Revised Security Certificate Legislation

A Parliamentary committee report regarding Bill C-3, An Act to amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act, was debated in the House of Commons on December 10, 2007. The Bill must undergo a third reading before it can receive royal assent and become law.

Bill C-3 is a legislative response by the Federal Government to the Supreme Court of Canada's decision in Charkaoui v. Canada (Citizenship and Immigration) [1]. In that case, the Court ruled that aspects of the security certificate regime violated sections 7, 9 and 10 of the Charter of Rights and Freedoms. Security certificates are used by government authorities to detain and deport terrorist suspects; they cannot be used against Canadian citizens.

The Court gave Parliament until February 23, 2008, to revise the current legislation, after which point it becomes of no force or effect. Before the House of Commons, Dave Mackenzie, Parliamentary Secretary to the Minister of Public Safety, emphasized the urgency in passing the bill [2]. The recent support of the Opposition Liberals suggests that Bill C-3 will likely pass a third reading prior to the February deadline [3].

The Bill revises the security certificate process by declaring ineligible any evidence elicited through torture, and granting the right of review within 48 hours of detainment to both permanent residents and foreign nationals.

Another major revision is the incorporation of the special advocate – an idea first developed in Britain to prosecute detained terrorist suspects while ensuring a fair hearing. Bill C-3 legislates that the "special advocate" would be a lawyer chosen by the detainee from a list of lawyers prepared by the Minister of Justice. The lawyer would represent the detainee in Federal Court proceedings and be privy to any classified information. Previously, security certificate proceedings were held in camera (a judge's private chambers) and ex parte (without the accused present). Now, through the special advocate, the detainee can know the case against them and challenge the classified evidence. Although there is no solicitor-client privilege between the special advocate and the detainee, the special advocate cannot be compelled to testify against the detainee regarding confidential conversations between them.

The special advocate system has been criticized in Britain, and the use of security certificates is controversial in Canada. For example, the Canadian Bar Association recommended further legislative changes to Bill C-3 such as: forcing the "government to disclose all relevant information to the court and the special advocate, not just the evidence the government believes is helpful"; granting continued contact between the special advocate and the detainee after reviewing the secret evidence; and ensuring "sufficient

logistical and administrative support to effectively challenge the evidence" [4]. Adil Charkaoui, a terrorist suspect detained under a security certificate and currently under house arrest, called the special advocate a "clown in a circus," while another suspect, Algerian Mohamed Harkat, referred to the security certificate regime as "medieval" [5]. Both men had an opportunity to express their opinions before the Parliamentary committee in early December.

[1] 2007 SCC 9, [2007] 1 S.C.R. 350.
[2] Hansard, 39th Parliament, Second Session, Vol. 142 (26 October 2007).
[3] Jim Bronskill, "Bill revamping system of security certificates ready to be passed" CBC News (7 December 2007).
[4] "CBA says security certificate legislation (Bill C-3) needs further amendments" Canadian Bar Association, 29 November 2007.
[5] "Terror suspects dismiss security certificates as 'medieval' National Post, 6 December 2007.