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For immediate distribution – July 28, 2010

NEWS RELEASE

Preventive detention necessary to address gap in anti-terrorism law

Challenge is to minimize risk of terrorist attack while respecting human rights

Montreal – Canada should develop a limited but meaningful system of preventive detention to grapple with situations where it has reason to believe that a terrorist attack is imminent, that a particular group is behind the plot, that the suspect is a member of that group, but where it has no other information connecting that particular individual to the plot, according to a new study published by the Institute for Research on Public Policy (IRPP).

“In these circumstances, conventional legal instruments allowing the state to disrupt that threat through detention of the individual may not be available,” says author Craig Forcese. “Preventive detention may be appropriate to fill this narrow space where other tactics of disruption are judged inadequate, subject to a number of important safeguards.”

In the study, *Catch and Release: A Role for Preventive Detention without Charge in Canadian Anti-terrorism Law*, Forcese, an associate professor of law at the University of Ottawa, offers lessons from state practice since 9/11. He argues for a preventive detention model that focuses on disruption by the short-term detention of persons tied to specific threats, but that includes checks and balances to ensure proper use. He rejects approaches that detain people on the basis of their perceived inherent dangerousness who are not connected to specific threats.

“Done poorly – as at Guantanamo Bay – preventive detention may amount to a virtual repudiation of the rule of law and may blight a state’s reputation,” notes Forcese. “On the other hand, done properly, it may save lives if a terrorist attack is forestalled.”

In April, Stephen Harper’s Conservative government introduced Bill C-17, the *Combating Terrorism Act*, to reinstate for another five years the anti-terror laws that were introduced in the wake of the 9/11 terrorist attacks by Jean Chrétien’s Liberal government and that lapsed in 2007. Forcese generally supports the approach taken in the expired law, but he proposes a number of adjustments designed to maximize the effectiveness of the law while responding to civil liberties concerns.

“Somewhere on the spectrum between a system of detention that seeks to eliminate all risk and a system that preserves absolutist civil liberties is an optimal point, one that is desirable in democratic, rights-respecting societies like Canada,” says Forcese.

Catch and Release: A Role for Preventive Detention without Charge in Canadian Anti-terrorism Law, by Craig Forcese, can be downloaded free of charge from the Institute’s Web site (www.irpp.org).

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