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## Presentation to the Standing Committee on Public Safety and National Security

### **BILL C- 51 – *Anti-Terrorism Act, 2015***

Remarks By: D/Commissioner Scott Tod, Ontario Provincial  
Police

Chair - CACP Counter Terrorism and National Security  
Committee

Canadian Association of Chiefs of Police

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- Distinguished members of the Committee, I am pleased to accept your invitation and am here today as the co-chair of the Counter Terrorism and National Security Committee, representing Chief Clive Weighill, President of the Canadian Association of Chiefs of Police (CACP) and its members.
- The mandate of the CACP is “safety & security for all Canadians through innovative police leadership”. This mandate is accomplished through the activities and special projects of a number of committees and through active liaison with various levels of government and departmental ministries having legislative and executive responsibility in law and policing.
- A primary principle for every law enforcement organization in Canada is the importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Legislation*. Law Enforcement agencies also understand the importance of the respect for victims of crime and the understanding of their needs.
- CACP has supports Canada’s Counter Terrorism Strategy “Building Resilience Against Terrorism” and the four pillars of the Strategy that are Prevent, Detect, Deny and Respond. CACP has also assisted in the development of terrorism legislation and has supported past programs and activities sponsored by the federal government.
- In preparation for the response from CACP to the proposed legislation in Bill C-51 police leaders must ask

themselves “how much risk can we carry”? The space between civil liberties and the terrorist threat is the area of risk that the police and the public live within.

- Suppression and prevention are important to be successful in reducing the terrorist threat. Bill C-51 provides legislation that can support both the prevention and suppression efforts of law enforcement.
- The recent collective efforts by police to increase community safety and well-being demonstrate the need for cooperation between police services, social service organizations, government and communities. Our efforts are reflected in a new approach to community safety and well-being through the establishment of community hubs or situational tables.
- The situational table is the early warning system that predicts the need for better or improved social development of people and groups. Identifying and mitigating risks requires leadership and collaboration with the sharing of information in a prescribed format that protects privacy, yet allows for the table to identify acutely elevated individuals who have demonstrated antisocial behavior and need assistance before they become radicalized to terrorism or other harmful criminal behavior within communities.
- The police must continue to rely on intelligence-led and evidence-based policing and use the community situational table to reduce the chances for those who are on the pathway of radicalization.
- C-51 includes the *Security of Canada Information Sharing Act* as part of the *Prevention of Terrorism Act*

and grants clear authority for federal government institutions to share information about “activity that undermines the security of Canada” with other designated federal government institutions. The fluid sharing of information will enhance the government’s ability to establish or share information at situational tables and other forums that can assist in early identification and implementation of solutions to people on the pathway to radicalization and becoming a terrorist.

- Information sharing in a controlled and methodical process to protect privacy is possible in today’s world of big data and high velocity solutions of radicalization, high risk travelers, high risk individuals and those embarking on the path to violent extremism.
- Provincial and municipal police services will have to rely on our pre-existing authorities and formal agreements to continue the disclosure and sharing of information at local levels to support police activities of prevention and suppression of terrorist acts.
- Bill C-51 creates a new criminal code offence for promoting or advocating others to carry out a terrorism offence –with a provision for a maximum of 5 years imprisonment. Further if enacted C-51 will allow courts the new authority to order the seizure of printed and audio terrorist propaganda and order the removal of terrorist propaganda made available to the public through a Canadian Internet service provider. This piece of the legislation is consistent with the similar provisions in the ability to seize and destroy criminal material of child pornography offences in section 163.1

of the Criminal Code. To now have a similar offence to include terrorist propaganda is consistent with the changing terrorist landscape and threats in Canada.

- Having the ability to deter and remove the propaganda material used by sympathizers and supporters that incite or propagate terrorism is a critical factor in creating “off ramps” from the path of the radicalization process.
- The Criminal Code provisions in C-51 will provide law enforcement and the courts the tactical ability to intervene and stop those individuals, who by communicating statements, knowingly advocate or promote the commission of a terrorist offence with a new section. (83.221)
- There is also a second aspect to this offence that there will exist a burden for the Crown to prove the person had knowledge that an offence will be committed or being reckless as to whether any of those offences may be committed.
- Section 83.222 will allow a Judge who is satisfied by information on oath that there are reasonable grounds to believe that any publication, copies of which are kept for sale or distribution and is terrorist propaganda publications, to order seizure of the material and destroy if necessary. Seizing and destroying terrorist propaganda removes the influences of the terrorist message and provides more space to the voice community groups and government programs that are promoting the counter narrative message.

- Other important amendments to the Criminal Code include the new Recognizance threshold requirements in Section 83.2(2) that replace “will be carried out” and “is necessary to prevent the carrying out of an offence to “terrorist activity may be carried out” and “likely to prevent the carrying out of a terrorist act”.
- The new thresholds speak to the preventable opportunities for law enforcement versus the higher threshold of response opportunities.
- The amendment actually permits a judge to order a person to be detained in custody for two additional periods of up to 48 hours.
- This proposed change will allow police the opportunity to ensure that when time is critical between becoming aware of information about a possible terrorist attack and the ability to identify, detect and apprehend so to prevent a terrorist attack, there will be an opportunity to detain a person based on the “likely to be carried” out threshold. The new threshold actually speaks to preventing an attack in today’s terrorist environment.
- The difference may be subtle but in recent investigations the time between a source coming forward with limited and chaotic information of a terror attack and the planned date of the attack has been as little as 2 days. The threshold of “may be carried out” can be crossed in 2 days but “will be carried out” may not be crossed in the 2 days. The opportunity to lawfully detain someone to ensure an attack does not occur is important in today’s context as it serves towards the principle of preserving life.

- Determining the veracity of the source information, mixing it with known intelligence, conducting analysis and searching for more information to prove the reliability and credibility of source information can take days or weeks to corroborate or prove. Accessing investigative assistance in other countries can also take many days if not weeks.
- The new provision builds a better counter terrorism enterprise for law enforcement and communities. The additional periods of preventative detention in the new legislation requires the authorization of a judge at each interval. The Judge provides the oversight needed to ensure that detention is required and that the individuals Charter of Rights and procedural fairness are considered at detention hearings.
- The next area I would like to discuss is the amending portion of the Criminal Code affecting Section 810 peace bonds. The new section will allow a judge to order a defendant, whom it is “feared may commit a terrorist offence”, to enter into a recognizance to abide and follow conditions imposed by the court for a period of one year, and up to 5 years if the person has been convicted of a past terrorist offence.
- Court imposed 810 conditions upon individuals has limited use as the strength of the recognizance may be limited to the compliance of the person and the ability of the police to monitor compliance and take appropriate action as necessary. We must be careful that the 810 process is used for persons who are not considered a high risk to public safety but are persons who show

commitment to change or are believed to have a strong potential for redevelopment of positive social behavior.

- I believe that there is an expectation from the provincial court justices that the police are responsible and accountable to monitor compliance of court ordered 810 recognizance and report back as necessary. This is an additional burden to law enforcement. Similar to other Anti Terrorism legislation, there is no new money attached to this legislation and the requirement to use this information will cause police services to re prioritize and redirect their limited resources away from other priorities that include commercial crime, organized crime, proceeds of crime and other specialized police services to terrorism investigations that require the same experienced and skilled members who can investigate and respond to the new terrorist threat in Canada.
- In closing I would like to state that under estimating the threat is dangerous and overestimation is expensive. Bill C-51 offers improvements for the federal police to share information amongst our justice sector partners, security partners but more importantly, and hopefully, with the community partners and government situational tables designed to reduce the terrorist threat and improve community safety and well-being.
- What has been successful today will not make us successful in the future. Our learning and education must outpace that of the terrorists.

- The members of the CACP are committed to upholding the laws of Canada and working within the legislative construct provided.
- Thank you and I look forward to answering any questions you have.