

Canadian Coalition Against Terror (C-CAT)

Representing Canadian Victims of Terror

An Open Letter from Canadian Terror Victims to Members of Parliament – Regarding the Renewal of the ATA Provisions

February 19, 2007

To All Members of Canada's Parliament,

We are turning to you as members of a unique Canadian constituency that represents thousands of ordinary Canadians of every background, religion and political affiliation. We are Canadians whose loved ones were victims of terrorism. Some of us lost a single relative, others lost entire families, and some of us were injured ourselves. All of us have been irrevocably changed by our experience, and any of us could have been any of you under different circumstances. And all of us are united in our determination to ensure that our fellow Canadians and all other potential victims of terror are spared the horror that we have had to endure.

We are deeply dismayed by recent reports that Canadian Members of Parliament are considering to diminish significantly Canada's capacity for fighting terrorism by removing critical provisions from Canada's Anti-Terrorism Act (ATA). These provisions enable the use of "preventive arrests" and "investigative hearings" – two invaluable investigative tools that allow law enforcement officials to take appropriate action in real time to prevent terrorism from turning people like you into victims like us.

"Preventive arrests" allow for the judicial supervision of a person when there are reasonable grounds to suspect that such conduct is necessary to prevent terrorist activity. An initial judicial hearing is held within 24 hours, and a person cannot be detained longer than 48 hours after the hearing. "Investigative hearings" permit a judge to compel a witness with information about a terrorist crime or organization to testify before a judge when a terrorist act has been committed, or when there are reasonable grounds to believe a terrorist offense will be committed. This person is a witness, not an accused. In fact, no evidence from that testimony can be used against the person in criminal proceedings, except when contradictory information has been given or there has been perjury.

Given the unprecedented security challenges presented by terrorism, as well as some of the obvious limitations of our criminal justice system in prosecuting the sponsors and perpetrators of terrorist attacks, these two provisions are sorely needed. As for the individuals who are concerned that these measures might be abused by government and law enforcement authorities, the record clearly indicates otherwise. Despite the fact that three different governments have been in power since the ATA was passed in 2001, Canadian authorities have scrupulously avoided utilizing these tools. In fact, they have never been used and have therefore never been abused. And if for some of our elected officials, the concern regarding potential abuse of these tools supersedes the concern for saving real lives from a very real threat, they should consider the following: by assisting authorities in interdicting a major terrorist incident, these rather modest provisions will have protected our justice system from the inevitability of coming under even greater

pressure – in the aftermath of an attack – to enact measures even more stringent and controversial, in order to protect Canadians from other attacks.

Although MPs will debate this in the coming days, the issues are hardly theoretical for some of our fellow Canadians. They have 331 tragic reasons to ensure that investigative hearings, in particular, are kept on the books. The RCMP is planning to use these hearings in the next few months to pursue information regarding the deaths of 331 people – including 280 Canadians – murdered in the 1985 Air India bombing. If our MPs allow investigative hearings to be excised from Canadian law, these hearings will not be able to proceed. This would be the latest in a long litany of stunning legislative missteps by Parliament regarding the Air India bombing. It took Canada 11 years to remove charitable status from Babbar Khalsa (the organization responsible for Air India bombings), 18 years to ban that same organization, and 25 years to launch an official inquiry into the bombing.

But this most recent controversy over the ATA, based on the remarkable assumption that the terrorist threat has abated, is a disturbing indication that we still have learned very little from the tragedies that gave birth to these provisions. We remain a society that has been unable to look terror in the eye even when terror is staring right at us from close range. We must face the fact that terrorism is not another form of organized criminality. Terrorism is different in its scope, intent, method and consequence. Its primary objective is not economic or personal gain in a criminal sense, but to inflict maximum damage and horror on society for generations – for military and ideological purposes. This is not a social ill in any conventional sense. However it is defined, terrorism clearly requires new technologies, policies, and legal structures to protect Canadians. The ATA was a good first step in this direction and we laud the Liberal government of 2001 and all Members of Parliament who voted for its passage. These contested provisions, far from being a product of an overreaction to 9/11, were in fact a sober and responsible recognition of the new reality that terrorism had presented.

We implore you now to support the renewal of the “preventive arrests” and “investigative hearings” provisions in the ATA for another five years, as recommended last October by the subcommittee reviewing the Act. The Air India investigative hearings being planned by the RCMP, which may provide the only opportunity to pursue the perpetrators of the Air India bombing, demonstrate exactly why our statutes had been inadequate in terrorism cases and why these provisions are so critical in their investigation. This provision contains numerous safeguards, and was upheld as constitutionally valid by Canada’s Supreme Court in 2004.

We urge all MPs to approach this vote with the security of Canadians in mind. Canada should not be removing these tools for fighting terrorism while terrorists are busy sharpening their tools for use against Canadians and other innocent victims. The Conservative government is correct in requesting the extension of the provisions, and we hope that Liberal MPs will join fellow Liberals Marlene Jennings, Irwin Cotler, Roy Cullen, John Manley, Anne McLellan, Bob Rae and others in supporting such an extension. While these measures can always be revisited at a later date, the lives shattered by a future terrorist attack that may have been prevented by utilizing these tools cannot be reconstituted by any act of Parliament. So please – keep the ATA intact, and do not allow the sun to set on Canada’s security.

Sincerely,

Cindy Barkway, Maureen Basnicki, Dave Hayer, Sherri Wise,
on behalf of C-CAT -- The Canadian Coalition Against Terror