

**ANNUAL REPORT ON THE USE  
OF ARREST WITHOUT WARRANT  
PURSUANT TO THE *ANTI-TERRORISM ACT*  
SUBSECTION 83.31(3) OF THE *CRIMINAL CODE***

**2002**



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## **SECTION I – INTRODUCTION**

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Following the tragic events of September 11, 2001, Canada moved rapidly to develop a comprehensive Anti-Terrorism Plan. As part of this plan, the Government introduced the *Anti-terrorism Act* (Bill C-36) in Parliament on October 15, 2001, which later received Royal Assent on December 18, 2001.

Through amendments to the *Criminal Code*, the new Act created measures to take enforcement action in order to prevent terrorist incidents from taking place and provided law enforcement agencies with new investigative tools. Examples of such tools are the amendments introducing the concepts of investigative hearings and preventive arrests.

Pursuant to subsection 83.3(4) of the *Criminal Code*, a peace officer who suspects on reasonable grounds to believe that the detention of a person is necessary to prevent a terrorist activity, may arrest the person without a warrant. The Solicitor General of Canada is required under subsection 83.31(3) of the *Criminal Code* to prepare and submit to Parliament an annual report pertaining to the use of arrest without warrant<sup>1</sup>.

The annual report must include: the number of arrests without warrant and the period of detention; and the number of cases in which the person arrested was released by either a peace officer under paragraph 83.3(5)(b) of the *Criminal Code*, or, was released by a judge under paragraph 83.3(7)(a) of the *Criminal Code*.

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<sup>1</sup> The Attorney General of Canada is also required, pursuant to subsection 83.31(2) of the *Criminal Code*, to prepare and submit to Parliament an annual report on the use of arrest with warrant.

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## **SECTION I – INTRODUCTION**

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The legislation also requires the Minister responsible for policing in every province to publish or otherwise make available to the public an annual report pertaining to the use of arrest without warrant, the period of detention and the number of cases where a person was arrested without warrant and subsequently released.

The 2002 annual report of the Solicitor General of Canada is organized in the following manner:

- Section I provides a brief background on the development of the *Anti-terrorism Act* and the annual report requirements;
- Section II provides an overview of the key procedural requirements of the arrest without warrant power;
- Section III presents data provided by the Royal Canadian Mounted Police and Department of Justice; and
- Section IV provides a general assessment of the data results.

## **SECTION II – OVERVIEW OF ARREST WITHOUT WARRANT POWERS**

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A key focus of the Government's anti-terrorism strategy is to prevent terrorist incidents by providing the necessary tools to police, prosecutors and the courts. Section 83.28 and 83.29 of the *Criminal Code* allow a peace officer, "for purposes of an investigation of a terrorism offence", to apply *ex parte* to a judge for an order to gather information relevant to that investigation. This procedure has parallels in Canadian mutual legal assistance legislation. It authorizes the judge to order the examination of a material witness who may possess information regarding a terrorist offence that has been, or may be, committed. The procedure is not designed to initiate a prosecution against the individual and, in fact, the person is protected by subsection 83.28(10) from his or her statements being used in any criminal proceeding against him or her. Other safeguards of the individual's rights are built into the procedure.

Section 83.3 of the *Criminal Code* allows a peace officer to make an arrest, *inter alia*, where there are reasonable grounds to believe that the person will commit a terrorist act. Subsection 83.3(4) allows a peace officer to arrest without a warrant under exceptional circumstances when it is believed a terrorist act is about to occur, and it is impractical to obtain the necessary warrant in time. The philosophy behind this power is that prevention is the most effective approach to combat terrorism.

## **SECTION II – OVERVIEW OF ARREST WITHOUT WARRANT POWERS**

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The following are the key features of the arrest without warrant regime:

- A peace officer must believe on reasonable grounds that a terrorist activity will be carried out and must suspect on reasonable grounds an arrest is necessary to prevent the carrying out of a terrorist activity;
- Exigent circumstances make it impracticable to obtain the consent of the Attorney General and to lay an information before a provincial court judge; and
- A peace officer suspects on reasonable grounds that the detention of a person in custody is necessary to prevent a terrorist activity.

When the above conditions are met, the person may be arrested without warrant.

The following are the key features of the procedural regime:

- The arresting officer is required to lay an information with the consent of the Attorney General of Canada before a provincial court judge with respect to the reasonable grounds for the arrest;
- A person arrested without warrant can be released before being taken before a provincial court judge by the arresting officer or officer in charge;



## **SECTION II – OVERVIEW OF ARREST WITHOUT WARRANT POWERS**

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- A person arrested without warrant and detained in custody shall be taken before a provincial court judge, if the judge is available, within 24 hours. If a provincial court judge is not available within 24 hours after the person has been arrested, the person shall be taken before a provincial court judge as soon as possible; and
- Once before the provincial court judge, an order can be made by the judge to release the person if an information has not been laid. Where an information has been laid, the judge can order the person released unless the peace officer can show cause why the detention is necessary. The judge can also adjourn the matter to a hearing that must occur within 48 hours.

Both the investigative hearing and preventive arrest provisions are subject to annual reporting requirements and are sunsetted—they expire at the end of the fifteenth sitting day of Parliament after December 31, 2006, unless, before the end of that day, an extension by resolution is sought and passed by both Houses of Parliament.

Subsection 83.31(4) of the *Criminal Code* imposes some limitations on the annual report in that the information disclosed shall not compromise or hinder any ongoing investigations or endanger the life or safety of anyone. In addition, the disclosure shall not prejudice any legal proceedings or otherwise be contrary to the public interest.

### **SECTION III – STATISTICS**

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Paragraphs 83.31(3)(a) and 83.31(3)(b) of the *Criminal Code* require the Solicitor General of Canada to report on an annual basis information relating to:

#### 83.31(3)(a)

- **The number of arrests without warrant.**
- **The period of the arrested person's detention in each case.**

From December 24, 2001, to December 24, 2002, both the Royal Canadian Mounted Police and the Department of Justice Federal Prosecution Services report that there were no arrests without warrant pursuant to subsection 83.3(4) of the *Criminal Code*. As such, there is no data to report in relation to the period of the arrested person's detention.

#### 83.31(3)(b)

- **The number of cases where a person arrested without a warrant was released by a peace officer.**
- **The number of cases where a person arrested without a warrant was released by a judge.**

Since no arrests without warrant were made under subsection 83.3(4), there is also no data to report as per paragraph 83.31(3)(b). This has been confirmed by the Royal Canadian Mounted Police and Department of Justice Federal Prosecution Services.

## **SECTION IV – GENERAL ASSESSMENT**

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The provisions in the *Anti-terrorism Act* for investigative hearings and preventive arrests were intended to provide tools to the police, prosecutors and courts in support of effective identification and investigation of terrorist threats and activities, within the general objective of preventing the occurrence of such activities.

The fact that subsection 83.3(4) of the *Criminal Code* was not exercised by the Royal Canadian Mounted Police during the first year of the *Anti-terrorism Act*'s existence illustrates several things.

It is an indication that the power of arrest provision is seen as a uniquely preventive measure by the police. It illustrates that law enforcement do not take lightly the carefully circumscribed powers that they have been given in the *Anti-terrorism Act* and are sensitive to the implications of exercising such powers.

The result is that this provision of the *Anti-terrorism Act* is fulfilling its original intent: ensuring the legislative means of protecting Canadians and the global community, while at the same time respecting Canadian values of fairness and human rights.

The annual reporting requirements within the *Anti-terrorism Act* will continue to provide a useful means of analyzing the utility of these measures, if and when they are used. The third-year comprehensive review of the *Anti-terrorism Act* will provide a further opportunity to assess the usefulness of the provisions and to hear from stakeholders.