



November 26, 2019

Mr. Dennis R. YOUNG
1330 Ravenswood Drive South East
Airdrie, Alberta T4A 0P8

RECEIVED
DEC 3, 2019
[Signature]

Dear Mr. YOUNG:

This is in response to your informal request which was received by this office on November 15, 2019, for:

Disclosure package pertaining to A-2019-04251

Attached is a copy of the records which were previously released.

Should you wish to discuss this matter further, contact the undersigned. Please quote the file number appearing on this letter.

Regards,

Constance Carlotti
Access to Information and Privacy Branch
Mailstop #61
73 Leikin Drive
Ottawa, Ontario K1A 0R2
613-823-7782
Constance.Carlotti@rcmp-grc.gc.ca

Attach.

Royal Canadian Mounted Police
Commissioner



Gendarmerie royale du Canada
Commissaire

Guided by Integrity, Honesty, Professionalism, Compassion, Respect and Accountability

Les valeurs de la GRC reposent sur l'intégrité, l'honnêteté,
le professionnalisme, la compassion, le respect et la responsabilisation

JAN 08 2019

The Honourable Ralph Goodale, P.C., M.P.
Minister of Public Safety and
Emergency Preparedness
269 Laurier Avenue West
Ottawa, Ontario
K1A 0P8

Dear Mr. Goodale:

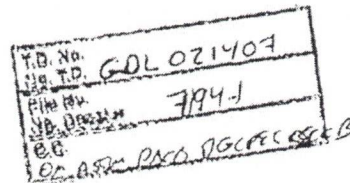
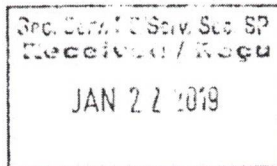
Please find enclosed, in both official languages, the *Annual Report Concerning Criminal Code section 83.3, Recognizance with Conditions*. This report satisfies the requirements in subsection 83.31(3) of the *Criminal Code* that the Minister of Public Safety prepare and present before Parliament an annual report on issues relating the use of section 83.3 of the *Criminal Code*. The report covers the period from July 15, 2017, to July 14, 2018.

The Royal Canadian Mounted Police (RCMP) has assumed responsibility from Public Safety Canada to report on the operational use of the section 83.3 recognizance with conditions. I understand that your officials will continue to support you in the development of your opinion on whether the measure should be renewed, as required by subsection 83.31(3.1).

Please note that, as in previous years, the RCMP did not use the recognizance with conditions provision during the current reporting period. In fact, the RCMP has not used this provision since its introduction in 2001.

Kindest regards,

Brenda Lucki
Commissioner



Enclosures

Ottawa, Ontario
K1A 0R2

Ottawa (Ontario)
K1A 0R2

NOT REVIEWED

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Annual Report of the Minister of Public Safety and Emergency Preparedness
Concerning *Criminal Code* section 83.3 Recognizance with Conditions
July 15, 2017 – July 14, 2018

1. Introduction

This document constitutes the annual report of the Minister of Public Safety and Emergency Preparedness on issues relating to the operation of s. 83.3 of the *Criminal Code*, the recognizance with conditions provision. The Minister is required, under subsections 83.31 (3) and (3.1) of the *Criminal Code*, to prepare and present this report before Parliament, which covers the period from July 15, 2017 to July 14, 2018.

2. Requirements of the Annual Report

The *Criminal Code* states that the Minister must report on:

1. the number of arrests without warrant that were made under subsection 83.3(4) and the period of the arrested person's detention in custody in each case;
2. the number of cases in which a person was arrested without warrant under subsection 83.3(4) and was released:
 - a. by a peace officer under paragraph 83.3(5)(b), or
 - b. by a judge under paragraph 83.3.(7)(a), (7.1)(a) or (7.2)(a); and,
3. the opinion of the Minister of Public Safety, supported by reasons, on whether the operation of section 83.3 should be extended.

This report covers the first two requirements from the perspective of the Royal Canadian Mounted Police (RCMP). The Minister responsible for policing in every province and territory must also publish, or otherwise make available to the public, an annual report on the use of this provision, and are not included in this report. The opinion of the Minister of Public Safety, as required by s. 83.31 (3.1) of the *Criminal Code*, will be provided separately by Public Safety Canada.

3. Background on s. 83.3: Recognizance with Conditions

The s 83.3 recognizance with conditions was originally created in the *Criminal Code* by the *Anti-terrorism Act* in 2001 (ATA, 2001). Section 83.3 was established to assist in disrupting plans to carry out a terrorist activity. The primary benefit of the measure to law enforcement is that it allows a court to place conditions on a person and for a peace officer to detain an individual suspected of being involved in imminent terrorist activity for a period, mitigating the threat while providing more time to collect evidence. Once detained, the individual would be brought to a judge, who if satisfied with the evidence brought before them, could order the subject to enter into a recognizance to keep the peace and to comply with any other reasonable conditions (e.g., prohibition against owning a weapon) that the judge had considered desirable for preventing the carrying out of a terrorist activity. The recognizance had a maximum period of twelve months duration.

The measure could only be used under strict circumstances. A peace officer, with consent from the Attorney General, could apply to a provincial court judge to apply the recognizance if the peace officer 1) "believes on reasonable grounds that a terrorist activity **will be carried out**;" and 2) "suspects on reasonable grounds that the imposition of a recognizance with conditions on a person, or the arrest of

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a person, *is necessary* to prevent the carrying out of the terrorist activity (emphasis added).” The s. 83.3 recognizance with conditions was operational from its creation until it sunset in March 2007.

Other safeguards surrounding its usage included:

- the judge could issue a summons for an individual to appear rather than issue an arrest warrant where the arrest of the person would be excessive and unwarranted;
- a warrantless arrest of a person can only be made in limited circumstances, where the grounds for laying an information existed, but laying the information was impracticable by reason of exigent circumstances, or where an information had been laid and a summons issued and the peace officer suspected on reasonable grounds that the detention of the person in custody was necessary to prevent a terrorist activity;
- a person detained must be brought before a provincial court judge without unreasonable delay and within 24 hours of arrest. The only exception to this was when a judge was not available within that period, in which case the person must be brought before a judge as soon as possible
- when a person is detained in custody and taken before a judge, the onus is on the peace officer to show cause why the person should continue to be detained;
- at the hearing, the presiding judge must be satisfied by evidence that the further detention was justified by one or more of the specified grounds; and,
- the measure included strict reporting requirements to Parliament, and a five-year sunset clause.

4. Amendments by the *Anti-terrorism Act, 2015*

The *Anti-terrorism Act, 2015 (ATA, 2015)*, which received Royal Assent on June 18, 2015, restored the section 83.3 recognizance with conditions while introducing a number of amendments. The most substantive amendment was to lower the threshold to obtain a recognizance with conditions. The previous dual requirement of 1) reasonable belief that a terrorist activity “will be carried out” and 2) reasonable suspicion that the imposition of the recognizance with conditions “is necessary to prevent” the carrying out of the terrorist activity, was amended to 1) reasonable belief that a terrorist activity “**may be carried out**” and 2) reasonable suspicion that the imposition of the recognizance with conditions “**is likely to prevent**” (emphasis added). In addition, the arrest without warrant power was amended so that, in those cases, the peace officer had to suspect on reasonable grounds that the detention of the person in custody “is likely to prevent” a terrorist activity. These were the thresholds that were in effect during this reporting period.

The measure also increased the period of preventative detention to a possible total of up to seven (7) days, with repeated appearances before a judge no later than every 48 hours to ensure the protection of the rights of the subject. Further, it included additional areas that a judge must consider as restrictions, including imposing a geographic restriction, and the surrender of passport(s) or other travel documents.

5. Proposed amendments, Bill C-59

On June 20, 2017, the Government introduced Bill C-59, *An Act respecting national security matters* (also known as the *National Security Act, 2017*), which amends the s. 83.3 recognizance with conditions. The Act proposes restoring the second of the two primary thresholds amended in 2015 to the original wording of the ATA, 2001. Specifically, it would restore the requirement in 83.3(2)(b) that “[...] the imposition of a recognizance with conditions on a person, or the arrest of a person, is



necessary to prevent the carrying out of the terrorist activity (emphasis added).” This proposed change is also reflected in proposed paragraph 83.3(4)(b) relating to the arrest without warrant power.

An additional reporting requirement would also be introduced under proposed subsection 83.32(1.1). This subsection would require that a Committee of the Senate or House, or of both Chambers of Parliament comprehensively review the section and its operation of the recognizance with conditions. Proposed subsection 83.32(1.2) would require the report of the Committees to be completed no later than one year before the recognizance with conditions is to sunset. This would allow sufficient time for the Government to seek to have the recognizance with conditions extended, should it choose to do so, before the provision is to sunset.

6. Expiration of the Measure

The s. 83.3 recognizance with conditions was last renewed in July 2013, with the coming into force of the *Combating Terrorism Act*. Bill C-59 seeks to include a renewal of the s. 83.3 recognizance with conditions, and enacts a new sunset clause such that moving forward it would have effect at the end of the fifth anniversary of the day on which the *National Security Act, 2017* receives Royal Assent. The Bill also introduces new authorities for Parliament to extend the s. 83.3 recognizance by resolution passed by both Chambers of Parliament. This would provide a means to extend the measure without it having automatically sunset after the legislated five-year sunset period.

Bill C-59 is currently being considered by the Senate. As such, there has been no renewal of the s. 83.3 recognizance, and the provision expired on October 25 2018: the end of the 15th sitting day of Parliament after the fifth anniversary of their coming into force. Therefore, the s. 83.3 recognizance with conditions provision is no longer in effect, and cannot be used.

7. Statistics

The RCMP recognizes that the s.83.3 recognizance with conditions is an extraordinary authority and would only consider using it in the most pressing of circumstances. This is reflected by the fact that the RCMP has not used the provision during the current reporting period. In fact, it has not used it since its introduction in 2001.

Paragraph 83.31(3)(a): number of arrests without warrant and period of detention.	0
Paragraph 83.31(3)(b): number of cases in which a person was arrested without warrant, and released: 1. by a peace officer under paragraph 83.3(5)(b), or 2. by a judge under paragraph 83.3(7)(a), (7.1)(a) or (7.2)(a).	0