

**Submission on Bill C-36 (The Anti-Terrorism Act)
to the House of Commons' Standing Committee on Justice and Human Rights Ottawa, 6
November, 2001**

The Canadian Council of Churches wishes to thank the Committee for the opportunity to participate in the review of Bill C-36 on measures to carry out Canada's duties with respect to suppression of terrorism. The Council is made up of 19 Christian churches, many of which participate in the Commission on Justice and Peace and the Steering Group on Church-State Relations, a joint program of the Council and the Evangelical Fellowship of Canada, with participation from other faiths from time to time. These notes are presented on the basis of the work of those two bodies within the Council.

1. The basis for the churches' interest in the issues before the committee

Canadian churches have a keen interest in policy questions, in part because we are subject to Canadian law. However, our contribution to this conversation is also based on our concrete experience as institutions within civil society, carrying out mission in Canada and overseas, either ourselves or in partnership with our counterparts in other countries. This experience includes:

- (a) decades of sponsorship and settlement of refugees coming to Canada, including people from many of the countries involved in the current conflict;
- (b) partnerships with churches and non-governmental organizations for humanitarian work, justice, development, and peace-building in many countries of the world, including in such conflict zones as former Yugoslavia, Sudan, the Horn of Africa, and Central Asia;
- (c) collaboration between Canadian and other churches and para-church organizations overseas in Christian ministries of worship, education, and service in such countries;
- (d) 50 years of work in the United Nations and within global religious organisations to establish international agreements, strengthen compliance with Human Rights Conventions, build suitable models of church-state relationships, and draft laws on freedom of religion and of the communities that believers form, especially in emerging democracies;
- (e) practitioner programs in human rights, peace-building, demilitarization of conflict, and human security, particularly through our work in Project Ploughshares.

Based on this kind of experience, we bring a number of assumptions about the issues before the Committees, particularly regarding the framing of the issues and values that need to drive policy choices.

2. Assumptions we bring to the work

The Canadian Council of Churches has a long tradition of contributing to the public policy processes of the House, of ministries of government, and of inter-governmental bodies such as the UN High Commission for Refugees, the UN Committee on Human Rights, the General Assembly, as well as the World Bank, the IMF, and the Organisation on Security and Co-operation in Europe.

Some of the assumptions the churches have brought to that work are relevant to the issues before this Committee.

- (a) The framework for the government's security strategy needs to be grounded in a commitment to human security both for Canadians and for those who those who reside in other states.
- (b) Canada's commitment to international common law and to multilateralism, particularly through the United Nations, needs to provide the framework for elaboration of domestic law.
- (c) Christian ethical traditions tend to rest on the concept of "person in community". Therefore, individual civil liberties need to be balanced by social responsibilities to others.
- (d) The suppression of terrorism needs to ensure that important Canadian values and policies are not jeopardized, in particular:
- the policy of encouraging immigration and building a multi-ethnic and multi-faith society;
 - the protection of equality rights for Canadian citizens, landed immigrants and refugee claimants, including Charter protections;
 - the commitment to social programs for all people within Canadian boundaries and to co-operation for justice and development beyond Canada's borders;
 - the tradition of freedom of religion and of religious communities, balanced by the social responsibility of religious believers and their communities to the wider community and to Canadian law.

3. Issues raised by the proposed legislation

Churches assess the effort to suppress terrorism from the perspective of their tradition of social faith and practice, as well as their experiences in communities overseas and in Canada. They are

also charities under Canadian law, with considerable experience in the administration of existing legislation, regulations, and guidelines. On the basis of that background, we wish to draw to the committee's attention several issues that need to be addressed with respect to Bill C-36 and the suppression of terrorism.

3.1 The Definition of Terrorist Activity Clause 4, Section 83.01 (1)

Like many other groups who have commented on the bill we are concerned that the net cast by this definition is too wide and could catch those involved in the kind of political dissent and protest which have long been part of Canada's social landscape. Media reports have indicated that the Minister of Justice is prepared to consider addressing this concern by removing the adjective "lawful" from the description of the exemption for protest or dissent in clause 83.01 (1) (b) (i) (E). While an amendment along these lines would be helpful, we would prefer to see this section deleted altogether as recommended by the Canadian Bar Association so that there is no doubt that traditional social protest will not be treated as terrorism. There are already sufficient legal instruments available to respond should protesters become violent or destructive.

The definition of "terrorist activity" in section 83.01 (1) requires not only a particular act and criminal intent but also "a political, religious or ideological" motive. Is the additional and unusual requirement of motive helpful? What about other motives that are not mentioned such as money or attention seeking? The Bill would be stronger if section 83.01 (1) (b) (i) (A) were deleted.

Perhaps the difficulties of the definition could be overcome if it were more in harmony with the recent International Convention for the Suppression of the Financing of Terrorism. While the Convention does not specifically define terrorism it does come close by making it a crime to provide or collect funds with the knowledge or intention that they are to be used in acts of violence targeting civilians for the purpose of intimidating a population or to compel a government or an international organization to do or to abstain from any act. It is also a crime to provide or collect funds with the knowledge or intention that they are to be used to carry out any of the acts described in nine previously adopted anti-terrorism conventions referred to by the Convention.

Section 83.01 (2) concerns us very much because it provides that a terrorist activity is "facilitated whether or not the facilitator knows that a particular terrorist activity is facilitated." This section could catch Church groups who in good faith and with due diligence provide funds to their overseas partners for development or humanitarian assistance, only to discover that they have been inadvertently diverted to a terrorist organization. This section should be amended to include a requirement of criminal intent.

3.2 The process of designating groups and/or activities as "a listed entity" Clause 4, section 83.05 (1)

Churches have worked for decades in countries whose governments use repressive measures to govern the population, as well as in areas of conflict zones in Africa, Latin America, and Asia. As well, we have extensive experience with the building of lists in the former Soviet Union and Central/Eastern Europe, where the procedure for registration-and therefore, avoiding being labelled as a dissident or terrorist-was extremely sophisticated.

Many of those states are willing to apply the "terrorist" label to unpopular minorities, unofficial religions, human rights groups, and so on. Canada needs to ensure that a foreign state, particularly a state with a poor record of respect for human rights and democracy, is not the only source of information that would lead to a group being labelled as a terrorist organization. The procedural safeguards must also be enhanced so that the organization knows the case that it has to meet.

3.3 Participating in or contributing to an activity of a terrorist group Section 83.18 (3)

Section 83.18 makes it a criminal offence to participate in or contribute to an activity of a terrorist group. This participation or contribution is deemed to include "entering or remaining in any country for the benefit of, at the direction of or in association with a terrorist group."

A problem for Canadian charities is that humanitarian disasters are sometimes created by actions of governments against minorities or those who oppose them politically. Charities, including Canadian churches, are often encouraged to provide humanitarian assistance for people who are in allegedly "terrorist-controlled" areas and who would otherwise starve. A contemporary example would be southern Sudan, where Canadian organizations that want to provide humanitarian assistance must work in areas that are not within the control of the government of Sudan.

CIDA and Canada Customs and Revenue Agency already have arrangements for Canadian organizations that wish to work with partner churches and other organizations to support work that is consistent with their Canadian charitable status. Those agreements are important components of a Canadian charity's effort to exercise due diligence and to ensure that it is not inadvertently assisting something illegal.

Measures taken to suppress terrorism must not make it impossible for Canadian charities to deliver either humanitarian assistance or funding for any number of charitable purposes to countries or groups within a country on the grounds that such work might enhance the ability of a terrorist group to carry out a terrorist activity. The legislation needs to make clear that humanitarian assistance is not an offence, even when it is delivered to people who have been labelled "terrorists" by a hostile government.

3.4 Registration of Charities - Security Information Part VI of the Bill

Part VI of the Bill provides special treatment for registered charities, almost one-half of whom are religious organizations. The Solicitor General and Minister of National Revenue may sign a

certificate stating that it is their opinion, based on security or intelligence reports that there are reasonable grounds to believe that a registered charity or applicant for charitable status "has made, makes or will make available any resources directly, or indirectly", to a terrorist organization. The matter is referred to the Federal Court and if the certificate is found to be reasonable the charitable status of the organization is revoked or not granted. While the charity has the right to be heard, it does not have the right to know the case it has to meet because the Federal Court Judge may hear the evidence of the Ministers, including evidence from foreign governments, in the absence of the organization if he or she is of the opinion that disclosure of the information would injure national security or endanger a person. If the certificate is upheld it is in force for seven years and there is no right to appeal.

Canadian churches are supporters of many churches and other organizations that serve the poorest and most repressed people in our world. Given the problems with the definitions and the lack of requirement for knowledge or criminal intent, there is real concern that bona fide charities will be caught by this Part of the Bill with the result that there will be a reduction in international charitable activities. Our experience is that some governments designate our church partners and related non-governmental organizations as terrorist groups simply because they work among minorities or among the poorest people of their country. An excellent example would be the support given in the past to the dependent children of black South Africans who had been labeled as terrorists and were imprisoned for their efforts to replace apartheid with a democratic political system.

We can't help wondering why registered charities have been identified for special treatment and not other non-profit or business corporations who also are involved in overseas operations. We welcome the call of the Canadian Bar Association that this section of the Bill be deleted because of its serious lack of procedural fairness and because it will unnecessarily hamper the legitimate operation of Canadian charities. In the alternative, this Part should be substantially amended so that the charitable organization knows the case that it has to meet and has available to it the usual defenses of due diligence and lack of criminal intent as well as a right of appeal.

3.5 Sunset Clause

Given the extraordinary powers of this bill, the complexity and quantity of the provisions, the limited time allowed for study and debate, the uncertainty about how it will be applied and the danger that it could cause irreparable harm to innocent individuals and bona fide organizations, we ask you to consider fully the recommendations by several groups, including the Canadian Bar Association and the Senate of Canada, that there be a sunset clause.

3.6 Protection for Refugees and Immigrants

The churches have extensive experience in refugee sponsorship and in settlement of refugees and immigrants once they arrive in Canada. We have been profoundly enriched by the relationships that have developed among us. We strongly affirm the importance of Canada's

commitment to providing asylum to refugees, to welcoming immigrants, and to building a pluralistic society together. It is crucial that no provisions in Bill C-36 should affect the equality rights of those Canadians who have arrived here by birth and by choice either through immigration or refugee processes.

In our experience, Canadian offices overseas that do the screening of refugees and immigrants are severely under-resourced. They are the most important security lever we have for Canadians, but most of all for refugees themselves.

We urge the Committee to recommend that Canada's capacity for overseas screening be strengthened as the first priority in ensuring that people who have terrorist intentions do not get into Canada.

3.7 Equipping Canadian Institutions to Address the Religious Component of Terrorism

Religious intolerance and misunderstanding between religious communities are intensifying in the current environment. They play a growing role in issues affecting Canada's foreign and domestic policy. However, this trend is at odds with the opposite trend in Canada: conducting our public life as if religion and belief had no impact on what people bring to the "commons". The events of September 11th sharpen our awareness that we need to address the religious component of terrorism on the basis of knowledge. They also demonstrate that public policy makers need the assistance of all religious communities in crafting policies that reinforce pluralism and respect.

Several years ago, Canadian religious communities proposed that the government appoint a multi-faith advisory group on religion. The model proposed at the time was along the lines of the group created by the Organisation on Security and Co-operation in Europe at the end of the Cold War. That group was designed to draw on the expertise of religious communities committed to pluralism and therefore to strengthen the problem-solving abilities of governments and of civil society organizations.

We ask the committee to recommend that a multi-faith advisory group be created to assist the government in building up the capacity of Canadian policy makers to address the religious component of relevant public policy issues.

Summary of Recommendations

1. That section 83.01 (1) (b) (i) (A) be deleted.
2. That section 83.01 (1) (b) (i) (E) be deleted. In the alternative that the word "lawful" be deleted from the description of the exemption for protest or dissent.

3. That the definition of "terrorist activity" be amended to bring it more in harmony with the recent International Convention for the Suppression of the Financing of Terrorism. That is, making it a crime to provide or collect funds with the knowledge or intention that they are to be used in acts of violence targeting civilians for the purpose of intimidating a population or to compel a government or an international organization to do or to abstain from any act; and to provide or collect funds with the knowledge or intention that they are to be used to carry out any of the acts described in nine previously adopted anti-terrorism conventions referred to by the Convention.

4. That section 83.01 (2) be amended to include a requirement of criminal intent.

5. That the legislation ensure that the designation of an organization as "terrorist" not be allowed in cases where the only source of information is a state with a poor record of respect for human rights and democracy and that procedural safeguards be put in place to ensure that such an organization knows the case against it.

6. That the legislation make clear that providing humanitarian assistance is not an offence.

7. That Part VI be deleted. Alternatively, that Part VI be substantially amended to ensure that a charitable organization knows the case that it has to meet and has available to it the usual defenses of due diligence, lack of criminal intent, and the right of appeal.

8. That, given the extraordinary powers of this bill, the complexity and quantity of the provisions, the limited time allowed for study and debate, the uncertainty about how it will be applied and the danger that it could cause irreparable harm to innocent individuals and bona fide organizations, we ask you to consider fully the recommendations by several groups, including the Canadian Bar Association and the Senate of Canada, that there be a sunset clause.

9. That the Committee recommend that Canada's capacity for overseas screening of refugees and immigrants be strengthened as a first line of defense in reducing the risk that people with terrorist intentions do not get into Canada.

10. That the Committee recommend that the government appoint a multi-faith advisory group to assist the government in building up the capacity of Canadian policy makers to address the religious components of relevant public policy issues.