International Civil Liberties Monitoring Group
Presentation to the
House of Commons Legislative Committee
on Bill C-17: The Public Safety Act, 2002.

January 28, 2003

Good afternoon,

It's good of you to have us here today to speak before the House of Commons Legislative Committee on Bill C-17

The **International Civil Liberties Monitoring Group (ICLMG)**, composed of a number of Canadian civil society organizations, was created in the wake of the adoption of anti-terrorist measures, in 2001. We share concerns about the impact of the new legislation on civil liberties, human rights, refugee protection, political dissent, governance of charities, international co-operation and humanitarian assistance.

That legislation… passed by Parliament in late 2001 together with measures currently before it or under study, such as Bill C-17, provide the police, security and intelligence services with intrusive investigative powers and enforcement tools never imagined outside the War Measures Act.

Many of these measures are, in our view, "off on the wrong foot", neither appropriate nor warranted in the context of the acknowledged real threat to democracy and order in the world.

Security legislation, post September 11th, looks – to us - to have been prepared hurriedly without reference to fundamental and universal human rights frameworks as found in the *Universal Declaration of Human Rights* and the *Covenants* of the United Nations to which Canada is a party.

Further, there are parts of these laws which look as if they conflict with sections of the *Canadian Charter of Rights and Freedoms* as well as with specific guarantees to the rights of Canadians in such laws as the *Privacy Act*.

The Privacy Commissioner of Canada has done a service for us all - citizens and law-makers alike - by focussing public attention on the impact of C-17 (and related initiatives) on existing human and civil rights protections.

He also invited and circulated commentary, primarily directed to the implications of S-23 and the Advance Passenger Information/Passenger Name Record (API/PNR) database project, from a former Minister of Justice, a former Deputy Minister of Justice, and a retired Supreme Court Justice.

- Retired Supreme Court Justice, Gérard La Forest reminds us of guarantees under Section 8 of the Charter against unreasonable search or seizure, and a broad and general right to privacy, and control through consent or its refusal over personal information. In short, C-17 permits seizure of personal information without any provision for consent.
- Former Deputy Minister of Justice, Roger Tassé cites the legal doctrine of "overbreadth". This can be summarized as the question of whether C-17, in its broad scope and scale, restricts liberty far more than is necessary to accomplish the goal.
- And finally, former Justice Minster Marc Lalonde asserts that the "legitimate interests of the State requiring the collection of personal information must be balance with the fundamental right to privacy of all Canadians."

The International Civil Liberty Monitoring Group is convinced that both the API/PNR database and the provisions of C-17 are, indeed, *over-broad.*

Let me set our preoccupations in context.

We are profoundly concerned at the fundamental trends embodied in initiatives such as the U.S. **Total Information Awareness (TIA)** project.

This database will combine all existing private information from both commercial and governmental sources. We regard this initiative as leading toward information mining, monitoring and pattern analysis equivalent to or worse than practices of the most reprehensible of security forces in dictatorships.
Antithetical to a free and democratic society.

Further, we are concerned that direct diplomatic pressure related to the harmonization of the border as well as less direct "spillover" influences, will lead to sharing of information relating to Canadian citizens and residents with this intrusive U.S. system.

The Canadian Council of Chief Executives has called for a series of "common regulatory and administrative instruments" leading to a common approach to borders, trade, immigration, security and defence. CCCE President Tom D'Aquino calls it "reinventing the border". We understand the proposal to essentially mean reinventing Canada as part of the United States. We oppose measures that would effectively severely weaken Canadian sovereignty and diminish the capacity of the Canadian government and institutions to ensure the security and to protect the freedoms of Canadian citizens on the basis of Canadian rights and values.

In the face of these internal and external pressures we assert the priority of maintaining and strengthening Canadian autonomy and of defending the constitutional rights and protection of Canadians, including their privacy rights. The development of a "Big Brother" database – the API/PNR – on the foreign travel activities of Canadians by the Canada Customs and Revenue Agency, represents a deeply troubling move toward what can only be viewed as a corner-stone for a parallel system to the draconian U.S. security regime.

We agree with the Privacy Commissioner that this database is a violation not only of the Privacy Act but also of sections 7 and 8 of the Charter of Rights and Freedoms.

We cannot address, in this brief presentation, all aspects of the present Bill. We do, however, wish to draw the Committee's attention to central issues of the right to privacy and to control of personal information.

If we take a step back, for a moment, to the right to privacy as put forward in the *Personal Information Protection and Electronic Documents Act.* As the relevant Guide for Canadians states: "The Act gives you control over your personal information by requiring organizations to obtain your *consent* to collect, use or disclose information about you."

Bill C-17, on the other hand, provides for mandatory self-identification of Canadians through the use of airline passenger information and its provision to law enforcement agencies for a significant period of time following travel.

It would permit government agencies:

- to sift through the personal information of law-abiding Canadians;
- to review the travel information of domestic as well as international travellers;
- to do so without the consent of Canadians for purposes beyond travel security for which the information is provided to airlines and the travel industry;
- to seek out persons wanted on warrants for Criminal Code offences having nothing to do with terrorism, transportation security or national security; and
- to subject all Canadians, and particularly those with common names, to errors of identification and possible mistaken arrest or investigation.

In sum, the proposed new power would turn all Canadians into suspects.

Consequently, we recommend that C-17 be amended and radically refocused, in combination with a profound revision and restriction of the provisions setting up the "Big Brother" API/PNR database itself.

There are several other aspects of Bill C-17 which need revisions:

- We share the concern of the Canadian Bar Association that specified controlled access military zones will be used to inhibit legitimate dissent.
- We are concerned that the power given to Ministers to issue "interim orders" without the approval either of Cabinet or of Parliament conflicts with democratic accountability.

We are also concerned with two other issues:

- The access of individual Canadians to any information being held by the State through measures established by this legislation; and
- The need for transparent, regular Parliamentary review of the conduct of agencies and officials granted powers in this legislation.

We think that this Legislative Committee, Parliament itself and the Government must reassert a commitment to the essential rights and protections of Canadians as embodied in the Constitution, and ought to test all proposed legislation, including that dealing with security and concerns like international terrorism, in the light of its impact on those rights and protections.

We support this approach and note that similar reviews are merited with regard to the rights of Canadians *beyond* the specific right to privacy.

C-17 is *not* the last proposed step in extending intrusive and extraordinary state incursions into the lives of all Canadians. The "Lawful Access Initiative" currently put forward for discussion by Justice Canada would make our Internet and telephone communications subject to unprecedented scrutiny.

Canada is under persistent – direct and indirect – pressure from the United States to bring our laws and practices into conformity. The Homeland Security project, Total Information Awareness, the profiling and registering of residents from a particular geographic region, religious background, and gender, and many other initiatives raise challenges to Canadian norms and traditions, and to both national and universal rights.

In conclusion, I would like to leave you with the words of Sofia Macher, Commissioner of the Truth and Reconciliation Commission in Peru: “We cannot defend our democracies if we abandon respect for due process and fundamental rights. When public order is put above the civil liberties of citizens, then that democracy has adopted the tactics and principles (or lack of principles) of its enemies, and has peen partially defeated.”

Thank you.