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## **INTERIM REPORT OF THE SPECIAL SENATE COMMITTEE ON ANTI-TERRORISM IS RELEASED**

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*By Terrance S. Carter and Nancy E. Claridge\**

### **A. INTRODUCTION**

The Special Senate Committee on Anti-Terrorism (“the Committee”) released its Interim Report entitled *Security, Freedom and the Complex Terrorist Threat: Positive Steps Ahead* (“the Report”) in March, 2011.<sup>1</sup> The Committee was created and authorized on May 27, 2010 by Order of Reference from the Senate “to examine and report on matters relating to anti-terrorism.” In preparing this report the Committee held 11 hearings between May 13, 2010 and February 14, 2011 and heard from 32 witnesses. This *Anti-Terrorism and Charity Law Alert* is a brief summary of the Report’s recommendations.

### **B. COMMENTARY**

The Report was organized into three chapters

1. The changing threat environment;
2. The challenges associated with terrorism investigations and prosecutions; and
3. Parliamentary oversight of Canada’s national security.

The focus of the report was on Islamist extremism and it made several recommendations. Some of the more import recommendations are as follows.

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<sup>1</sup> The Report is available online at <http://www.parl.gc.ca/Content/SEN/Committee/403/anti/rep/rep03mar11-e.pdf>.

## 1. The Changing Threat Environment

Very early on in the Report, the Committee recommended that the federal government should provide support, including financial support, to facilitate research, in order to better understand and prevent violent extremism.

In addition to funding, it was also recommended that the federal government study the technology used in combating child pornography and apply it to “counter the role of the internet and other means of telecommunication in radicalization.” This recommendation did not endorse any kind of censorship but wanted to “limit the circumstances in which potentially radicalizing material is automatically suggested to an audience that did not necessarily look for it.”

The Report was critical of the courts imposing shorter individual sentences for multiple terrorism related offences because of section 83.26 of the *Criminal Code*, which generally requires sentences for terrorism offences to be served consecutively. The Committee complained that the courts were using section 718.2(c) of the *Criminal Code*, in which the “totality principle” is found as a consideration in sentencing, to reduce the sentences and basically undermine the purpose of section 83.26 of the *Criminal Code*. The Committee recommended that Parliament conduct a review of section 83.26 of the *Criminal Code* and consider amendments to provide “better” guidance to the courts with respect to the role of the “totality principle.”

## 2. The Challenges Associated with Terrorism Investigations and Prosecutions

The Committee opined that national security was too important to be entrusted to a single minister. The Committee recommended that the National Security Advisor (“NSA”) must be responsible for improving “... coordination and integration of security efforts among government departments.” This was also a recommendation of the Air India Inquiry. The Committee however, highlighted a problem in that the mandate of the NSA is not well defined and recommended that legislation be passed to “expand and clarify” the mandate of the NSA.

The Committee also examined the very complex issue of disclosure of Intelligence for the purposes of criminal prosecution. The Committee recommended that the *Canadian Security Intelligence Service Act* be amended to require CSIS to provide any information that may be used in an investigation or

prosecution of an offence constituting a “threat to the security of Canada.” When it is “possible and reasonable to expect that the intelligence will be relevant to an investigation or criminal prosecution,” CSIS would have to retain intelligence collected and this would include operation notes, tapes of interviews and verbatim transcripts of all intercepted communications.

The Committee also recommended examining the usefulness of amending the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*<sup>2</sup> (“PCMLTFA”) and its regulations to reduce the \$10,000 threshold for financial transactions related to terrorist financing, recognizing that both the Air India terrorist act and other recent acts of terrorism were committed for nominal sums. The recommendation included expanding the definition of “monetary instruments” to include prepaid cards and mobile communication devices that are used to transfer funds.

### 3. Parliamentary Oversight of Canada’s National Security

The final set of recommendations were for the federal government to pass legislation that would create a permanent committee composed of members from both the Senate and the House of Commons to exercise oversight over the federal departments and agencies responsible for national security. This would ensure compliance with the *Canadian Charter of Rights and Freedoms* and it would provide assurances that the departments are operating in a “fiscally responsible” way and are “properly organized and managed.” This would be consistent with the practices of other countries, such as the United Kingdom, Australia, France, the Netherlands, and the United States.

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<sup>2</sup> *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000 c. 17

## C. CONCLUSION

The Report acknowledges weaknesses in investigating terrorism in Canada. This was also highlighted in the Air India Inquiry. It was revealed during the Air India Inquiry that very few people in the RCMP actually spoke Punjabi and there was a lack of understanding of the culture. Law enforcement and intelligence agencies are now attempting to recruit members of minority communities in order to increase availability of language skills and cultural awareness.<sup>3</sup>

Charities and not-for-profit organizations will want to monitor the recommendation concerning stricter monitoring rules under the PCMLTFA. In particular, the reduction of the \$10,000 threshold for financial transactions related to terrorist financing and the broadening of the definition of “monetary instruments,” to include prepaid cards and mobile communications devices that are used to transfer funds may result increased scrutiny and regulatory red-tape for organizations operating abroad.

The report signals that combating terrorism remains a key focus of the government. However, in doing so there is always the risk that legitimate, non-violent charities and NGO’s may inadvertently get caught up in the increasingly broad anti-terrorism measures. This could hinder the sector’s effectiveness, particular within minority communities and in the developing world.