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Letter dated 23 March 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached fifth report from Canada submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 20 March 2006 from the Permanent Mission of Canada to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of Canada to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee and has the honour to transmit herewith the fifth report of the Government of Canada on the implementation of Security Council resolution 1373 (2001) (see enclosure).

Enclosure

1. Implementation measures

Protection of the financial system

1.1 The Committee acknowledges laws and regulations adopted by Canada in suppressing terrorist financing in accordance with resolution 1373 (2001). The Committee is aware that Canada has mentioned in its fourth report that it is looking at options to establish a registration or licensing system for MSBs. The Committee would be glad to know whether a licensing/registration system has been established. If so, please give the Committee an update as to its functions and legal authority.

Canada's Department of Finance released a Consultation Paper in June 2005 which outlined proposals for establishing a registration regime for persons or entities engaged in the business of remitting or transferring funds; engaged in the business of foreign exchange; or issuing or redeeming money orders, traveller's cheques or other similar instruments.

Comments from stakeholders have been received and face-to-face consultations on the proposals have taken place. The government is now in the process of finalizing its policy in this area. Details on the proposed registration regime can be found at:
http://www.fin.gc.ca/activty/pubs/enhancing_1e.html#chapter%203

1.2 The Committee may wish to know how Canada monitors alternative money transfer agencies, such as the "Hawala" which do not work at all through the banking system. How many such informal money transfer agencies do you believe exist? How do the Canadian authorities intend to make sure that these entities would not serve for terrorist purposes?

Informal money remitters, such as "hawalla" are currently subject to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and as entities operating in Canada are prohibited by the Canadian *Criminal Code* from dealing in terrorist property.

The proposed registration system would include registration of "hawalla" and other informal remittance operators. The registration system is proposed as a further tool for Canada's Financial Intelligence Unit (FIU), the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), to identify money remitters and ensure that these entities comply with the PCMLTFA.

1.3 The Committee is aware also that with respect to the money laundering, Canada has put in place administrative control on the financial institutions: However, the Committee would be grateful to have further clarification on the measures that Canada is employing in order to monitor the financial activities of charitable organizations. How, for example, does Canada make sure that these charitable

organizations report their financial activities (donations and disbursements)? How does Canada prevent charities from being a source for misuse of funds that could be diverted to terrorist activities?

Jurisdiction over the regulation of charities in and for the province is a matter of provincial jurisdiction under s. 92(7) of the *Constitution Act, 1867*. Canadian federal jurisdiction to deal with charities exists for purposes of taxation (s. 91(3)) and criminal law (s. 91(27)).

The federal government has in place a regulatory regime for charities registered with the Canada Revenue Agency (CRA). Registration under the federal *Income Tax Act* gives charities two significant tax advantages: a registered charity is exempted from paying tax on any income it earns, and donations to registered charities are tax-deductible or tax-creditable to the donor.

An eligible charity is obliged to register to be accorded tax-exempt status. Otherwise, its income is taxable. To qualify for registration, an organization must be established and operated for charitable purposes, and it must devote its resources to charitable activities. The charity must be resident in Canada, and cannot use its income to benefit its members.

Application for charitable registration must be in prescribed form. The organization must identify its current legal name and any other trade or operational name used, as well as any previous name under which it has operated. It must provide a list of its directors or trustees and contact information for each of them, as well as copies of all governing documents under which it operates. The organization's programs and activities must be described in detail. This information should include where the organization will be carrying on each of its activities and who the intended beneficiaries are. The organization is asked to provide the address of any web site it maintains, and to attach minutes of meetings, newspaper cuttings, videos, fund-raising materials, pamphlets, brochures, or other items that illustrate its work and purposes. Financial statements or a proposed budget, including details of disbursements for programs planned outside Canada, must also be provided.

Registered charities are obliged to file a return with CRA each year. The return discloses general information on the charity's assets, liabilities, revenues and expenditures (specifically enumerating expenditures outside of Canada), the names, occupations and addresses of its directors and trustees and the charities' affiliations. It gives information on the charity's programs, its finances, its political and foreign activities and its fund raising practices. The charity is also obliged to include a copy of its financial statements. Failure to file an annual return will result in revocation of charitable status.

A registered charity is subject to revocation if it fails to keep, in Canada, adequate books and records of account, including a duplicate of each receipt issued for income tax purposes. Among other things, these books and records must contain sufficient information to allow CRA to determine if the charity is operating in accordance with the provisions of the Income Tax Act.

The CRA also administers the *Charities Registration (Security Information) Act* (the "CRSIA"), which is a critical component in the Government's ability to pursue those engaged in raising funds for terrorists and terrorist groups. The CRSIA re-defined the role and importance of protecting the

integrity of Canada's registration system for charities in terms of Canada's anti-terrorism objectives. The Act's purposes are:

- to demonstrate Canada's commitment to participating in concerted international efforts to deny support to those who engage in terrorist activities;
- to protect the integrity of the registration system for charities under the Income Tax Act; and,
- to maintain the confidence of Canadian taxpayers that the benefits of charitable registration are made available only to organizations that operate exclusively for charitable purposes.

Under this legislation, the Minister of Public Safety and Emergency Preparedness and the Minister of National Revenue may jointly sign a special certificate in cases where they have reasonable grounds to believe that an organization makes or will make resources available to terrorism. The certificate then is automatically referred to Federal Court for judicial review. Classified information remains sealed.

If the Federal Court judge upholds the reasonableness of a special certificate, the certificate is deemed to be conclusive proof that an organization is ineligible for registration as a charity under the Income Tax Act. If confirmed, the certificate will be valid for seven years, subject to review if there has been a change in material circumstances.

In addition, the Department of Finance Consultation Paper proposes that the federal government will review the *Income Tax Act* with a view to determining what mechanisms the CRA can employ in cases where there is evidence that a charity is being used or will be used for money laundering or terrorist financing activities. The disclosure of information on specific charities would be made available to Canada's financial intelligence unit, law enforcement and intelligence agencies, for the application of specific anti-terrorist legislation.

Criminalization and criminal procedures

1.4 Canada has also mentioned in its fourth report that since September 2001, no entities or persons have been prosecuted by the Canadian authorities in relation to terrorist activities. Could Canada please provide the Committee with an updated data relating to persons, entities, non-profit organization being prosecuted for terrorist activities since September 2001?

Mohammad Momin Khawaja, age 26, of Ottawa, Ontario, Canada is the first, and to date only, person, entity or organization charged with terrorism offences pursuant to the 2001 *Anti-Terrorism Act*.

On March 30, 2004, with the consent of the Attorney General of Canada, the Royal Canadian Mounted Police (RCMP) charged Mr. Khawaja with participating in the activity of a terrorist group (s. 83.18 of the *Criminal Code*) and facilitating a terrorist activity (s. 83.19 of the *Criminal Code*).

On December 16, 2005, with the consent of the Attorney General of Canada, Mr. Khawaja was the subject of a direct indictment (the effect of which is to send the matter directly to trial without a preliminary inquiry) which was filed with the Ontario Superior Court of Justice. The direct indictment expands the time frame and the locations where the two initial offences were alleged to have been committed and also contains five additional terrorism-related charges. The additional charges arise from an analysis of the evidence gathered in Canada and in other countries since the arrest of Mr. Khawaja. The new offences allege the following: that he worked on the development of a remote activation device with intent to cause an explosion endangering life, in association with a terrorist group (ss. 81(1)(a), 83.2 *Criminal Code*); that he possessed an explosive device with intent to enable another person to cause an explosion endangering life, in association with a terrorist group (ss. 81(1)(d), 83.2 *Criminal Code*); that he participated in an activity of a terrorist group by receiving training (ss. 83.18(3)(a) *Criminal Code*); that he provided property for terrorist purposes (s. 83.03 *Criminal Code*); and that he instructed another person to conduct financial transactions for the benefit of a terrorist group (s. 83.21(1) *Criminal Code*).

Mr. Khawaja has been ordered detained pending his trial on three separate occasions: on May 7, 2004 at a bail hearing in the Ontario Court of Justice; on June 17, 2005 at a bail review in the Ontario Superior Court of Justice; and finally, a detention order was made on consent, by the Assignment Court judge on January 9, 2006.

Mr. Khawaja's trial is expected to commence on January 2, 2007, for a duration of approximately three months. He elected to be tried by a court composed of a judge sitting without a jury.

Mr. Khawaja has been named in British court documents as being part of a conspiracy with six accused in London between October 1, 2003 and March 31, 2004 to "cause by an explosive substance an explosion of a nature likely to endanger life or cause serious injury to property". Although named as a conspirator, Mr. Khawaja has not been charged with any offence in the United Kingdom.

1.5 The committee is aware of the need to bring terrorists to justice while preserving defendants' rights to due process of law. In this regard the committee would like to know to what extent intelligence data can be used in judicial proceedings in Canada. 'What are the checks and balances of this use under Canadian law? Can the Canadian authorities proceed with cases although relevant intelligence information was not given to the defence? If affirmative, then under which circumstances can that happen? What safeguards are provided for the rights of the accused?

It should be noted that a person cannot be convicted on the basis of evidence to which that person does not have full access. Section 7 of the Canadian Charter of Rights and Freedoms provides that the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Section 7 guarantees the right to a fair trial, the right to a full answer and defence and the right to disclosure.

The *Anti-Terrorism Act* (ATA) reformed section 38 of the *Canada Evidence Act*. Section 38 sets out a mini-code of procedure, establishing pre-trial, trial and appellate procedures to assist all parties and persons involved in proceedings in which there is a possibility that information, if disclosed, could cause injury to international relations or national defence or national security. "Proceedings" includes a criminal prosecution as well as other types of proceedings before a court, person or body with jurisdiction to compel the production of information. Special rules apply in a proceeding under Part III of the *National Defence Act*.

Section 38 is applicable if "potentially injurious information" or "sensitive information" may be subject to disclosure in the context of a proceeding (such as, but not limited to, a criminal or civil trial). Both potentially injurious information and sensitive information are defined in s. 38. "Potentially injurious information" is defined as: 'potentially injurious information' means information of a type that, if it were disclosed to the public, could injure international relations or national defence or national security. "Sensitive information" is defined as: 'sensitive information' means information relating to international relations or national defence or national security that is in the possession of the Government of Canada, whether originating from inside or outside Canada, and is of a type that the Government of Canada is taking measures to safeguard.

Notice must be given to the Attorney General of Canada in circumstances where it is foreseeable that the disclosure of information in connection with or in the course of proceedings could be injurious to international relations or national defence or national security. All information covered by a notice is, by law, prohibited from being disclosed unless authorized to be disclosed by the Attorney General of Canada or the Federal Court of Canada. The Attorney General may, upon receipt of a notice, authorize the disclosure of information.

The Attorney General of Canada may, and at times must, also apply to the Federal Court for an order with respect to the disclosure of sensitive or potentially injurious information. The participant, or the person who seeks disclosure, may make a similar application. The onus rests with the Attorney General of Canada to prove the probable injury to international relations or national defence or national security.

Applications before the Federal Court are heard in private (*in camera*) and the Attorney General of Canada can ask to be heard in the absence of any other party (*ex parte*).

Upon a finding that disclosure of the information would result in injury, the Court must then determine whether the public interest in disclosing the information is greater than the public interest in not disclosing it. If the balance favours disclosure, the court may order disclosure but must do it in the manner most likely to limit any injury to international relations or national defence or national security, subject to any appropriate conditions. If the judge determines that disclosure is appropriate, then such an order could require disclosure of all the information, a part of the information or a summary, or a written admission of facts. This option is not open to the Attorney General of Canada when making his or her decision, as the Attorney General does not have the authority to disclose a summary or a written admission of facts.

Section 38.05 provides for the possibility that a report may be given to the Federal Court, by the person presiding at the proceeding to which the information relates, concerning any matter relating to the proceeding that the person presiding considers would be of assistance to the Federal Court judge in making his or her determination.

If the judge determines that a party to the proceeding was not given the opportunity to make representations and that person's interests are adversely affected by an order, the judge shall refer the order automatically to the Federal Court of Appeal for review (section 38.08).

If it is sought to have the information ruled disclosable by the Federal Court introduced into a proceeding then, resort may be had, if necessary, to subsection 38.06(4) of the *Canada Evidence Act*, which provides as follows:

> 38.06(4) A person who wishes to introduce into evidence material the disclosure of which is authorized under subsection (2) but who may not be able to do so in a proceeding by reason of the rules of admissibility that apply in the proceeding may request from a judge an order permitting the introduction into evidence of the material in a form or subject to any conditions fixed by that judge, as long as that form and those conditions comply with the order made under subsection (2).

Before making an order pursuant to subsection 38.06(4) the Federal Court judge must first consider all the factors that would be relevant for a determination of admissibility in the other proceeding.

In respect of a criminal proceedings, either the defence or the prosecution may be in a position where they seek an order pursuant to subsection 38.06(4). The nature and type of order that could be made pursuant to subsection 38.06(4) will be dictated by the particular circumstances of the case. The order made by the Federal Court judge pursuant to subsection 38.06(4) relates exclusively to the admissibility of the information; it does not address the issue of what weight to be accorded to the evidence. The question of weight remains entirely within the purview of the judge presiding in the proceeding.

An appeal of the Federal Court order may be made to the Federal Court of Appeal and the Supreme Court of Canada.

Pursuant to section 38.13 of the *Canada Evidence Act*, the Attorney General of Canada can also personally issue a certificate prohibiting the disclosure of information for the purpose of protecting information obtained in confidence from or in relation to a foreign entity as defined in subsection 2(1) of the *Security of Information Act* or for the purpose of protecting national defence or national security.

The certificate can only be issued after an order or a decision that would result in the disclosure of the information has been made. Disclosure of the information is then prohibited in accordance with the terms of the certificate, notwithstanding any other provision of the *Canada Evidence Act*.

The Federal Court of Appeal can review the certificate to determine whether the information to which it applies relates to the categories described above. The judge could confirm, cancel or vary the certificate. The decision of that judge is final and not subject to review or appeal.

The purpose of these certificates is to provide, where necessary, a bar to the disclosure of certain highly-sensitive information. For example, the Government of Canada may receive information from other countries on the condition that it should not be disclosed to a third party without that country's consent. Where the consent for disclosure is not given, the government continues to have an obligation to protect that information.

A number of safeguards apply to the use of an Attorney General certificate. These include the following:

- the certificate can only be personally issued by the Attorney General of Canada;
- the certificate may only be issued after an order or decision that would result in the disclosure of the information has been made under the *Canada Evidence Act* or any other Act of Parliament;
- the certificate may only be issued in connection with a proceeding for the purpose of protecting information obtained in confidence from, or in relation to, a foreign entity as defined in subsection 2(1) of the Security of Information Act or for the purpose of protecting national defence or national security;
- the certificate is to be published in the *Canada Gazette* without delay;
- any party to a proceeding may apply to the Federal Court of Appeal for an order varying or cancelling the certificate;
- the judge reviewing the certificate has the power to confirm, vary or cancel the certificate;
- the life of the certificate is fifteen years, unless it is re-issued by the Attorney General of Canada; and
- the notice of variation or cancellation of the certificate must be published in the Canada Gazette as soon as possible after the decision of the judge.

Protection of right to a fair trial

Section 38.14 of the *Canada Evidence Act* provides expressly that the person presiding at a criminal proceeding may make any order that he or she considers appropriate in the circumstances to protect the right of the accused to a fair trial, other than an order calling for the disclosure of the information. Such orders could be made following the issuance of a certificate by the Attorney General of Canada, or following a non-disclosure order prohibiting the disclosure of information in

the criminal proceeding. The judge may, among other things, stay the proceedings, dismiss counts of the indictment or draw any inference against any party on any issue relating to the information that cannot be disclosed.

As can be seen from the foregoing, although section 38 may be of assistance in relation to the introduction of information into a criminal proceeding, the person presiding at the proceeding retains control of his or her own proceeding.

If the Attorney General of Canada does not authorize disclosure of the information and the Federal Court of Canada does not order disclosure of the information under section 38 of the *Canada Evidence Act*, the information must remain protected and cannot be disclosed. Thus, the prosecutor cannot use the information in the course of the trial and the trial judge (who is a different judge than the Federal Court judge that ruled on the *Canada Evidence Act* application) does not have access to the information. In short, an accused cannot be convicted on the basis of evidence to which the accused does not have access.

As has been seen, there are a number of safeguards provided for the rights of an accused.

Effectiveness of Counter-terrorism Measures

1.6 As explained in Canada's fourth report, Bill C-17 that was intended to increase Canada's capacity to prevent and respond swiftly to significant threats or terrorist attacks was lapsed by the parliament. The Committee would like to know whether the government of Canada has or intends to promote an alternative legislation in order to improve Canada's preparedness with regard to:
a. Data collection from air carriers and aviation reservation systems for transmission to federal departments and agencies for the purpose of transportation and national security.
b. Issuance of interim orders in emergency situations.

The Canadian *Public Safety Act, 2002* referred to as Bill C-17 in Canada's Fourth report to the CTC (Feb. 2004) received royal assent on May 6, 2004 and is in force.

Effectiveness of customs, immigration and border controls

1.7 The Committee would be glad to receive a report on the progress and functions of Canada's Border Services Agency (CBSA) established in 2003.

The Canada Border Services Agency implements national counter-terrorist strategy and/or policy targeting (at the national and/or sub-national level) and deals with the forms or aspects of counter-terrorist activity relating to border and immigration controls.

The Canada Border Services Agency (CBSA) is responsible for border management issues. CBSA also represents Canada in various multilateral fora where the aim is to address issues surrounding illegal migration and the transborder movement of goods and persons. Key fora which are actively

addressing such issues include the Group of Eight (G8), the World Trade Organisation (WTO), the World Customs Organisation (WCO), the Asia-Pacific Economic Cooperation (APEC), the International Civil Aviation Organisation (ICAO), and the Inter-Governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC).

The creation of the CBSA in December 2003 allows for services to be delivered more efficiently and effectively, thereby strengthening the Government of Canada's capacity to protect the safety, security and economic prosperity of Canadians. As an integrated border services agency, the CBSA is well positioned to improve risk management, advance interoperability with its partners in Canada and internationally, collect and share the right information at the right time, and significantly improve its overall capacity to respond rapidly and effectively to threats.

The CBSA contributes to an efficient and effective border by:

- Simplifying border crossing for legitimate, low-risk people and goods through the implementation of risk-assessment programs using technological and science-based solutions;
- Interdicting persons who are inadmissible for war crimes, crimes against humanity, terrorism, subversion, espionage or organized crime, and detaining and removing inadmissible individuals;
- Implementing screening processes to interdict unsafe foods and unhealthy animals that could spread disease to humans, animals, food products, plants, etc.; and,
- Searching for and preventing the smuggling of people, drugs, explosives, radioactive materials, and chemical and biological agents.

Since its creation in 2003, the CBSA has made significant progress in building a new organization and progressing toward a fully integrated, multi-faceted border management agency.

1.8 Regarding the importance of identifying high-risk containers, the Committee would appreciate receiving the latest information on Canadian cooperation with the United States on the Container Security Initiative (CSI).

The Government of Canada has identified the need to establish more effective risk management processes and tools to identify potential threats to Canadians prior to the arrival of the shipments in Canada. In March 2002, Canada and the U.S. launched the Joint In-Transit Container Targeting at Seaports Initiative (JTI). The goal of JTI is to detect and interdict potential high-risk shipping containers as early as possible in the marine trade flow by sharing important law enforcement information and by deploying officers to each other's country to work at seaports. Building on the JTI model, the United States Customs and Border Protection launched the Container Security Initiative (CSI) in the spring of 2002. The goal of CSI is to deter and interdict weapons of mass destruction, terrorists, and terrorist implements including chemical, biological, radioactive, nuclear and explosive materials in marine containers, prior to the loading of these containers aboard vessels bound for the United States. Through its recent partnership with the United States (U.S.) in the CSI, and by establishing partnerships with other CSI countries, Canada seeks to enhance security by

liaising with host customs administrations to exchange information in an effort to identify high-risk cargo. By placing officers at key foreign seaports, the Canada Border Services Agency (CBSA) can request container examinations, selecting the number and comprehensiveness, without placing unfair obligations or demands on its international partners.

The past several years have seen a tremendous change in how Canada's borders are managed. The CBSA is continuing to identify effective and efficient technologies and to share best practices for security screening and detection. Through research and effective partnerships, the Agency is improving its capability to detect the illicit movement of goods and people to conduct faster, non-intrusive examinations targeted at high-risk people and goods that will minimize delays at the border for the law-abiding public.

Firearms

1.9 The Committee was pleased that Canada has ratified the Convention against Transnational Organised Crime and its two other Protocols. The Committee would like to get an update as to the ratification process of the supplementary Protocol against the Illicit manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.

Canada is a signatory to the *Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition* (UN Firearms Protocol), supplementing the *United Nations* Convention Against Transnational Organized Crime. Canada's practice is to ratify international agreements or protocols only after its domestic legislative and regulatory framework is in full compliance with a given instrument's provisions.

Port Security

1.10 As port security is an important component in the overall strategy against terrorism, the committee would be pleased to have an update on measures adopted by the Canadian authorities regarding port security.

Since 2003, the Government of Canada has invested over $700 million in a series of initiatives designed to further enhance the security of Canada's marine transportation system and maritime borders. Several of these initiatives focus on enhancing the security of Canadian ports and marine facilities. Specific projects include: the establishment of a three-year contribution program to provide ports and marine facilities with funding assistance for security enhancements, the development of a security clearance program to reduce the risk of security threats by conducting background checks on marine workers who perform certain duties or who have access to certain restricted areas, the establishment of port enforcement teams in Canada's major seaports to protect the ports from being utilized as a conduit for cargo and/or persons that could pose a threat to Canada's national security, and the ongoing installation of radiation detection equipment at key Canadian marine container terminals to prevent the entry of illicit radioactive materials via Canadian ports.

On 1 July 2004, Canada introduced the Marine Transportation Security Regulations (MTSR) which implement the International Maritime Organization's International Ship and Port Facility Security (ISPS) Code which requires SOLAS class ships on international voyages, and the port and marine facilities that service them, to conduct security assessments and to develop security plans. To date, Canada has issued compliance certificates to 66 SOLAS vessels, 151 non-SOLAS vessels, and 426 ports and marine facilities – an ISPS Code compliance rate of 100 per cent.

Aviation security

1.11 Does Canada intend to make contributions to the ICAO Plan of Action to strengthen aviation security, including security audits, urgent assistance to States, provision of training courses and a range of guidance material, and various other projects?

Canada intends to continue to make significant contributions, financial and otherwise, in support of the International Civil Aviation Organization (ICAO)'s Aviation Security (AVSEC) Plan of Action, of which the Universal Security Audit Program (USAP) is the centrepiece.

The USAP, launched in 2002, aims to enhance aviation security worldwide through regular, mandatory, systematic and harmonized audits of all 189 ICAO Contracting States. Furthermore, it facilitates ICAO's technical and training assistance to Contracting (including developing) States to implement their corrective action plans.

As it has since 2002, Canada's leadership contribution will continue to include personnel and technical assistance to aid in the development and implementation of the Plan of Action. In 2003, for example, Transport Canada trained eight aviation security inspectors to work on international inspection teams tasked with identifying potential deficiencies in the security oversight systems of ICAO member States, and to make recommendations for their mitigation or resolution.

2. Implementation of Resolution 1624 (2005)

Paragraph 1

2.1 What measures does Canada have in place to prohibit by law and to prevent incitement to commit a terrorist act or acts? What further steps, if any, are under consideration?

Measures Currently in Place:

The Canadian *Criminal Code* includes a range of measures which target incitement to commit a terrorist act or acts. Under the Code, the definition of "terrorist activity" has two parts. First, "terrorist activity" means an act or omission that is committed in or outside Canada and that, if committed in Canada, is an offence referred to in different subsections of section 7 of the Code that implement various United Nations conventions relating to the prevention of terrorism. These include the offences referred to in subsection 7(3.72) of the Code that implement the *International Convention for the Suppression of Terrorist Bombings*, and the offences referred to in subsection 7(3.73) that implement the *International Convention for the Suppression of the Financing of Terrorism*.

The second part of the definition of "terrorist activity" catches:

"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 public or the person, government or organization is inside or outside Canada, and

(ii) that intentionally

(A) causes death or serious bodily harm to a person by the use of violence,

(B) endangers a person's life,

(C) causes a serious risk to the health or safety of the public or any segment of the public,

(D) causes 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), or

(E) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C) […]

An act or omission found in the definition of "terrorist activity" also "includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counselling in relation to any such act or omission …"

For example, counselling an act or omission that falls within the definition of "terrorist activity" is itself caught by the definition of "terrorist activity". Counselling, by subsection 22(3) of the Code, includes inciting. Hence, someone who incites another to commit an act or omission that constitutes "terrorist activity" engages in "terrorist activity". By subsection 83.27(1) of the *Criminal Code*, a person convicted of an indictable offence, other than an offence for which a sentence of imprisonment for life is imposed as a minimum punishment, where the act or omission constituting the offence also constitutes a terrorist activity, is liable to imprisonment for life.

In addition, section 2 of the *Criminal Code* defines "terrorism offence" to include a conspiracy or an attempt to commit, or being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a), (b) or (c) of the definition. The offences in paragraphs (a) to (c) include those relating to the financing of terrorism, participating in an activity of a terrorist group and facilitating terrorist activity. Hence, counselling (as by inciting) a "terrorism offence" described in paragraphs (a) to (c) of the definition is also a "terrorism offence". By section 83.25 of the Code, the Attorney General of Canada can initiate and conduct a prosecution for a "terrorism offence" in any territorial division in another province of Canada from that in which the offence is alleged to have occurred.

In addition, there are new crimes created by the *Anti-Terrorism Act* that address specific kinds of conduct that further acts of terrorism. Below are many of the relevant provisions.

Participating or contributing to any activity of a terrorist group (s. 83.18)

By subsection 83.18 (1), every one who knowingly participates in or contributes to, directly or indirectly, any activity of a terrorist group for the purpose of enhancing the ability of any terrorist group to facilitate or carry out a terrorist activity is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years. By subsection 83.18(2), the offence may be committed whether or not a terrorist group actually facilitates or carries out a terrorist activity; the participation or contribution of the accused actually enhances the ability of a terrorist group to facilitate or carry out a terrorist activity; or the accused knows the specific nature of any terrorist activity that may be facilitated or carried out by a terrorist group. By subsection 83.18(3), "participating in or contributing to an activity of a terrorist group" includes, in part, providing, receiving or recruiting a person to receive training; providing or offering to provide a skill or an expertise for the benefit of, at the direction of or in association with a terrorist group; or recruiting a person in order to facilitate or commit a terrorism offence. By subsection 83.18(4), factors that a court may use to determine whether an accused participates in or contributes to any activity of a terrorist group include whether the accused uses a name, word, symbol or other representation identifying the terrorist group; frequently associates with any of the persons who constitute the terrorist group; or receives any benefit from the terrorist group.

Facilitating terrorist activity (s. 83.19)

By subsection 83.19 (1), every one who knowingly facilitates a terrorist activity is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years. By subsection 83.19(2), a terrorist activity is 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; or any terrorist activity was actually carried out.

Instructing to carry out activity for terrorist group (s. 83.21)

By subsection 83.21 (1), every person who knowingly instructs, directly or indirectly, any person to carry out any activity for the benefit of, at the direction of or in association with a terrorist group, for the purpose of enhancing the ability of any terrorist group to facilitate or carry out a terrorist activity, is guilty of an indictable offence and liable to imprisonment for life. Subsection 83.21(2) outlines the matters which are irrelevant to the commission of the offence, such as whether the activity instructed is carried out, a particular person is instructed or known by the accused, the person instructed has any knowledge of the relationship of the activity to a terrorist group, any thing is actually carried out or facilitated or an ability to do so is actually enhance, or the accused knows the specific nature of any terrorist activity that may be carried out or facilitated.

This offence imposes criminal liability upon those who play leadership roles in respect of activities that are intended to enhance the ability of the terrorist group to commit or facilitate terrorist activity. Those who instruct others pose a unique threat: operationally, they threaten society through their enhanced experience and skills; motivationally, they threaten society through their constant encouragement of others.

Instructing to carry out terrorist activity (83.22(1))

By subsection 83.22 (1), every person who knowingly instructs, directly or indirectly, any person to carry out a terrorist activity is guilty of an indictable offence and liable to imprisonment for life. By subsection 83.22(2), the offence may be committed whether or not: the terrorist activity is actually carried out, the accused instructs a particular person to carry out the terrorist activity, the accused knows the identity of the person whom the accused instructs to carry out the terrorist activity, or the person whom the accused instructs to carry out the terrorist activity knows that it is a terrorist activity.

Harbouring or concealing a terrorist (s. 83.23)

By section 83.23, every one who knowingly harbours or conceals any person whom he or she knows to be a person who has carried out or is likely to carry out a terrorist activity, for the purpose of enabling the person to facilitate or carry out any terrorist activity, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Crimes of Hate Propaganda

The *Criminal Code* of Canada has the following crimes of hate propaganda: (a) advocating genocide against an identifiable group (s. 318 of the Code); inciting hatred in a public place against an identifiable group likely to lead to a breach of the peace (subsection 319(1) of the Code), and the wilful (i.e., intentional) promotion of hatred against an identifiable group (subsection 319(2) of the Code). "Identifiable group" is defined to mean any section of the public distinguished by colour, race, religion, ethnic origin or sexual orientation. The Anti-terrorism Act created a procedure whereby a judge may order the deletion of hate propaganda from a computer system.

Measures under consideration:

Canada is not presently considering any additional measures in this area.

2.2 What measures does Canada take to deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act or acts?

The first pillar in denying safe haven to individuals involved in terrorism, human or international rights violations, serious or organized criminality is interdiction abroad to prevent them from entering Canada. The second pillar in denying safe haven to these individuals is enforcement in Canada. This includes intervention in refugee hearings, vacation of refugee status, inadmissibility and detention hearings, security certificates, revocation of citizenship and removal from Canada.

Individuals involved in terrorism, human or international rights violations, serious or organized criminality are inadmissible to Canada pursuant to sections 34 to 37 of Canada's *Immigration and Refugee Protection Act* (IRPA). The standard of proof for these grounds of inadmissibility is reasonable grounds to believe that the facts have occurred are occurring or may occur. Reasonable grounds to believe has been defined as more than a mere suspicion but less than a balance of probabilities.

IRPA includes measures which permit the denial of entry to persons who have not been convicted of an offence abroad, as long as evidence of criminal activity exists that could result in a conviction if there were a prosecution in Canada. As well as being established in law, this is put into practice through operational guidelines for Canadian visa officers who determine admissibility of potential entrants. This is applicable to the offences as described in section 2.1 of this report.

As part of Canada's international commitment to combat transnational crime, the policy intent in applying the provisions is first and foremost to deny entry into Canada and thereby prevent Canadian territory being used as a safe haven by persons who are subject to a criminal proceeding in a foreign jurisdiction; or are fleeing from such proceedings.

The practical application of the policy with respect to the "committing an act" provisions is to deny entry into Canada to persons against whom there is evidence of criminal activity that could result in a conviction if there were a prosecution in Canada.

These provisions cannot be used where the person has been acquitted. Similarly, when a court has made a finding of not guilty, the process and the decision will be respected and negate any reasonable grounds to believe that the person committed the offence.

Paragraph 2

2.3 How does Canada cooperate with other States in strengthening the security of its international borders with a view to preventing those guilty of incitement to commit a terrorist act or acts from entering their territory, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures?

To protect Canada effectively, there is a requirement to address threats as early as possible, such as by screening and clearing travellers before they reach North America. It involves having timely access to reliable information and intelligence, and systems in place that can act on it.

Migration and security issues transcend national borders. For this reason, our approach to protecting Canadians is based on the concept of multiple borders, rather than simply on our geo-political boundary. The adoption of the Multiple Borders Strategy in the late 1990's moved the concept of "border" out, away from focusing solely on our ports of entry to earlier stages in the travel continuum and to the source countries. This multi-layered border approach focuses on inspection and interception at all points along the travel continuum, to prevent inadmissible and potentially harmful individuals from reaching North America. This Multiple Borders Strategy is guided by a risk management framework designed to enhance border security.

To combat the use of fraudulent travel documents Canada Border Services Agency (CBSA) works closely with international partners on the development and promotion of secure minimum international travel document standards through International Civil Aviation Organisation working groups. To prevent entry of individuals to Canada through the use of fraudulent travel documents a network of 45 Migration Integrity Officers, working in conjunction with international partners, operates at key locations abroad. These officers train and support airline staff and local immigration authorities in document examination, fraud detection techniques and current fraud trends, and conduct ongoing liaison and reporting on specific cases and trends in irregular migration and travel document fraud within their region of responsibility. They also provide periodic onsite support within the airport environment and monitor the security of airline check in and boarding procedures to ensure airline compliance with legal requirements under *Immigration and Refugee Protection Act* (IRPA) as well as the conditions of Memoranda of Understanding signed between CBSA and many commercial air transporters.

A specific module within the immigration processing system houses information on known lost, stolen or fraudulent travel documents reported both by Canada and international sources. This module is linked to optical character readers at primary inspection lines for entry to Canada or can be searched manually via the automated immigration processing system.

Canada tracks information on fraudulent travel documents detected either enroute or upon arrival to Canada in order to develop a range of informational and analytical products which are used broadly within CBSA and partner agencies. As well, CBSA produces regular information products, which are shared with key international partners and stakeholders to identify and assist in the detection and interruption of irregular travel patterns and fraudulent documents.

Canadian officers receive specific training on document examination and fraud detection as part of their basic officer training. Selected officers receive more advanced document examination and fraud detection training depending on their job function. All officers have access to additional fraud detection expertise either within the CBSA regional intelligence units or within the national headquarters Enforcement Branch.

To illustrate a specific example of cooperation with other States, passengers arriving by air into Canada and the United States are subjected to a sophisticated electronic screening of their Advanced Passenger Information (API) and Personal Name Record (PNR) data. The provision of this data by airlines to Canada and the United States is a legislated requirement. Information on high risk travellers who are identified through this process is exchanged in a real time electronic environment to ensure travellers that pose a terrorist risk or threat to either country are identified before they arrive. All information sharing is event driven and is subject to strict regulations and procedures that guide both countries in the sharing of sensitive personal information. Canada and the United States are able to share information on known and suspected terrorists through a system-to-system electronic interface.

Paragraph 3

2.4 What international efforts is Canada participating in or considering participating in/initiating in order to enhance dialogue and broaden understanding among civilizations in an effort to prevent the indiscriminate targeting of different religions and cultures?

Canadian efforts to prevent radicalization and violent extremism extend beyond law enforcement and intelligence work, and are undertaken in close cooperation with our international partners.

In particular, the Government of Canada believes that a fruitful and sustained dialogue with all Canadian ethno-cultural and religious communities is critical to the Governments' efforts in the fight against violent extremism and terrorism. The Government recognizes the contributions of Canada's religious and cultural communities, and is undertaking comprehensive outreach to address concerns around Canadian security policy in a multicultural landscape.

In February 2005, the Government of Canada established the Cross-Cultural Roundtable on Security to engage Canadians in a long-term dialogue on national security issues. Roundtable members provide insights on how national security measures impact Canada's diverse communities and assist the Government in developing a common understanding of effective approaches to national security. More information about the Roundtable is found in the answer to question 2.5 below.

Canada actively advocates its approach to these issues internationally.

2.5 What steps is Canada taking to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent subversion of educational, cultural and religious institutions by terrorists and their supporters?

A. Canada's Immigration and Multiculturalism Policies

The measures described above in section 2.4 are key to our efforts in this area. In addition to the promotion of domestic dialogue with Canada's diverse religious and ethno-cultural communities through the Cross Cultural Roundtable on Security, Canada's immigration and multiculturalism policies are also part of our approach. These policies serve many purposes, including fostering legitimate, non-violent dissent and contributing to the prevention of radicalization and extremism.

Canada believes that ensuring successful integration of newcomers can help to prevent radicalization and extremism leading to terrorism. Canada's integration programs help newcomers move through the various stages of adapting to life in Canada and encourage Canadian citizenship, which is accessible by naturalization after only three years of residence.

By welcoming newcomers, supporting their adaptation and facilitating their Canadian citizenship, Canada aims to affect social and economic integration for all while respecting the diversity of cultural communities in Canada. Initiatives are also undertaken to promote Canada's two-way model of integration which underscores the rights and responsibilities of citizenship.

B. Countering Incitement to Terrorism by Combating Hate Propaganda and Hate-Motivated Mischief

Canada has extensive *Criminal Code* and other measures to combat hate propaganda, and thereby prevent the fomenting of hatred that can give rise to incitement of terrorism. As already explained in the answer to question 2.1 above, the *Criminal Code* of Canada contains three crimes of hate propaganda. These measures were needed to protect from hatred those who have become vulnerable because they belong to a group distinguished by factors of colour, religion, race, ethnic origin, or sexual orientation. They recognize that fighting terrorism also requires fighting hate propaganda and intolerance against specific ethnic or religious groups in our society. By creating these crimes, Canada has attacked a root cause of violence. However, Canada does not rely solely on punitive measures to achieve this result. The Cross-Cultural Roundtable on Security and Canada's *Action Plan against Racism* are important efforts to engage the support of ethno-cultural communities in order to prevent hate propaganda that could lead to incitement to terrorism.

The *Anti-Terrorism Act* included amendments to the *Criminal Code* which added sections 320.1 and 430(4.1) and also amended subsection 13(2) to the Canadian *Human Rights Act*.

(a) Criminal Code

Section 320.1 of the *Criminal Code* allows the courts to order the deletion of publicly available on-line hate propaganda from computer systems when it is stored on a server that is within the jurisdiction of the court.

The provision applies to hate propaganda that is located on Canadian computer systems, regardless of where the owner of the material is located, or whether he or she can be identified. Individuals who post the material have an opportunity to be heard before the judge decides to order the deletion of the material.

(b) Canadian *Human Rights Act*

Subsection 13(1) of the Canadian *Human Rights Act* prohibits the spreading of hate messages that would expose a person or group to hatred or contempt because of that individual's identification with a prohibited ground of discrimination. The *Anti-Terrorism Act* amended subsection 13(2) to clarify that the prohibition against spreading repeated hate messages by telephonic communications included computer communications, including Internet sites.

In addition to any other penalty, persons found responsible for these messages can be required to cease and desist from this practice.

(c) Signing the Council of Europe's first Additional Protocol to the *Convention on Cybercrime*

Canada has now signed the Council of Europe's first Additional Protocol to the *Convention on Cybercrime*, concerning the criminalisation of acts of a racist nature committed through computer systems. Signature of this Protocol is an important element of Canada's *Action Plan against Racism* and demonstrates Canada's commitment to fighting hate crimes at home and abroad.

(d) Hate-Motivated Mischief

Section 430(4.1) of the *Criminal Code* created an offence of mischief motivated by bias, prejudice or hate based on religion, race, colour or national or ethnic origin, committed in relation to property that is a place of religious worship or an object associated with religious worship located on the grounds of such a building or structure associated religious property, including cemeteries.

When directed against religious property, the impact of mischief is not so much the physical damage to the property as to the message conveyed by the damage or destruction.

If the crime is prosecuted as an indictable offence, the maximum punishment that can be imposed is imprisonment for a term not exceeding 10 years. If the crime is prosecuted as a summary conviction offence, the maximum punishment that can be imposed is a term of imprisonment not exceeding 18 months.

C. The Cross-Cultural Roundtable on Security

On April 27, 2004, the federal government issued Canada's first comprehensive National Security Policy. *Securing an Open Society: Canada's National Security Policy* provides an overall framework for national security.

Among other initiatives, the National Security Policy (NSP) announced that a Cross-Cultural Roundtable on Security (Roundtable) would be established. The NSP recognized that the Government needs the help and support of all Canadians to make its approach to security effective, and that the Roundtable will provide a forum to discuss emerging trends and developments emanating from national security matters and it will serve to better inform policy makers.

The mandate of the Roundtable is to engage Canadians and the Government of Canada in an ongoing dialogue on national security in a diverse and pluralistic society. In February 2005, the fifteen members of the Roundtable were appointed, based on their demonstrated understanding of national security issues in a multicultural community and a demonstrated commitment to inter-cultural dialogue and healthy, safe, pluralistic communities. To date, four meetings of the Roundtable have been held. The Roundtable is accomplishing its mandate by:

- Providing insights on how national security measures may impact Canada's diverse communities;
- Promoting the protection of civil order, mutual respect and common understanding; and,
- Facilitating a broad exchange of information between the government and communities on the impact of national security issues consistent with Canadian rights and responsibilities.

D. Canada's *Action Plan against Racism*

On March 21, 2005 the Government made public its *Action Plan against Racism: A Canada for All*. The Action Plan responds to a commitment in the October 2004 Speech from the Throne, to "take measures to strengthen Canada's ability to combat racism, hate speech and hate crimes, both here at home and around the world."

The Action Plan includes initiatives to be conducted by a number of federal departments in six priority areas:

1. Assist victims and groups vulnerable to racism and related forms of discrimination;
2. Develop forward-looking approaches to promote diversity and combat racism;

3. Strengthen the role of civil society;
4. Strengthen regional and international cooperation;
5. Educate children and youth on diversity and anti-racism; and,
6. Counter hate and bias.

Paragraph 4

2.6 What steps is Canada taking to ensure that measures taken under paragraphs 1, 2 and 3 of resolution 1624 (2005) comply with all its obligations under international law, in particular international human rights law, refugee law and humanitarian law?

Canadian *Criminal Code* provisions relating to UNSC Resolution 1624 (for instance relating to counselling or instructing to carry out a terrorist act and provisions against hate propaganda) are in compliance with our domestic legal constitutional framework, including Canada's *Charter of Rights and Freedoms*, as well as with our international obligations.

Canada's *Anti-Terrorism Act*, which implements some of the provisions described in section 2.1 of this report, are currently under a legislatively mandated review by Parliament.

As explained in the answer to Question 2.1, Canada's *Criminal Code* has specific provisions that address inciting to commit a "terrorist activity" or "terrorism offence"; that are designed to prevent a terrorist activity from taking place; and that are designed to combat hate propaganda.

Careful attention was paid to human rights protections in the development and implementation of the *Anti-Terrorism Act*. The provisions of the Act were tailored to protect national security and prevent terrorism, while respecting Canadian values, such as the Canadian *Charter of Rights and Freedoms*, as well as Canada's international obligations. In short, the Act was designed to protect both national security and civil liberties.

The preamble to the Act recognizes that terrorism is a matter of national concern and that this concern must be addressed "while continuing to respect and promote the values reflected in, and the rights and freedoms guaranteed by, the Canadian *Charter of Rights and Freedoms*".

To ensure that Charter rights are protected, the provisions of the Act contain a number of safeguards, including the following examples:

- the Government did not invoke the Notwithstanding Clause (Section 33 of the Canadian *Charter of Rights and Freedoms*), and thus Canadian courts are able to review the legislation for consistency with the Charter;
- the provisions are focused almost exclusively on the threat to national security posed by terrorism rather than generally expanding law enforcement powers;

- numerous provisions in the Act implement international conventions and other international obligations and commitments;
- the definition of the core concept of “terrorist activity” requires that a number of intention and purpose elements be satisfied and the definition protects democratic action by expressly excluding from its coverage “advocacy, protest, dissent or stoppage of work” (where these are not intended to result in serious forms of specified harm); and
- an interpretive clause ensures that the expression of political, religious, or ideological thought, belief or opinion does not fall within the definition of “terrorist activity” unless it constitutes an act or omission that falls within that definition.

As indicated in the answer to 2.2 above: Canada has measures in place to deny safe havens to persons for which there are probable grounds to believe they have been guilty of a terrorist act. Canada’s compliance with international human rights law, refugee law and humanitarian law are embodied within the *Immigration and Refugee Protection Act*.