term (which criteria, of course, also need to be viewed in the context of a particular situation), this label can be very subjectively applied. An oppressive government may well have a political interest in labeling as "terrorist" any group advocating change beneficial to the larger society, though damaging to that government's illegitimate hold on power.

In December 2004, the United Nations released *A most secure world: Our shared responsibility*, the Report of the Secretary-General's High Level Panel on Threats, Challenges, and Change (see *Appendix A*). Section V of the Report addresses terrorism and recognizes the need for a common definition as the bedrock requirement for a comprehensive strategy on the issue. We concur that a global consensus on this term is required and, as a suitable alternative to the definition in the current *Anti-terrorism Act*, draw your attention to the definition advanced in the Report:

“Any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act”.¹

¹ Page 49, *A most secure world: Our shared responsibility*, the Report of the Secretary-General's High Level Panel on Threats, Challenges, and Change (UN document number A/59/565, December 2004).

Terrorist activity and civil action:

The *Anti-terrorism Act* has potentially serious implications for individuals, Meetings, charities, and NGO's.

The *Act* amends the federal Criminal Code to include a definition of "terrorist activities" and "terrorist group" and defines a terrorist offence. The main concern that arises is the broad nature of the definitions, and the new criminalization of "facilitating" and financing terrorist activity.

Under the *Act* a terrorist activity is deemed to be "facilitated" whether or not:

- the facilitator knows that a particular terrorist activity is facilitated
- any particular terrorist activity was foreseen or planned at the time it was facilitated
- any terrorist activity was actually carried out

Under the *Act*, it is a criminal offence to:

- directly or indirectly provide or collect property that is intended to be used or knowing that it will be used in whole or in part in a terrorist activity
- directly or indirectly collect property, provide property, or invite a person to provide property, financial or other "related services" that facilitates or carries out a terrorist activity
- deal with property owned or controlled by or on behalf of a terrorist group, facilitate, directly or indirectly, any transaction with respect thereof or provide any financial or other related services in respect thereof
- directly or indirectly participate or contribute to any activity that enhances the ability of any terrorist group to facilitate or carry out a terrorist activity
- directly or indirectly instruct any person to carry out a terrorist activity.
- for a financial institutions (which may include charities) not to determine if they possess property of a "listed entity"

The following examples illustrate the impact that the revised Criminal Code could have upon charities:

- A hospital foundation raises funds for the general operations of a hospital that subsequently provides medical care to student protesters at an anti-globalization protest who erect a road block leading to an international economic summit
- A religious denomination provides funding to a local church that assists student protesters by providing sleeping facilities in its church basement. These protesters then block a road leading to an international economic summit

The above illustrations may, at first, seem absurd - until you look at the provisions of the *Anti-terrorism Act* and other legislation that was amended in the wake of September 11th.

Bill C-35 amended the *Foreign Missions and International Organization Act* widening such definitions as "international organization" to encompass inter-governmental bodies such as the G-8 or World Trade Organization (WTO), and "internationally protected persons" to include foreign representatives such as diplomats, and other government officials.

Under this revised *Act*, any threatening or commission of acts against those defined as "internationally protected persons", "official premises", or "means of transport" would meet the definition of "terrorist activity". In other words, the specific areas where "internationally protected persons" are to meet are so protected under this *Act* that it affects where protesters are allowed to protest, putting those protesters at risk of being accused of committing a "terrorist activity".

Similarly the *Act* gives power to the Royal Canadian Mounted Police (RCMP), which operates federally and provincially, to limit the rights of protesters "as they deem necessary".

As one can now see, it is imperative for all the anti-terrorism measures passed in the past few years to be reviewed, and reviewed in tandem. They could have had profound, and chilling, effects on charities in terms of project selection and funding allocations - as also on individuals or groups engaged in wholly legitimate dissent against ill-advised government policies or undemocratic regimes.

Impact on legal rights:

Quakers are deeply concerned about how the legislation could be used against those engaged in legitimate civil disobedience or social witness, or against immigrants, refugees, and other minority groups (see *Appendix B* for a statement by Canadian Yearly Meeting, the national body of Quakers in Canada).

Particularly distressing, and unacceptable, is the lack of due process for individuals detained under a "security certificate" - be it under the *Anti-terrorism Act* or the *Immigration and Refugee Protection Act*.

We believe that the *Act's* changes to the Criminal Code with regards to preventive detention and the withholding of information about charges against an accused violates the fundamental freedoms and the legal rights that are secured in the Charter of Rights and Freedoms.

We wish to remind Parliamentarians that the *Charter of Rights and Freedoms* declares that "everyone" - not just citizens - has the following rights:

Article 9: Everyone has the right not to be arbitrarily detained or imprisoned.

Article 10: Everyone has the right on arrest or detention

- a) to be informed promptly of the reasons therefore;
- b) to retain and instruct counsel without delay and to be informed of that right; and
- c) to have the validity of the detention determined by *habeas corpus* and to be released if the detention is not lawful.

Article 11: Any person charged with an offence has the right

- a) to be informed without unreasonable delay of the specific offence;
- b) to be tried within a reasonable time;
- c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
- d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- e) not to be denied reasonable bail without just cause;
- f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
- g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
- h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
- i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

Parliament's abrogation of these fundamental rights through the *Anti-terrorism Act*, and related legislation, is simply unconstitutional. We, at CFSC, are left wondering if Parliament, in the emotionally charged environment following September 11th, 2001, approved unnecessary measures that would have been unthinkable if a clear-headed examination of the threats and legitimate needs in the context of existing legislation and requisite constitutional rights had then been undertaken.

How is the legislation being applied?

There are already examples of unjust application of these new laws. Like many other concerned groups, CFSC is a member of the International Civil Liberties Monitoring Group. One of the results of the ongoing research and monitoring carried out by the ICLMG is concrete evidence that the new anti-terrorism legislation has already been used to intimidate activists and discourage protests. Some examples are:

- Two members of the West Coast Warrior Society, an Aboriginal group, had their house searched by the RCMP. A search warrant was issued after the RCMP heard an allegation that weapons were being stockpiled in the activists' house. No weapons were found. The activists were given no further information as to why

they were targeted and were told that the details would not be disclosed. The authorities did say that they used the *Anti-terrorism Act* as grounds for the search.

- Members of the Muslim community have reported that they have been harassed and interrogated by the Canadian Security and Intelligence Service (CSIS). The Muslim Lawyers Association believes that over 1,000 of these interviews have taken place, although people are reluctant to speak out as they fear reprisals.
- Members of the anti-globalization movement have also been harassed and intimidated by the authorities. Some protesters report that they were informed that if they failed to cooperate with questioning they risked prosecution under the anti-terrorism laws.

To date, those being affected are those already on the margins of society - for racial, ethnic, or political reasons. Being on the margins does not make one a criminal, let alone a terrorist. We remind you that Ghandi and Martin Luther King Jr. were perceived as criminals, even terrorists, because of the kind of fundamental societal changes they were seeking to bring about. Perhaps most shocking about this perception is that both men were pacifists, committed to non-violent change.

Conclusion and recommendation:

The *Anti-terrorism Act*, with its loose definitions, expanded powers, and lack of sufficient oversight by Parliament must be withdrawn.

CFSC offers these a recommended way forward to determine any needed replacement legislation:

1. The *Anti-terrorism Act* should be withdrawn, or be amended to include a sunset clause of one or two years.
2. The “security certificate” mechanism should be immediately discontinued, with the provision being retracted from both the *Anti-terrorism Act* and the *Immigration and Refugee Protection Act*.
3. Over the next 12-24 months, the Government of Canada should appoint a Commission to undertake public consultation and research on the issue of terrorism with a view to assessing Canada's needs. No new anti-terrorism-like legislation should be introduced into Parliament until this process is completed.
4. Public consultation should include representatives from those most affected and concerned about the legislation – charities, non-governmental organizations, faith groups, minority groups, legal scholars, unions, etc.

5. The defining of “terrorism” is the necessary foundation for any strategy or required legislation. This consultative process would include the development of a more precise definition of terrorism which would not capture in its wording those working non-violently for legitimate social change. We would encourage drawing upon the findings and definition advanced in the Report of the UN Secretary-General’s High Level Panel on Threats, Challenges, and Change (see *Appendix A*).
6. With a definition in place, and a grasp of the issues that need to be addressed, the Commission should review legislation that pre-existed the *Anti-terrorism Act*, related anti-terrorism legislation, and international law to determine what effective mechanisms were already in place.
7. If there are needs unmet by pre-existing legislation and international law, then the Commission should identify needs for new legislation giving clear guidelines, especially concerning the protection of Charter rights.
8. Given the potential impact on civil liberties, Canadians should be given the opportunity through public hearings to comment on any new legislation before it is introduced into Parliament.
9. Any new legislation should include:
 - a. measures for collecting and reporting on the impact of its provisions, including adherence to constitutional rights,
 - b. an annual report to the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness based on the above measures, which will be made public.

APPENDIX A:

Section V (Terrorism) from *A most secure world: Our shared responsibility: Report of the Secretary-General's High Level Panel on Threats, Challenges, and Change* (December 2004).

UN Document number: A/59/565 (available at: <http://www.un.org/secureworld/>)

Section VI. Terrorism

Defining terrorism

157. The United Nations ability to develop a comprehensive strategy has been constrained by the inability of Member States to agree on an anti-terrorism convention including a definition of terrorism. This prevents the United Nations from exerting its moral authority and from sending an unequivocal message that terrorism is never an acceptable tactic, even for the most defensible of causes.

158. Since 1945, an ever stronger set of norms and laws — including the Charter of the United Nations, the Geneva Conventions and the Rome Statute for the International Criminal Court — has regulated and constrained States' decisions to use force and their conduct in war — for example in the requirement to distinguish between combatants and civilians, to use force proportionally and to live up to basic humanitarian principles. Violations of these obligations should continue to be met with widespread condemnation and war crimes should be prosecuted.

159. The norms governing the use of force by non-State actors have not kept pace with those pertaining to States. This is not so much a legal question as a political one. Legally, virtually all forms of terrorism are prohibited by one of 12 international counter-terrorism conventions, international customary law, the Geneva Conventions or the Rome Statutes. Legal scholars know this, but there is a clear difference between this scattered list of conventions and little-known provisions of other treaties and the compelling normative framework, understood by all, that should surround the question of terrorism. The United Nations must achieve the same degree of normative strength concerning non-State use of force as it has concerning State use of force. Lack of agreement on a clear and well-known definition undermines the normative and moral stance against terrorism and has stained the United Nations image. Achieving a comprehensive convention on terrorism, including a clear definition, is a political imperative.

160. The search for an agreed definition usually stumbles on two issues. The first is the argument that any definition should include States' use of armed forces against civilians. We believe that the legal and normative framework against State violations is far stronger than in the case of non-State actors and we do not find this objection to be compelling. The second objection is that peoples under foreign occupation have a right to resistance and a definition of terrorism should not override this right.

The right to resistance is contested by some. But it is not the central point: the central point is that there is nothing in the fact of occupation that justifies the targeting and killing of civilians.

161. Neither of these objections is weighty enough to contradict the argument that the strong, clear normative framework of the United Nations surrounding State use of force must be complemented by a normative framework of equal authority surrounding non-State use of force. Attacks that specifically target innocent civilians and non-combatants must be condemned clearly and unequivocally by all.

162. We welcome the recent passage of Security Council resolution 1566 (2004), which includes several measures to strengthen the role of the United Nations in combating terrorism.

163. Nevertheless, we believe there is particular value in achieving a consensus definition within the General Assembly, given its unique legitimacy in normative terms, and that it should rapidly complete negotiations on a comprehensive convention on terrorism.

164. That definition of terrorism should include the following elements:

(a) Recognition, in the preamble, that State use of force against civilians is regulated by the Geneva Conventions and other instruments, and, if of sufficient scale, constitutes a war crime by the persons concerned or a crime against humanity;

(b) Restatement that acts under the 12 preceding anti-terrorism conventions are terrorism, and a declaration that they are a crime under international law; and restatement that terrorism in time of armed conflict is prohibited by the Geneva Conventions and Protocols;

(c) Reference to the definitions contained in the 1999 International Convention for the Suppression of the Financing of Terrorism and Security Council resolution 1566 (2004);

(d) Description of terrorism as “any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act”.

APPENDIX B:

Statement by Canadian Yearly Meeting of the Religious Society of Friends (Quakers) on Canada's anti-terrorism legislation (August 2003):

We have more than one reason to concern ourselves with the anti-terrorism legislation now in process. There is an historic and continuing connection between our belief in that of God in everyone, and our traditional work to ensure the equal treatment of all persons. Secondly, as a people engaged in publishing Truth, Friends themselves have experienced their share of arbitrary arrest, and detention without due process. Lastly, state legislation, because it deals with our relationships with one another and with the social frameworks that support those relationships, is a spiritual concern appropriate to Friends.

We believe that the new Canadian anti-terrorism legislation was developed to appease the anxieties of the present US Administration rather than to answer any evident need within Canada; and that pre-existing Canadian and international law was already more than sufficient for purposes of reasonable security.

The new legislation, both through intention and poor drafting, is likely to have damaging effects. It can be used to criminalize dissent. It disproportionately threatens those already vulnerable as members of minority groups: immigrants, naturalized Canadians, refugees, Muslims and Indigenous peoples. By the threat of unjust surveillance, harassment, deportation, wrongful conviction, denial of charitable status, and seizure of assets, it can hinder and discourage the humanitarian work and social witness to which Quakers and many others are called by the Spirit. Of particular concern is the lack of due process for the accused, and the lack of adequate accountability on the part of those given authority under the legislation.

We ask ourselves, "At what point do people lose the power to challenge their government's misuse of authority?" Learning from history, we must have the courage to act despite fear, and call our government to account while it is still possible to do so.

RESOURCE DOCUMENTATION FOR SUBMISSION:

A most secure world: Our shared responsibility, the Report of the Secretary-General's High Level Panel on Threats, Challenges, and Change (December 2004).

UN Document number: A/59/565 (available at: <http://www.un.org/secureworld/>)

Anti-terrorism Act - <http://laws.justice.gc.ca/en/a-11.7/text.html>

Anti-Terrorism and the Security Agenda: Impacts on Rights, Freedoms and Democracy. Report and Recommendations for Policy Direction of a Public Forum organized by the International Civil Liberties Monitoring Group. Published by the ICLMG (2004) - http://www.cfsc.quaker.ca/pages/documents/ReportICLMGPublic_Forum.pdf

Canadian Anti-Terrorism Legislation: How may it affect charities and individuals?

Published by Canadian Friends Service Committee (2002) -

http://www.cfsc.quaker.ca/pages/documents/aniterrorbriefing_000.pdf

Charter of Rights and Freedoms - <http://laws.justice.gc.ca/en/charter/index.html>

Immigration and Refugee Protection Act - <http://laws.justice.gc.ca/en/i-2.5/64943.html>