

Does *Bill C-36* Give Police too Many Powers?*

Gwen BONIFACE**

Good morning, and thank you for the opportunity. I hope that we can give you a perspective from the law enforcement community. As Susan said, I am president of the Canadian Association of Chiefs of Police; as well I am here in my capacity as Commissioner of the Ontario Provincial Police.

Canadian law enforcement has a fundamental responsibility to protect the safety and security of the people of Canada and it is clearly what Canadians want. They want measures to protect their safety and security especially as it relates to threats of terrorism and violence here in Canada and they support the laws that mitigate the threat of terrorism. Canadians also want and indeed have every right to expect that their rights and freedoms, the rights and freedoms of all citizens, will be fully respected and they want to be assured that appropriate safeguards exist to protect those rights. In my view, the provisions of *Bill C-36*¹ can meet the need for both of those.

The provisions of *Bill C-36* are necessary to address terrorism and prevent terrorism crime in Canada and the legislation balances protection of security with those individual rights. It is legislation that provides essential and appropriate tools to law enforcement in Canada to address terrorism for Canadians. The legislation applies to a new environment, the stark reality revealed on September 11. Such terrorism and threat of

* Transcription of a speech presented by Gwen Boniface, on March 26, 2002 in Montreal at a special Conference sponsored by the *Canadian Institute for the Administration of Justice* entitled "Terrorism, Law & Democracy: How is Canada Changing Following September 11?"

** Commissioner, Ontario Provincial Police, Orillia, Ontario.

¹ *Anti-terrorism Act*, S.C. 2001, c. 41 [hereinafter *Bill C-36*].

violence did not start and finish on that day and it won't disappear solely in the future. It is real and it is ongoing. Canadians rely on the police and the courts to protect our society and police services across Canada exist to keep our communities safe and ensure that our Canadian way of life be maintained. In doing so, the police role is to uphold the law and to treat the citizens of Canada fairly in all that we do as police services. *Bill C-36* provides a balanced legislative structure for police services and intelligence agencies that work together to effectively counter terrorism on Canadian soil. It also facilitates law enforcement participation in a very necessary global response to terrorism. *Bill C-36* provides strengthening of the legal infrastructure—as Richard Mosley spoke about yesterday—through a strong legislative framework and enforcement capacity. The legislation strengthens our ability to deter terrorism through provisions aimed at preventing, disabling and dismantling the activities of groups and those who support them. Prior to this legislation, laws were ineffective to deal with these individuals who belong to terrorist groups or willingly participate in finance or support terrorist acts. Further, the legislation supports our efforts to work in concert with other countries in a global effort against terrorism and brings Canada in line with international conventions on the suppression of terrorist financing and the suppression of terrorist bombings. Canada, as was indicated yesterday, has now implemented all 12 United Nations conventions and protocols related to terrorism. We must be able to work towards prevention of terrorist acts and *Bill C-36* provides measures to assist us with that objective: measures that define and designate terrorist groups and activities; measures that make it an offence to knowingly participate, and contribute or facilitate the activities; measures that cut off financial support for terrorists by making it a crime to knowingly collect or give funds in order to carry out terrorism; measures that require individuals who have information related to it to appear before a judge to provide that information.

In our view, the legislation does not provide unrestrained or highly intrusive powers of investigation. It does not provide for powers of extended detention without trial. Any powers of preventative arrests are strictly limited in time frame and any charges require the consent of the Attorney General and in turn, the scrutiny of the courts. This legislation does not provide for reverse burden of proof. Proof of intent is required to prove offences. The Government of Canada has included safeguards in the legislation to ensure consistency in the legal framework including the

Canadian Charter of Rights and Freedoms.² Checks and balances are in place to ensure the provisions of the legislation meet the needs and protection of both our security interest and our individual rights. The legislation has clearly defined scope. Legitimate political activism and protests are excluded through the precise definition of terrorist activities. This was specifically addressed to the amendments of the legislation. In addition to comprehensive new terrorism offences under the *Criminal Code*,³ this legislation provides for limited and strictly safeguarded preventative arrests to make it possible for law enforcement to disrupt the planning and carrying out of terrorist attacks. As Minister McLellan said in her often-quoted comments, “It’s too late when the terrorists have already boarded the plane.” Any such threat must be specific and involve a specific individual and the Attorney General must consent to the arrest. Detention after arrest must receive judicial review within 24 hours. This legislation also provided for judicially supervised investigative hearings under limited conditions to assist the investigation of terrorist offence. As you know, a judge may order the examination of a material witness, but first must be satisfied that the consent of the Attorney General was obtained and that there are reasonable grounds to believe that the offence has been or will be committed. These provisions are recognized as necessary powers for extraordinary interventions, interventions that we hope will be rarely required or applied. In fact we expect that it will be used only as a last resort. Should they be however, law enforcement must establish that requirement before a number of different authorities.

In January of this year police chiefs from across the province gathered for a workshop on *Bill C-36*. It was important to us to ensure, at a leadership level, that the implications of *Bill C-36* were well understood and we will followup with regional presentation across the country in the months ahead. It was clear to us that there were diverse views and we will expect considerable scrutiny of the exercise of any police powers. Mr. Borovoy, who is the room today and was present at our conference, cautioned us that police should use these powers sparingly and respect due process of law. In essence, if I have quoted him correctly and I believe I have, he said, “The police should use as much effort in protecting individual rights as they do in enforcing the legislation.” We at

² Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

³ R.S.C. 1985, c. C-46.

the leadership level bear responsibility to ensure both sides of that equation are met. As Mr. Mosley said yesterday, training packages have been developed and distributed, including concurrent lectures delivered by the Department of Justice. Training at this level should be restricted to those highly specialized units, which will take on the task of these investigations. To a much lesser degree, front line officers will require general awareness of the legislation, its implications, but not in depth training, as they will not be employing the measures contained in *Bill C-36*. Further, Canadian police agencies will have to prepare internal policy and establish procedures to set out clear rules and guidelines. The guidelines will include procedural requirements, for example, when the Attorney General's consent is required. Police agencies will have to determine what information is collected, how it is conveyed, what levels of the organization communicate this information and what the requirements will be from a reporting perspective for government. These are some of the types of internal policies and procedures that will have to be implemented and we agree this should be a coordinated effort across the country. The workshop also emphasized the need to work within communities to understand the fears felt and to understand the sensitivity that is required. It is important to develop proper lines of communication to maintain respect for communities and for the role we play as police and to dispel any notion of targeting. Operationally, police agencies must work hard and we understand we will have to work hard hand in hand with communities. Let me emphasize again that the law enforcement officers working on these types of cases would not be our normal front line patrol officers. They will be highly specialized, highly trained police investigators working collaboratively with a number of agencies. Canadian police services strongly support the measures in *Bill C-36*. They also support the protection of rights equally strongly. The terrorist's greatest ally is complacency and terrorists exploit the very freedoms and protection afforded by our society to carry out their acts. Canadian law enforcement is part of our democratic society and intrinsically and wholeheartedly supports the protection of individual freedoms as paramount to that democratic society. In Canada the policing profession is among the most highly regulated and scrutinized professions. Indeed oversight is in place to supervise the actions of police agencies. Police agencies are accountable to local police services boards or government departments. Jurisdictions have civilian oversight bodies. In Ontario, for example, the Ontario Civilian Commission on Police Services provides that oversight function and I understand it has already begun training on *Bill C-36*. All police agencies have public complaints systems to review

any allegations of improper police conduct. Any enforcement action, including enforcement undertaken under the provisions of *Bill C-36*, will be subject to the scrutiny of the courts up to and including the Supreme Court of Canada. Moreover, all police actions are subject to the *Canadian Charter of Rights and Freedoms* with respect to the application of this and, of course, all other legislation. The courts and civilian oversight bodies provide essential checks and balances to ensure police integrity. Nonetheless we appreciate the need to maintain close control over the powers contained in *Bill C-36*. The legislation itself calls for the Attorney General, the Solicitor General of Canada, provincial Attorneys General and ministers responsible for policing to report annually to Parliament on the use of preventative arrest and investigative hearing provisions. The entire Act is subject to parliamentary review in three years. Provisions in the Act dealing with preventative arrest and investigative hearings will sunset after five years unless both the House of Commons and the Senate pass a resolution. We argued before the commons committee that a small central agency should be set up to facilitate the sharing of information and other important resources, to ensure best practices and ongoing learning. These best practices are important to the professionalism of police response to terrorism while an oversight body would contribute to the professionalism and integrity of the process.

Bill C-36 complements the basic structure of the criminal justice in this country and does not change the basic public expectation of law enforcement action that respects human rights. It maintains the context of close scrutiny of law enforcement action through the application of significant safeguards. Police training will be more extensive than any other new legislation introduced. We know our actions will be under great scrutiny and we intend to meet the expectations of protecting individual rights.

Thank you.