House of Commons
CANADA

Standing Committee on Public Safety and National Security

SECU • NUMBER 007 • 2nd SESSION • 39th PARLIAMENT

EVIDENCE

Tuesday, December 4, 2007

Chair

Mr. Garry Breitkreuz

Also available on the Parliament of Canada Web Site at the following address:

http://www.parl.gc.ca

Standing Committee on Public Safety and National Security

Tuesday, December 4, 2007

● (1530)

[*English*]

The Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)): I'd like to bring this meeting to order.

This is meeting number 7 of the Standing Committee on Public Safety and National Security. We are continuing our study of 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.

I want to make a brief announcement before we turn to our witnesses. For the members of this committee, if it's all right with you, we have arranged a meeting for tomorrow afternoon, Wednesday, December 5, from 3:30 to 5:30. We will have three witnesses: Amnesty International, the Canadian Arab Federation, and Human Rights Watch.

Does anybody have a problem with that, or can I go ahead and line up that meeting? This is in relation to a motion that was put before the committee.

Mr. MacKenzie.

Mr. Dave MacKenzie (Oxford, CPC): Mr. Chair, certainly we would agree with that.

The other thing I would ask is that the clerk attempt to put together another meeting on Thursday morning from 9:30 until 11:30.

The Chair: Nine or 9:30? We usually meet from nine to eleven. Is that...?

Mr. Dave MacKenzie: It doesn't matter, whatever—a two-hour meeting on Thursday morning. And I think Mr. Dosanjh may have indicated to the clerk those people who were considered to be a priority, if they're available.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): I'm just looking at who we haven't heard from. I think the two committees for Harkat and Charkaoui we should hear from, and any other person who wants to come and make a presentation that day.

I think it's important to ensure that people feel they've been heard.

The Chair: Any further discussion?

Mr. MacKenzie.

Mr. Dave MacKenzie: We would concur with that.

The Chair: All right.

Hon. Ujjal Dosanjh: If the committee concurs that we have the meeting tomorrow morning and one Thursday morning, in addition to the prescheduled meetings, I would withdraw the motion I had submitted.

The Chair: Let's deal with one thing at a time.

Does the committee concur with those extra meetings...?

Ms. Priddy, please.

Ms. Penny Priddy (Surrey North, NDP): Yes, I do concur. I just wanted to congratulate people for bringing that forward. Thank you.

The Chair: Thank you.

Any other comments?

All right, I take your silence to be agreement. Okay.

We'll turn this over to the clerk. A few have been checked off, so I will let you do that.

The other thing was.... What was the second part of your motion? Agreed to the extra meetings, and....

Hon. Ujjal Dosanjh: The motion is withdrawn.

The Chair: And the motion is withdrawn.

You all agree to that? Yes.

I knew there was a second part to it.

We welcome to the committee today three groups. We will hear first of all from the *Ligue des droits et libertés*, secondly from the Canadian Council for Refugees, and thirdly, the B.C. Civil Liberties Association.

Welcome, ladies and gentlemen. The usual procedure at this committee, if you're not familiar with us, is we give you approximately ten minutes each for any introductory comments you have, and then questions and comments will follow, probably from the members of this committee after you've all given your presentations.

Ligue des droits et libertés first, please.

[*Translation*]

Mr. Dominique Peschard (President, Ligue des droits et libertés): My name is Dominique Peschard and I'm the President of the Ligue des droits et libertés. I will be sharing my 10 minutes with Mr. Philippe Robert De Massy, who is also with the Ligue des droits et libertés.

Mr. Chairman, ladies and gentlemen members of the committee, we are pleased to have the opportunity to appear before the committee on this very important issue. Indeed, in our opinion Bill C-3 raises fundamental human rights issues. On the other hand, it is with a certain distress and true displeasure that we were made aware of the whole consultation process of the committee before the bill is sent to the House for its third reading.

We were pleased to learn that an additional meeting will be held in order to allow Amnesty International, Human Rights Watch and the Canadian Arab Federation to testify. Nevertheless, some of the groups who asked to appear will not be heard by this committee, particularly those groups who are supporting individuals who are presently under a security certificate and groups supporting communities which are particularly targeted by security certificates and concerned with immigration issues and anti-terrorist measures in general. We would ask that you review this decision to ensure that all the groups and organizations who wish to be heard on this matter will have an opportunity to testify before you.

I will now focus on Bill C-3.

Until recently, Canada has always been considered in the world as a leader in the area of human rights. This unfortunately seems to have changed since the turn of the century, more particularly since September 11, 2001. Yet, the Immigration and Refugee Protection Act is one of the only statutes, to our knowledge, to specifically refer not only to the Canadian Charter but also to the international instruments.

Section 3(3) of the Immigration and Refugee Protection Act states:

> (3) This Act is to be construed and applied in a manner that [...]
>
> (d) ensures that decisions taken under this Act are consistent with the Canadian Charter of Rights and Freedoms, including its principles of equality and freedom from discrimination [...];
>
> [...] (f) complies with international human rights instruments to which Canada is signatory.

The objective of Bill C-3 is to eliminate from the Immigration and Refugee Protection Act the aspects which were judged unconstitutional by the Supreme Court in the Charkaoui case. Does the bill meet the requirements expressed by the court in an appropriate manner?

Let us recall some unequivocal statements in the decision. Paragraph of the decision, which deals with security certificates, reads as follows:

> 25. At the same time, it is a context that may have important, indeed chilling, consequences for the detainee. The seriousness of the individual interests at stake forms part of the contextual analysis. As this Court stated in Suresh: "the greater the effect on the life of the individual by the decision, the greater the need for procedural protections to meet the common law duty of fairness and the requirements of fundamental justice under section 7 of the Charter" (paragraph 118).

In paragraph 27, the court states:

> 27. The procedures required to conform to the principles of fundamental justice must reflect the exigencies of the security context. Yet they cannot be permitted to erode the essence of section 7.

The judgment describes the main element incompatible with the Charter as follows:

> 139. [...] section 78(g) allows for the use of evidence that is never disclosed to the named person without providing adequate measures to compensate for this non-disclosure and the constitutional problems it causes.

The primary innovation of Bill C-3 is the creation of the role of the "special advocate"; the expression "défenseur" used in the French version may be misleading, as it seems to imply that the person playing that role is truly the attorney as a named person. Does Bill C-3 actually offer "meaningful and substantial protection"—as was stated in the Charkaoui decision—compatible with the principles of fundamental justice? In our opinion, the answer to that question is no.

I will now give the reasons why we feel that these objectives have not been met.

The named person and his or her attorney will continue not to have access to the evidence adduced against him or her and will not be in a position to test this evidence in an adversarial proceeding affording a full answer and defence.

The special advocate is not bound by lawyer-client privilege and cannot really represent the named person since he or she cannot communicate with the person without permission from the judge and cannot share the secret evidence presented to the judge.

● (1535)

The cross-examination of the CSIS agents will probably be useless since, according to the testimony of former British special advocate Ian Macdonald before this Committee, the members of secret services usually have no personal knowledge of the facts they put forth as evidence.

A judge can receive as evidence elements which would not be admissible in a criminal trial: hearsay, opinions and so on.

There is nothing in Bill C-3 to prevent the judge from unknowingly receiving evidence or testimony obtained under torture and there is nothing the named person can do to oppose that.

The Ministers issuing the security certificates control the evidence: they are under no obligation to present the entire evidence, more particularly those elements of proof which would exculpate the named person. Yet, we know that CSIS destroys evidence. Recently, Adil Charkaoui, one of the persons under a security certificate, has addressed the courts upon his learning of the destruction by CSIS of the recordings of testimonies of which only written summaries were produced in evidence.

● (1540)

Mr. Philippe De Massy (Lawyer, Ligue des droits et libertés): The named person can still be incarcerated indefinitely, without trial, whereas in a criminal trial he/she would know the criminal charges, would be able to present a defence, and would be either acquitted or sentenced to a finite prison term. That's precisely what the Supreme Court denounced in *Charkaoui*.

> 13. [...] For both foreign nationals and permanent residents, the period of detention can be, and frequently is, seven years. Indeed, Mr. Almrei remains in detention and does not know when, if ever, he will be released.

Since this judgment was handed down almost a year ago, Mr. Almrei remains detained in Kingston.

The burden of the proof is still the mere obligation to establish "the reasonableness of the certificate", which is a derisory burden in comparison to the burden of proving "beyond a reasonable doubt", which is the requirement when a person is liable to lose his/her freedom.

Point number nine. It remains possible to send a person to torture —despite the fact that Stockwell Day denied this when he appeared before you on November 27 last. On this question, it is important to point out that the United Nations Committee against Torture has just issued a blame to Canada, on November 16, in the case of Bachan Singh Sogi, an Indian national that Canada expelled in July 2006, even though the Committee against Torture had asked Canada on two occasions to withhold deportation until such time as it had examined the complaint. The committee concludes:

The committee concludes:

> The Committee against Torture [...] is of the opinion that the expulsion of the applicant to India on July 2, 2006 is in violation of articles 3 and 22 of the Convention.

You are aware that article 3 does not provide for any exception. This expulsion to place under the responsibility of Minister Day.

You are aware of the recent successes against organized crime and biker gangs in Quebec. Many were condemned and are now serving jail sentences. This was accomplished using criminal procedures and evidence that complies with traditional rules. Yet, in this case, as in the case of antiterrorist activities, sensitive questions are raised regarding the need to protect the identity of police informers and to conceal police investigation techniques and strategies.

We therefore believe that instead of having recourse to security certificates and secret evidence, we should rely on traditional criminal procedures and thus ensure all persons on Canadian territory that they will not have their freedoms and rights infringed upon without tested and admissible evidence, without a fair trial, and a full and complete defence.

Especially when by expelling people Canada considers to be too dangerous to remain here, they are sent to other countries where they are just as dangerous! How does this enhance security?

In conclusion, let us not repeat historical errors.

Each time in the past we have allowed the erosion of traditional safeguards, consequences have been disastrous and have forced the Canadian government to recognize its errors, to apologize and sometimes offer compensation. Just take, for example: the expropriation and imprisonment of Canadians of Japanese descent during the Second World War; the hundreds of needless and unjustified arrests and imprisonments during the 1970 October Crisis in Quebec; and more recently, the responsibility in the extraordinary rendition of Maher Arar to torture in Syria by the United States.

Therefore, the Ligue des droits et libertés recommends: the abolition of security certificates and of the possibility of depriving a person of freedom and expelling him/her from Canada on the basis of secret evidence; that Canada's participation in the struggle against terrorism be governed by due process and non-discriminatory access to a fair and open trial in compliance with international law.

Thank you.

● (1545)

[*English*]

The Chair: Thank you.

We'll now go to the Canadian Council for Refugees, and I ask you to introduce yourselves before you begin your presentation.

Thank you.

[*Translation*]

Ms. Janet Dench (Executive Director, Canadian Council for Refugees): Thank you. My name is Janet Dench, and I am the Director of the Canadian Council for Refugees. I will be making this presentation with my colleague Sharryn Aiken, the former President of the Canadian Council for Refugees.

The CCR, an umbrella organization with more than 170 members throughout Canada, has been following the security certificate file for many years. We took a stand in the 1990s against rights violations inherent in the certificates. We commented on amendments made to the legislation during consideration of Bill C-11, which became the current Immigration and Refugee Protection Act, and we had intervenor status before the Supreme Court in the Charkaoui case.

We share the concerns already expressed by our colleagues from the Ligue des droits et libertés as to the need for allowing a larger number of witnesses to appear, and we underscore the importance of granting ample time to carefully study their submissions.

We have submitted a rather lengtht brief that we prepared, as well as a short summary. The time available will allow us only to present a very brief overview and to emphasize a few points, but we would be more than pleased to answer your questions on other aspects of our brief. I will proceed with the overview.

Canada's response to potential security threats should be founded on full commitment to human rights and should not rely on distinctions between citizens and non-citizens.

The use of secret evidence is a great threat to the principles of fundamental justice. Given this, any use of secret evidence must be kept to the absolute minimum and maximum safeguards must be provided to any person whose rights are at stake. If the safeguards are insufficient to allow the person to know and meet the case against them, the secret evidence must not be used.

The security certificate process should be eliminated.

The potential for the use of secret evidence in other immigration proceedings through section 86 is much broader than in security certificates and the rights safeguards are minimal. This aspect of Bill C-3 has not received the attention it deserves.

Canada must take seriously its obligation to protect non-citizens from removal to persecution or torture. The law needs to be amended in this regard to conform with international human rights instruments to which Canada is signatory.

[*English*]

I'm going to speak a bit about the last point, the issue of protection, which I believe has not been much addressed so far before this committee.

Persons subject to a certificate may have fled persecution in their home countries. Others may not have come to Canada as refugees, but once they are identified by Canada as linked to terrorism, they may face a strong risk of torture if they're removed to a country that practises torture. For these reasons, Canada needs to carefully apply the international obligations that exist under the refugee convention and the convention against torture.

There are a number of serious flaws in Bill C-3 in this regard:

One, it does not bring Canada into compliance with international human rights obligations by providing an absolute prohibition against return to torture and limiting exceptions to the non-refoulement principle to those contained in the refugee convention.

Two, the provisions relating to protection are weak and incoherent. If they are allowed to stand, they will almost inevitably lead to further litigation.

Three, a key problem lies with using the pre-removal risk assessment, known as PRA, to determine the person's protection. Under the PRA, a civil servant must balance the person's need for protection against the danger the applicant constitutes to the security of Canada. At the same time that the civil servant is deciding how dangerous the applicant is, the Federal Court judge is testing the minister's case against the person, including any allegations that the person represents a danger to national security. There is no coordination of these two processes; thus, the civil servant could decide that the person is too dangerous to merit Canada's protection, even while the Federal Court judge is concluding that the person is not quite as dangerous as the government is alleging.

Four, section 115 is added as a proceeding that can happen in parallel with the security certificate process. It appears that the intention is to allow for a re-assessment by a civil servant of a previous determination by the Immigration and Refugee Board that the person is a refugee. This represents a disturbing use of a provision that articulates Canada's most fundamental protection commitment, the principle of non-refoulement, to undermine a person’s status as a refugee.

In conclusion, the provisions relating to protection fail to provide the guarantees of principle and of procedure that are necessary to ensure that Canada respects the protection rights of the persons affected.

● (1550)

Ms. Sharryn Aiken (Former President, Canadian Council for Refugees): I would like to begin my remarks by pointing the committee's attention in the direction of some historical context, namely the long history of problems and mistakes made by security intelligence agencies in this country, whether we're speaking about the RCMP or CSIS. We can look to the findings of the McDonald commission that investigated RCMP activity in the 1970s, the recently concluded Arar inquiry, or the Air India inquiry currently in progress, to note that the Canadian public—all of us—need to be very skeptical with regard to the credibility of undisclosed and untested evidence proffered by intelligence agencies in this country. That context is very important to keep in mind as we review the specific provisions of Bill C-3.

Like my colleague Ms. Dench, I would like to draw the committee's attention to a few provisions in Bill C-3 that perhaps have not received as much attention as others. In particular, there's section 86 of Bill C-3, which speaks about the use of secret evidence outside the context of the security certificate procedure. To quote from our brief—and I would note that these paragraphs from our brief were endorsed completely by the Refugee Lawyers Association in their brief, which you should have before you by now as well—essentially I'd like to draw your attention to the fact that Bill C-3 proposes the continued use of secret evidence, non-disclosed evidence, under section 86 in a wide range of cases.

The Immigration and Refugee Board, which convenes section 86 hearings, is much less able to meet the procedural fairness hurdles set out by the Supreme Court. The Immigration and Refugee Board is a quasi-judicial administrative tribunal, not a court, and while only some of its decision-makers are lawyers, none are judges. Hearings before the IRB are conducted with greater informality and fewer procedural protections than before a court, yet the potential consequences for persons affected include prolonged detention and removal from Canada, to a danger of persecution or torture, and they are the very same as in security certificate cases.

Section 86 is even broader, since it allows the minister to apply for the use of secret evidence during any admissibility hearing, detention review, or appeal before the Immigration Appeal Division. There is no requirement that the persons affected even be alleged to be inadmissible on security or criminality grounds. It is enough that the minister wants to introduce the secret evidence. Keep in mind, then, that secret evidence can be introduced in a section 86 context in a case alleging misrepresentation. It may be alleging some form of criminality, but not necessarily serious criminality. And we may even be talking about inadmissibility on the grounds of health or economic reasons. We're talking about vast powers to introduce secret evidence in the context of section 86. The Immigration and Refugee Board member's decision can be based on this secret evidence if the member considers it reliable, appropriate, and relevant. That's the test.

We would ask if the government believes that if some non-citizen's fundamental rights need to be violated because they represent a threat to security, why is the use of secret evidence not limited to cases in which the persons affected are alleged to represent a genuine threat to security? Indeed, every statement made by the government to date—and certainly in the frequently asked questions available on the government's website—seems to imply that the power to deal with secret evidence is only being used in cases involving people who actually constitute a danger to security, a danger to society, and are heard and ruled on by judges of the Federal Court. That's a false premise, as the Refugee Lawyers Association noted, but it doesn't seem that enough people are aware of this. We're talking about Bill C-3 as proposing the continued use of secret evidence in a much broader range of cases.

● (1555)

CCR would like to emphasize the Supreme Court's ruling in the Charkaoui case in response. Although Charkaoui dealt specifically with the security certificate procedures, the case had much to say about the use of secret evidence in the security context more generally. In that regard, I'd like to quote a couple of small paragraphs from the Charkaoui judgment:

> The principles of fundamental justice cannot be reduced to the point where they cease to provide the protection of due process that lies at the heart of section 7 of the Charter. The protection may not be as complete as in a case where national security constraints do not operate. But to satisfy section 7, meaningful and substantial protection there must be.

Meaningful and substantial are the key benchmarks here.

The court goes on to note:

> If section 7 is to be satisfied, either the person must be given the necessary information, or a substantial substitute for that information must be found.

A substantial substitute for that information, I would underscore again.

It's the CCR's position that the proposed use of the special advocate model in the context of section 86, as well as in the context of the security certificate procedure, fail miserably in meeting the Supreme Court's benchmarks and, indeed, that Bill C-3 in its entirety is deeply flawed as a result. It is not, as the government has suggested, even minimally compliant with the requirements of section 7 of the charter.

I would be happy to elaborate on this point in discussion.

The Chair: Thank you.

And last of all, the B.C. Civil Liberties Association.

Mr. Murray Mollard (Executive Director, B.C. Civil Liberties Association): Thank you, Mr. President and honourable members.

It is always a pleasure coming from way out west to a place where when it snows the snow actually stays, unlike Vancouver, where we had a big dump, but of course it rains and it goes away in a very short time. So I thank you for giving me and our organization this opportunity.

I did want to start out by saying a little bit about the concern I think we have and that we've always stated whenever we meet with parliamentarians about national security matters. National security matters tend to invoke a lot of emotion, indeed at times I think panic, among the populace. But we've always said that in this context—and it's a very difficult context of balancing a variety of interests—we want our parliamentarians to be careful to take the time to deliberate on behalf of the collective sovereign, all Canadians, and to carefully consider this.

I'm very concerned. I'm worried about the amount of time you have. I understand the government has introduced the bill at a certain time, and you have to report out and you have to make decisions quickly because of the decision of the Supreme Court of Canada, but I'd urge you to take the time necessary to really fully understand the implications of this bill.

I'm happy to hear that you're going to be hearing from some other witnesses, but there are probably more you could hear from—and indeed, in your discussions internally, take the time to deliberate properly.

I'm going to begin my submission with respect to Bill C-3 by relating a conversation I had with Ian Macdonald, who is a barrister from England and somebody you may be familiar with and may have heard testimony from before. I understand he appeared before a parliamentary committee in Canada earlier this year. We had a conversation with him on July 6, 2005.

As you know, he was a special advocate in the English system but decided, after I believe up to eight years representing—and it's a good question about who he represents—the interests of at least testing information under their system before the Special Immigration Appeals Commission, that he could no longer sustain continuing his role because of his real concern that he was in fact just providing, in his words, a fig leaf, although we were discussing earlier today whether Justice Hugessen has also used that phrase.

In other words, he could not continue to play that role in a way in which he thought lended credence to a system that ultimately could not be sustained as fair and substantially providing due process to those subject to their system in England.

One of the keys for him—and there were a variety—was his inability to meet with the person who was subject to the order and to be able to discuss information that he had received and had reviewed after reviewing all the information before the tribunal. We're not just talking about national security information, because of course that requires some confidentiality, but indeed no ability to really have a discussion with his counsel and the person subject to that order.

That's in stark contrast to what occurred in the Arar inquiry. If you review Justice Dennis O'Connor's report, as I did last night, he'll make it very clear that it was really critical to any in camera hearings that the commission counsel, Mr. Cavalluzzo, was able to, after having seen all the evidence that the government held, have meetings with Mr. Arar and his counsel to be able to obtain suggestions and explore some of the evidence, as much as they could, given that national security confidentiality claim. Being able to explore that evidence as much as possible was very helpful going back into in camera meetings. That didn't occur, and it was one of the main reasons Mr. Macdonald decided to resign.

I wanted to take you then to the Charkaoui case, because after all that's why we're here. It's the decision of the chief justice and the whole of the court that is the reason we're here before you today and you're having to consider this legislation. I want to quote from paragraph 63; this is about halfway through paragraph 63:

> The judge, knowing nothing else about the case, is not in a position to identify errors, find omissions or assess the credibility and truthfulness of the information in the way the named person would be. Although the judge may ask questions of the named person when the hearing is reopened, the judge is prevented from asking questions that might disclose the protected information. Likewise, since the named person does not know what has been put against him or her, he or she does not know what the designated judge needs to hear.

● (1600)

> If the judge cannot provide the named person with a summary of information that is sufficient to enable the person to know the case to meet, then the judge cannot be satisfied that the information before him or her is sufficient or reliable. Despite the judge's best efforts to question the government's witness—

So we're talking about the judge questioning the government's witness.

> —and scrutinize the documentary evidence, he or she is placed in the situation of asking questions and ultimately deciding the issues on the basis of incomplete and potentially unreliable information.

Paragraph 64:

> Nevertheless, the judge's activity on behalf of the named person is confined to what is presented by the ministers. The judge is therefore not in a position to compensate for the lack of informed scrutiny, challenge and counter-evidence that a person familiar with the case could bring. Such scrutiny is the whole point of the principle that a person whose liberty is in jeopardy must know the case to meet.

And must have an effective ability to test that case.

> Here, the principle has not merely been limited; it has been effectively gutted. How can one meet a case one does not know?

Those are the words of Chief Justice McLaughlin

So I ask you: if the judge isn't able to do that, how is the special advocate that is proposed under Bill C-3 able to do that, given that he or she is going to be in exactly the same position, in a sense, as the judge under the old system, or what exists now, until indeed Bill C-3 passes as is?

The answer is that the special advocate is in no better position to be able to assess that information without an absolute right to be able to go back before the named person on the certificate and his or her counsel and have a discussion.

Now, the joint committee on human rights in England has, in a report earlier this year, again found that there are fundamental flaws in the system of special advocates in England. I understand that in Canada we think we are doing better. I don't think that's the case, and we can maybe get into details about that later.

I want to go back to my discussion, though, with Mr. Macdonald. Ultimately, he said—and I believe he's testified to this fact before Parliament as well—you have to ask the question, is secret evidence and the security certificate process good anti-terrorism policy? In his submission he said that if the authorities only need really to conduct or to provide information to a judge that someone should be removed due to security concerns, the standard is going to be relatively vague. Indeed, this is information. It's not really evidence in the full understanding that we have as lawyers before administrative tribunals and courts, and this information really isn't pursued.

He said his worry, and I think it's very clear, is that the security officials—RCMP, CSIS—need not pursue that information in a way, investigate that information carefully, such that that evidence can become reliable intelligence to ultimately prevent terrorism. And that, after all, is the goal, I would think, to actually prevent terrorism. Indeed, that intelligence can't be converted into true evidence that would be able to be put before a court to pursue a prosecution.

I think the worry here is that, by definition, the security apparatus in Canada is going to cast their net broadly. We know—I don't think Mr. Arar is the only person—that the net is cast so broadly that people who really shouldn't be caught in that net are going to be caught, to their significant detriment. I understand that you, as parliamentarians, have a serious responsibility to ensure the national security of this country, but at the same time, I think Bill C-3 does not balance the civil liberties and the national security concerns in a way that is optimum. Indeed, I think it means it's almost certain that this legislation will be back before the Supreme Court of Canada. Fortunately, it takes years to get back there, rather than the shorter time it takes to come before you as parliamentarians.

I have other things to say, and I expect to have an opportunity as we get into questions.

Thank you very much.

● (1605)

The Chair: Thank you to our witnesses.

The usual practice at this committee is to now begin with questions from the official opposition, then go to the government side.

Mr. Dosanjh, please.

Hon. Ujjal Dosanjh: Thank you very much.

I want to thank each one of you for coming and speaking to us. As you heard, we will be speaking to some more witnesses, but it appears to me that the witnesses we have heard so far are essentially making the same or similar points on most of the issues, whether it relates to access, torture evidence, or other issues. So in a sense, I think there is a consensus of what legitimate criticism exists with respect to the bill, but we will be wanting to hear from more witnesses.

I want to ask a question of Ms. Aiken or Ms. Dench, and others can pitch in. I didn't understand the point about the protection issues that you were making. I'm a former lawyer and a former attorney general and all that. It just kind of went past me. Can you simplify it for me in layperson's language and tell me what you were talking about? I understand that you were talking about the board and the evidence before the board in other proceedings. We're concerned with the security certificates. If you just limit yourself to the security certificates issue as to how the protection issue arises in that, tell me.

Ms. Janet Dench: Sure.

The protection issue arises in a different way in the security certificate, so I sympathize with your lack of understanding of it, and you're not alone in that. I've talked to lawyers who deal with these things, and they are also confused. I think that speaks to the way in which the law is written and also to the fact that there has been no accompanying explanation by the government to the changes they have brought in this regard in Bill C-3. So we also have questions about what is intended by this.

We have two situations with security certificates in relation to protection. In one case, you have somebody who does not have refugee protected-person status. They have not yet been found to be a refugee. That person, under the security certificate process, is able to make an application under section 112 of IRPA, which is the pre-removal risk assessment process.

If you are subject to a security certificate, you are not eligible for a full PRA, but only for a specific type of PRA, which is spelled out in section 113, which is based on a balancing, on the one hand, of the risk to the person if they were removed from Canada, versus the risk to Canada because of the danger they constitute. This evaluation is done by a civil servant, not by the Immigration and Refugee Board, not by the Federal Court judge.

The question we have—and we have a number of questions, but what I was particularly focusing on—is the fact that this civil servant is making an evaluation saying “Okay, they're going to face a certain amount of risk if they're sent back, but we consider them to be this amount dangerous.” Let's say we give it a scale of one to ten and the civil servant says “Okay, this is a number seven risk person to Canada or danger to Canada.”

At the same time the Federal Court judge is looking at this very issue, potentially—that's normally what you would think the security certificate is about—they're hearing the secret evidence, they're testing that, and they may be saying, “Okay, with this person, there are some concerns about maybe the people they've been associating with,” but the Federal Court judge may think, “Well, they're only a level three danger to Canada.” Yet this protection decision has been made over here by the civil servant without it having any connection to the Federal Court process.

The second issue we're raising is around section—

● (1610)

Hon. Ujjal Dosanjh: In that case, would the decision of the judge not, in a sense, implicitly override? I know the minister moves based on the PRA process, but do you think the minister would not be bound by the decision of the Federal Court?

Ms. Janet Dench: It's not clear in the legislation as it stands. It's far from clear, and one of the things that the government has done in Bill C-3 is to take out the automatic judicial review that occurs currently in the legislation.

A PRA decision in the security certificate process is automatically subject to review by the Federal Court judge. They've removed that, so they've actually taken out some sort of connection between those two processes.

Hon. Ujjal Dosanjh: They're now parallel.

Ms. Janet Dench: They're now parallel, and there's no automatic opportunity for the judge to review.

Hon. Ujjal Dosanjh: What was the second point you were making?

Ms. Janet Dench: The second point is to do with the introduction of section 115 of the Immigration and Refugee Protection Act as a process that can happen in parallel to the security certificate process. Section 115 is not a process at all; it is the statement of the non-refoulement principle. It's an important statement, which incorporates into Canadian law our obligation not to send refugees back to face persecution.

Why have they included section 115 as a process that can happen in parallel to the security certificate process? It appears it's because they are using section 115 quite wrongly and perversely, from our perspective, as a way of essentially stripping someone of the refugee status they already have. We find that extremely problematic.

Hon. Ujjal Dosanjh: Thank you.

The Chair: Thank you very much, Mr. Dosanjh.

We'll now go to Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you.

If we were to adopt the bill in its present form, do you think that it will end up back in the Supreme Court and that the Supreme Court will quash it again? If so, what do you think would be the main reason for that?

[*English*]

Ms. Sharryn Aiken: Thank you for your question.

As I began to articulate in my brief remarks, and as our colleague from the B.C. Civil Liberties Association correctly noted, in our view the provisions of Bill C-3 will absolutely find their way back to the Supreme Court. They will not meet the requirements of section 7 of the charter. In CCR's views, Bill C-3 is deeply flawed, and it is not compliant with the requirements of the charter.

To focus specifically on the proposed special advocate model, both in a security certificate context and a section 86 context, I think it's very important to note that the Supreme Court, in Charkaoui, did not explicitly endorse the special advocate model. It cited the model, along with a range of other protections, as examples of procedures that are less rights-infringing than a security certificate procedure that was currently in place and under examination by the court.

The court did not say that the special advocate model, and certainly the model proposed in Bill C-3, would meet the requirements of section 7.

● (1615)

Mr. Murray Mollard: May I add to that, Monsieur Ménard?

I think it's really important to emphasize that the court was clear that the liberty infringement isn't minor; it's actually very, very significant. I think the court is sensitive now, and it has been quite sensitive over the years, to Parliament pronouncing...especially after a decision is written.

Although, quite frankly, I think Madam Chief Justice McLachlin's decision is fairly wide open. I think it simply says there are some other alternatives that are less infringing; it doesn't go into a really detailed discussion of those.

The court is going to give you some latitude, but I would suggest that given the seriousness of the infringement, it is going to be very searching when it comes to looking at any proposal you put forward, as parliamentarians, about special advocates. I think you've heard testimony from Mr. Waldman and Mr. Forcese that goes through a variety of points, and we can go through those in more detail if you want.

Even if you're going to take the special advocate model—Ms. Aiken has indicated they don't endorse that per se—you're going to have to make it the best possible special advocate system in the world if it's going to really pass muster. And I don't think it is.

[*Translation*]

Mr. Serge Ménard: When I read the Supreme Court decision, I don't get the impression that the court is saying that it is impossible to have a rights regime that would enable us to deem inadmissible any person considered dangerous because he is a potential terrorist, given the type of terrorism we are currently facing, which is a far cry from the FLQ, and much more advanced than the threats at that time. However, the nature of this system is such that it will be based on secret information provided by allies, on the condition that it remains secret, and that will come from infiltrated agents whose lives would be in danger if we were to reveal their names or knowledge. The war on terrorism, contrary to the fight against organized crime, requires that its investigation methods be kept secret so that they can be effective against terrorists.

So for the Supreme Court, there must be a way of putting that in legislation. I think you have given us some potential solutions. What suggestions would you like to make to ensure that if this security certificate legislation ends up back at the Supreme Court, the Supreme Court will uphold its provisions.

Mr. Philippe De Massy: I would like it to be clearly understood that I am making this remark based on the fact that the league is against secret evidence. As soon as a government decides to deprive an individual of his or her liberty, it must tell this individual why and what it is accusing him or her of, what kind of evidence it has. In terms of justice, we do not see how it would be possible to get away from this position. Secret evidence in itself is problematic and is not compatible with the exercise of justice.

That said, it must be noted that the current amendments do not give the special advocate any right to communicate with the person named, to discuss matters with him or her or to provide information. I think that Murray described the situation to you very well. As lawyers, you and I know full well that this contact with the individual whose freedom has been jeopardized is absolutely fundamental, essential so that we're able to test the evidence presented against him or her.

● (1620)

[*English*]

The Chair: Does anybody else have a brief comment? We have twenty seconds left.

Ms. Sharryn Aiken: If I may just point something out, the government has suggested that it's sufficient in Bill C-3 that the judge has broad discretion to make numerous orders. It's the CCR's view, and I think the view of my colleagues, that it's not sufficient to respond to these concerns by pointing to the discretion vested in a judge. The law needs to address very specifically the protections and safeguards required by due process.

The Chair: Thank you.

Ms. Priddy, please

Ms. Penny Priddy: Thank you, Mr. Chair, and my thanks to the witnesses for appearing today.

At the beginning with witnesses, I just try to put a bit of context around where my questions will come from, because the NDP is opposed to this piece of legislation. For a variety of reasons, we think security certificates violate some very fundamental rights that people have. We would prefer to see these things dealt with under the Criminal Code, which some of you have talked about and some of you have not. Even with a special advocate, we don't think there's any way to guarantee the rights that people have.

I think I heard two groups speak to having this under the Criminal Code or looking at this as a criminal offence, as opposed to an immigration transgression or immigration offence. Mr. Mollard, I'm not sure if I heard you speak to it or not, so I'd like to ask if you have an opinion on this.

Mr. Murray Mollard: Thank you.

It is indeed a question that has been debated carefully by our organization. As with any organization that defends freedom of expression, I would say there are a variety of points of view. I would think that in an ideal world, our members and our association would like to see a situation in which....

Again, I pointed out the testimony of Mr. Macdonald. If you really want to have a strong anti-terrorism policy, you really want to be able to not just bring information that suggests there's a person who has a particular association, that he was here at this particular time, etc. Given a standard of proof that is considerably lower here, it is really going to allow our security apparatus to take an investigation not very far, in a sense, or not as far as we really want it to go. We would want, in fact, our security apparatus to go as far as possible to actually prevent terrorism. And I think Canada has obligations not just at home, but abroad, internationally, to make sure we prosecute to the full extent possible those people who are actually engaged in terrorism.

Certainly one answer is to prosecute them as criminals, to go the full length. Don't shortcut. Don't short-circuit our security apparatus from actually taking the time to investigate people they are concerned about so that they can provide evidence. And this goes to Monsieur Ménard's point that, in the alternative—and certainly this bill is all about the alternative, the special advocate process—if you're going to do it, you're going to want to do it in a way that's absolutely the model for the world to look at. At this point, it's not the model the world would want to replicate.

I think we've touched on some points and I have other points to touch on, but I'll leave it there for a moment unless you want me to elaborate.

Ms. Penny Priddy: Do other witnesses want to speak to their held views about having it under the Criminal Code, as opposed to immigration? I realize the standard of evidence, of course, is different.

● (1625)

Mr. Dominique Peschard: Pursuing it in the same direction, from a practical standpoint, there are presently five people who are under security certificates. I find it hard to believe that, from the point that the police or security services believed these people represented a threat, we did not have the means in Canada to monitor these people, find out what their activities were, and end up having a solid proof of their guilt, of participating in activities, and, in a way of proceeding that way, finding out the networks they belong to and thus achieving better success in the fight against terrorism.

When the police investigate organized crime, they don't seize the first person they suspect. They follow a trail and establish links in order to net in the maximum of the organization. It seems to me that the same philosophy should preside over the fight against terrorism.

Ms. Janet Dench: We mention this in our brief, and I just want to highlight the concern we have about the differential treatment of citizens and non-citizens. Bearing in mind that immigrants and refugees are often subject to scapegoating, prejudices, and stereotyping, it is important that we try to avoid that as much as possible.

The use of immigration measures, in fact, only has the effect of reinforcing these sorts of negative stereotypes. Why? There can be citizens who may raise the same concerns as those people who are currently under security certificates, but because they're citizens they cannot be made subject to a security certificate. So what is presented to the Canadian public all the time is non-citizens, immigrants, and refugees who are presented in the media as being the potential threats to Canadian security. That works entirely against the objective of welcoming newcomers and integrating new Canadians.

The Chair: You have just a little more than a minute.

Ms. Penny Priddy: Good. A minute.

I can't remember which individual from the refugee organization made a comment that the public is skeptical about the information received from the RCMP or CSIS, but you gave a variety of examples. I know there's not much time left, but would you want to recommend a model of oversight?

Ms. Sharryn Aiken: Absolutely. The CCR has urged the government to adopt much more expansive oversight mechanisms and measures to ensure accountability, and that's consistently included in all our briefs.

Ms. Janet Dench: And to underline in particular in relation to the Canada Border Services Agency, which is not subject to any kind of external review, although it has the power of arrest and detention.

Mr. Dominique Peschard: Just one word. Justice O'Connor put forward an extensive review mechanism, which we're still waiting for the government to implement, and it reviews all the agencies, those who are involved in intelligence and those who are involved in police work.

Mr. Murray Mollard: That was exactly my point. It's been over a year now. When are we going to see those reforms? When are the RCMP and the minister going to come and tell you exactly how he's managed to implement the recommendations in the Arar report?

The Chair: Thank you very much.

We'll now go to the government side. Mr. MacKenzie, please.

Mr. Dave MacKenzie: Thank you, Chair, and thank you to the panel.

You might think from my questioning that I don't appreciate your being here, but I very much do. I say that because I'm on the government side and this current amendment is ours.

Mr. Peschard in particular, I found some of your comments to be a little off. Number one is there are six, not five people currently under certificates. You indicated about groups targeted, and I took it—and correct me if I'm wrong—that it was groups targeted basically since 9/11. I took it that would be refugees of a particular kind, dealing with terrorism.

Would I be wrong in that assumption? If I am, say so.

Mr. Dominique Peschard: I'm talking about the six persons who are considered security risks, from what we understand, because of their links with terrorism in one way or another, although of course we don't know what the evidence is, for obvious reasons.

● (1630)

Mr. Dave MacKenzie: But you link them all to 9/11.

Mr. Dominique Peschard: No, no, not to 9/11.

Mr. Dave MacKenzie: I think you said since 9/11 that's been the focus.

Mr. Dominique Peschard: Maybe it was....

Mr. Dave MacKenzie: I might have misunderstood you.

Mr. Philippe De Massy: Yes, sure.

Mr. Dominique Peschard: Yes, I'm talking about the...yes.

Mr. Dave MacKenzie: Okay.

If I told you three of these people were way before 9/11 and one was three weeks after 9/11, so only two since 9/11 are currently subject to security certificates, that becomes a little bit different in perspective. And the very last person is one this government used a security certificate on, and that was industrial espionage.

I would suggest to you that security certificates became what they are not because of terrorism but to keep people from coming into this country who were deemed to be people who represent some threat. It might have been organized crime, it might have been industrial espionage, it might be terrorism.

So if we look at it, I think we've had 28 security certificates since 1991, representing 27 people. It's not a tool that's used to keep a lot of people out of this country. It's a pretty small number; I think you would agree with me on that—since 1991, 27 people. The last individual left the country because he was satisfied to go home. So we're not talking about 9/11; this is a longer period of time.

Would you agree with me that the country has a sovereign right to keep people from coming into the country who represent a threat to Canadians?

Mr. Dominique Peschard: The level of justice that has to be applied has to be measured in relation to the consequences. The fact is, despite what the intention of the law may be, as you stated, the result is there are people who are kept in indefinite detention for years. When they are released, it's into a form of house arrest. They face the prospect of eventually being deported to a country where they may be tortured. This is a very serious situation. It's equivalent to a severe criminal sentence, and it's not acceptable that people be subjected to this sort of treatment without having a fair trial and being able to defend themselves.

Mr. Dave MacKenzie: Of the 21 people who have left this country on security certificates, do you have any evidence those people went back and were tortured or any harm befell them?

Mr. Philippe De Massy: We don't have any information on that.

Mr. Dominique Peschard: But the people the government is presently trying to expel, such as Charkaoui, for example, face a risk of torture if they're sent back to Morocco.

Mr. Dave MacKenzie: Would you agree with me that the vast majority of the individuals with security certificates we have dealt with have had those same arguments, some of whom have gone back?

And that would be my question: for those who have been in this country and alleged that they faced torture when they went home, do you have any evidence that that has in fact occurred?

Mr. Philippe De Massy: To answer your question, we have no evidence—

Mr. Dave MacKenzie: Sure, that's fair enough.

Mr. Philippe De Massy: —but I do appreciate the fact that you come out with information. I had not looked closely at the six cases that are presently subjected to certificates, and it is quite true that some of them were before 9/11. There can be a short-circuit sometimes when we deal, because one of our very grave concerns since 9/11 is the risk of stereotyping people within a certain group.

Mr. Dave MacKenzie: Would you agree with me that hasn't occurred, though? It simply hasn't occurred.

Mr. Philippe De Massy: This we don't know. We don't know about the day-to-day practices.

Mr. Dave MacKenzie: But the security certificates have not been used by the former government nor this government in a willy-nilly fashion since 9/11, and in fact the legislation was originally put in place long before the issue of terrorism as we know it today.

It is my understanding that it was to deal with a variety of things, of people who would not be eligible to be in this country but for whatever reason didn't want to go back. If we had organized crime figures.... And I appreciate the concern about using the Criminal Code. You people are loyal. You recognize, I'm sure, that a criminal organization in eastern Europe may wish to have its people come here to set up a cell. Can you tell me how we prosecute that in Canada? How would you use the Criminal Code?

● (1635)

Mr. Philippe De Massy: May I just go back to the intention that we had in coming before this committee?

The question was, is Bill C-3 an answer to the objections that the Supreme Court saw to the process? We say no. This is why we are here.

Mr. Dave MacKenzie: Sure. I don't debate that, and I understand that's the role of a lawyer, to advocate on behalf of clients, and that's only appropriate. I'm not debating that.

All I'm saying is that it would appear to me that your concerns may very well be legitimate from your perspective. It seems that the concerns are larger than the....

What I hear is that England has a bad system and Canada has the best. Would you tell us if you have looked at the systems of France and Germany?

Ms. Sharryn Aiken: If I may, it is helpful to note that many countries in Europe and elsewhere have resorted to the criminal law process in their domestic jurisdictions with far greater frequency than Canada has. That doesn't mean that those countries don't adopt immigration procedures from time to time as well, but that there is far greater evidence, for example, in France, of successful prosecution in an anti-terrorism context than there has been here. Even in the United States the so-called millennium bomber received an ordinary criminal trial with evidence that was held up to ordinary due process.

Mr. Dave MacKenzie: If I could just interrupt you for a second, that occurred in the United States. We're talking about people who want to come to this country who we view as a threat when they get here.

Ms. Sharryn Aiken: There was one other point I wanted to make, if I may, which was to respond to your suggestion that security certificate procedures aren't used all that frequently in the broad scheme of things, so why are we all up in arms about it—after all, it doesn't affect that many people.

There would be two points that I would make, the first one being that the fact that a smaller number of people are affected directly by security certificates is no answer to the procedural flaws. If only one person in this country was affected by a deeply unjust system, we would all have grave concerns about it.

Secondly, I think it is important to understand that although the security certificate procedures themselves apply to individuals, the fact that they exist in Canadian law affects broad communities within which these individuals reside. The refugee and immigrant community in particular has been deeply affected by the existence of these procedures and deeply tarnished by the broad brush that the procedures have painted. The whole problem of racism, racial profiling, which existed well before 9/11 but has been exacerbated in its aftermath, is all part and parcel of the security certificate procedure. I think it is important to keep that context in mind, and hopefully some of the other witnesses who have appeared before you and potentially will appear before you tomorrow will elaborate further on that.

The Chair: Okay, we'll go to the five-minute rounds now.

Mr. Cullen, please.

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chairman.

Thank you to the witnesses. I think I've probably seen all of you on the same topic, maybe going back two Parliaments on the same legislation, but thank you for coming.

I want to pick up on where Mr. MacKenzie left off.

The 19 people have been removed as a result of the security certificate, and you're not aware of them having faced torture or death. In fact, in terms of those 19, it could have been that they didn't make that argument, the PRA assessment, so they might have willingly gone back to their countries. But you haven't actually researched that.

When I look at this list of those people currently detained.... I actually have a list of six. I thought you said five.

● (1640)

Mr. Dave MacKenzie: No, Mr. Peschard said five.

Hon. Roy Cullen: Oh, it is six. Yes, that's what the list here says.

One fears torture and death in Algeria; another fears torture and death in Syria; another, torture and death in Morocco; two others, torture and death in Egypt; and another, torture and death in Sri Lanka. Have you ever looked into the credibility of those assessments?

The reason I ask is because I get a lot of people who come to Canada, they claim refugee status, they're denied, they appeal, and they go to the Federal Court. They lose there, and then they're subject to removal. Then they put in this risk assessment. They say they're going to be tortured or killed if they go back to their country. In some cases those arguments are heard and agreed to, but in many cases they don't succeed with those arguments.

Have you looked at the six here as to the credibility? It's about credibility, isn't it, the credibility of these statements that they're going to be killed or face torture in these countries?

Ms. Sharryn Aiken: I think, actually, not only I, but the Supreme Court of Canada has looked at the credibility of those assertions in the case of Mr. Suresh, one of the security certificate individuals named in that group of six, and the Supreme Court of Canada found that there was indeed a prima facie risk that Mr. Suresh would be tortured if he returned to Sri Lanka. You actually have the Supreme Court of Canada indicating that the allegations the individual was making were sufficiently well founded to require Mr. Suresh a new hearing, in effect, a new procedure.

As to the facts of the other individual cases, as a law professor, I've looked into the facts quite extensively, because I teach these cases to my students. Of course it's very difficult for anyone not having access to the full evidence to be sitting before you and saying with any degree of confidence that we know this or that about the case, because in fact what we know about the case represents a small fraction of what is probably before the court.

However, I would ask you, why are you asking that question? Why does it matter whether we have personal views about the individual's credibility or not? The whole point is that the procedure itself is flawed and will not be best suited to actually assessing credibility.

Hon. Roy Cullen: Excuse me; if you don't mind, I'll ask the questions.

Ms. Sharryn Aiken: But I would like to know why—

Hon. Roy Cullen: It is an interest to me, because in many of these cases—not necessarily with respect to these six detainees—the claims made by people who are here on refugee status, denied, appealed, and so on, I've seen maybe a very low percentage of them that hold up in terms of their credibility.

You cited Mr. Suresh, but there are five others, and there have been 19, some of whom, I would admit, may have gone back voluntarily.

But let me come back to this: Are there any ways in which this bill can succeed? What are you actually saying? Do you support the need at all for security certificates?

No? So you don't support them all. In other words, if these hearings carry on until the end of February and these people are released because these matters haven't been dealt by the Parliament of Canada, you wouldn't be upset with that. Is that right?

Ms. Janet Dench: Let us remember that these provisions only apply to non-citizens. We have no reason for thinking that only non-citizens represent a risk to Canada. So if you collectively think we in Canada are safe with not having similar provisions for citizens, why are we not safe if we don't have these provisions for non-citizens?

Hon. Roy Cullen: I think you didn't answer my question. If these people are all released into Canada because the deadline for dealing with this legislation is not met, would that be of concern to you or not? It's a simple question.

Ms. Janet Dench: No.

Mr. Philippe De Massy: If there are very serious matters that we can reproach these people with, I would be confident that the police and information services are going to do what is required to charge them if they have to be charged, or whatever.

With regard to the credibility, may I just point to the fact—

Hon. Roy Cullen: On that point, if I might interject, if criminal charges could be laid, they would have been laid, believe me.

Carry on.

● (1645)

Mr. Murray Mollard: I'm not sure about that. I actually do think, going back to my earlier submission, that the security certificate process does allow the security apparatus to cut short investigations and provide information that really short-circuits that process.

If the legislation were to essentially expire in February, just to pick up on what my colleague suggests, I would be certain that our security apparatus, via CSIS and the RCMP, would not simply let these people operate with impunity if indeed they pose the threat that it's suggested they do. They would be very carefully monitored; they would be indeed more monitored than I think any person possibly could be. Indeed, if they were, evidence and intelligence would be gathered that could actually prevent any terrorist activities that they were involved in. It could actually prevent a terrorist act itself.

Hon. Roy Cullen: Mr. Mollard, you may not remember, and it may not have been you, but the B.C. Civil Liberties Association were on a panel a couple of Parliaments ago. I appreciated your candour then—I think it was you, but perhaps it was one of your colleagues—when I asked a question based on a dossier of an alleged assassin. I'll say “alleged”, but I think actually he's admitted that he was an Iranian assassin. I asked your colleague, if it wasn't you, whether, after going through that dossier, you'd like that person living next door to you, and I guess it was your colleague who said no, he wouldn't. I said, “Then your problem is...?”, and he said it was the process.

What we have here is a revamped process with a special advocate, but you're saying that in your judgment this process is still flawed. Is that right?

Mr. Murray Mollard: It wasn't me, Mr. Cullen. I'm not sure who you're referring to, but no doubt there are bad people in this world. I don't think anybody is suggesting that there aren't possible threats to the security of Canada posed by individuals involved in terrorist activities, and I'm indeed thankful that we have a security apparatus that can undertake this work.

We have to be skeptical of some of the work they do and we have to be very careful about the accountability mechanisms that we have in place, because we know they make mistakes. We know they cut corners and we have a large tome of evidence that suggests they did in Mr. Arar's case.

I have said that in the alternative, if you're not going to let this system just expire and you're going to continue with the security certificate program and you want to use special advocates, I don't think the bill before you is going to meet the constitutional standard of principles of fundamental justice required at the Supreme Court of Canada. That's really the question before you, I think, in your deliberations.

Hon. Roy Cullen: What's your suggestion, then?

Mr. Murray Mollard: I think there are a variety of things. You've heard evidence, I presume, from other witnesses on this. I know that Mr. Waldman and Mr. Forcese have come before you, but there are a variety of things. There is full disclosure, not just the disclosure that goes to the court; indeed, all the information the government has about this particular individual, which could include exculpatory information and evidence that would exonerate this person, should be going to the special advocate.

We've made the point several times now, I think, that the special advocate would have to have continued access to the person subject to the certificate after the fact. Stop me if you need to; I presume you've heard all of this already.

The Chair: Yes.

Go ahead, Monsieur Ménard, please.

[*Translation*]

Mr. Serge Ménard: I understand perfectly well that the reason we are worried about the plight of the 21 deported individuals is probably because they have been deported, precisely because they were not likey to be tortured.

At present, our main concern pertains to people who may be tortured or killed and who are to be deported. When I read the Supreme Court decision, it is precisely because of the very significant consequences, such as imprisonment for an indefinite period of time, that it is asking for requirements that closely resemble criminal law requirements. I would imagine that if these individuals prefer the comfort of our prisons rather than returning to their country of origin, it is not because they would be so poorly off there, it is because they could be imprisoned there. That is what I am chiefly concerned about.

To repeat an expression I hear often, it is true that the deportation order is a three-walled prison. If I continue on with this comparison, there are circumstances where the prison has three walls and a cliff on the fourth side. It's for these cases that we must, before we deport people, ensure that we have something more than a mere deportation order.

I do not want to get into whether or not we should, in cases where we're dealing with people who really may be killed if they are deported, call for a much more demanding procedure or more solid evidence than in cases where there is merely a deportation order, because other issues concern me. However, I do think that this is a topic that we could explore. Moreover, it seems to me that the criteria should be increasingly stringent if the detention continues for several years.

On another issue, no one has talked about appeals. Are you satisfied with the fact that this appeal, which is purely administrative, is perhaps accessible and acceptable in cases where we are dealing with purely administrative decisions that do not involve the loss of liberty? Are you satisfied with this type of appeal?

Personally, I am not aware of any appeal requirements that are so stringent. If I were the person targeted, I would say that this type of appeal may be good for furthering justice, but it wouldn't reassure me a great deal to know that the person who decides whether or not I'm to remain in prison indefinitely is also the same individual who will be drafting my notice of appeal for submission to the appeal court judge.

Do you have any comments to make with respect to the appeal process?

● (1650)

Ms. Janet Dench: You are referring to a problem that exists in immigration law that affects not only those named in security certificates, but all of those who are covered by immigration decisions. The appeal is limited to a judicial review, and an appeal of the decision of the trial division of the Federal Court can only be done with leave, and it is up to the trial judge to certify the questions. From our perspective, that represents a significant limitation of the rights of new citizens.

Mr. Serge Ménard: Would you agree with me that they should be given at least the same rights as an accused facing imprisonment of a specified duration?

Ms. Janet Dench: Yes, absolutely.

Mr. Serge Ménard: Given that the issue here is not deportation, because these people cannot be deported without facing possible death, before we push them off the cliff, could they not be given a right of appeal equal to those who are simply facing a set time in prison, that is to say an appeal on issues of law, on issues of fact, or on joint issues of law and fact, so that there would not be a single person with the responsibility of keeping them in detention indefinitely?

Ms. Janet Dench: It is obviously astonishing that we give so few rights to a person who is facing a long detention and possible deportation towards persecution, torture and even death.

Mr. Serge Ménard: I have another question.

Mr. Mollard, I am very well aware of the suggestions you have made and of those to which you refer. We will certainly be thinking of improving the process.

You have alluded to something very important. If I understand you correctly, the special advocate should be able to know even more than the judge and should be able to review the files of the security agencies in order to see the evidence that would tend to show that the person is not connected to... For example, Mr. Charkaoui comes to mind, as he seems to have some idea of why he was arrested and is trying to answer the charges.

How do you see this working in practice? Should these special advocates have unlimited access? I am trying to see how this might work.

[*English*]

The Chair: Could you give a brief response?

Mr. Murray Mollard: Briefly, there are a couple of things. Number one is certainly access to all the file that the government has, not just the information that the court is given. Number two, the ability to have that interplay with the person who's subject to the certificate is going to be critical in a way—and their advocate, their own lawyer—that can help to provide information, to provide evidence, so that indeed a special advocate could be able to call, perhaps, witnesses, and provide other documentary evidence that could really challenge and contradict the government's position.

I want to quickly make this point, though, and this goes to pages 301 and 302 of the Arar inquiry report. I just want to quote this, because it goes to the tendency of government—and it was certainly clear under the Arar inquiry—to over-claim national security confidentiality. I'll say this. This is Justice O'Connor:

> However, the public hearing part of the Inquiry could have been more comprehensive than it turned out to be, if the Government had not, for over a year, asserted NSC claims over a good deal of information that eventually was made public, either as a result of the Government's decision to reredact certain documents beginning in June 2005, or through this report. Throughout the in camera hearings that ended in April 2005 and during the first month of the public hearings in May 2005, the Government continued to claim NSC over information that it has since recognized may be disclosed publicly. This "overclaiming" occurred despite the Government's assurance at the outset of the Inquiry that its initial NSC claims would reflect its "considered" position and would be directed at maximizing public disclosure. The Government's initial NSC claims were not supposed to be an opening bargaining position.

As a matter of fact it's always going to be the case that the government, in its claims for NSC confidentiality, is probably going to overstate the case. It's going to be conservative. I don't necessarily say there's anything nefarious about that.

● (1655)

The Chair: All right, I'll ask you to wind it up. I think you've made your point.

Mr. Murray Mollard: But I just wanted to get that on the record, because I think it's a very important point.

The Chair: Thank you.

Mr. Mayes, please.

Mr. Colin Mayes (Okanagan—Shuswap, CPC): Thank you, Mr. Chair.

I'm reading from the Canadian Council for Refugees' submission. In one of the first bullets on the first page, it says, "Canada's response to potential security threats should be founded on full commitment to human rights and should not rely on distinctions between citizens and non-citizens."

I would say that distinctions are part of the immigration proceeding. There are distinctions based on skill. There are distinctions based on financial assets, on sponsorship, on the country of origin quotas, age. There are a lot of distinctions made when immigrants come to this country. So why not distinctions to do with criminal or terrorist association?

There's an assumption here that these certificates are issued because there's actually a case against a person with regard to breaking the law or having committed a terrorist act. But really that's not the case. The decision here, to me, is whether the person is, by association, going to be a threat to Canadian society and should be accepted into the country. Is that not correct?

Ms. Sharryn Aiken: I'd be glad to respond to your concern.

It's certainly true that, by its very nature, the Immigration and Refugee Protection Act discriminates in all kinds of ways. It's inherently about discrimination in terms of managing Canada's immigration program according to certain objectives, etc. We distinguish between certain categories and kinds of prospective immigrants, but that is very different from actually sanctioning discriminating against people once they're inside Canada with respect to conduct that anybody might commit, citizen or non-citizen. I would urge you to consider that as the fundamental distinction.

What security certificate procedures do about somebody who may or may not raise a concern about security is in effect say that the mere fact that they are a non-citizen means they're subject to a wholly separate procedure. The CCR is certainly not suggesting that the government doesn't have the right to make the ultimate decision about whether someone stays or goes, subject, of course, to the human rights commitments that we have not to deport someone to torture. The government retains that authority, but how we deal with the individual when they're inside Canada should be subject to due process protections that everyone in this country has the right to expect, citizen and non-citizen alike. The Charter of Rights itself sanctions differential treatment between citizens and non-citizens with respect to mobility, with respect to the franchise, but not with respect to right to due process, and not with respect to rights that trench on fundamental liberty and security protections.

● (1700)

Ms. Janet Dench: If I can just give an example, when we deal with murder, we don't distinguish between citizens and non-citizens. If a murder is committed, then whether the person is a citizen or non-citizen, they will be brought to justice. We're saying that terrorism issues should be dealt with in that sort of way, which doesn't stop the fact that if someone is convicted of murder and they're a non-citizen, then they'll potentially be subject to deportation, which the citizen will not be. But the first response, the way you deal with the problem of murder, is one through the criminal justice system, where you do not distinguish between citizens and non-citizens.

Mr. Colin Mayes: It seems to me that there are two proceedings here. One is the judicial procedure and the other is the immigration procedure, and to me they seem not to be separated here. I personally think they should be. As far as policy on immigration is concerned, the determination should be in the hands of people to determine whether or not, by association....

At the previous meeting I gave an example of a person who may be under surveillance from their country of origin, and there was therefore a certainty that they were associated with organized crime in the country of origin but there was no proof. That person could come here, but there really isn't anything substantial to prove it. However, the information from the police or Interpol or whatever says that this person is likely associated with....

Do you want that type of person to be allowed to come to Canada?

Ms. Janet Dench: Can I ask, though, whether we are talking about this sort of situation? When you say “organized crime”, as I understand it, the Supreme Court said that use of secret evidence is a violation of section 7, but that it might be justified under section 1 where there are issues of national security. I'm not sure that organized crime would constitute the kind of emergency that would justify a limitation of rights under section 1.

Mr. Colin Mayes: That's why the bill was brought in. The Canada Evidence Act provides for secret evidence in criminal trials. That's criminal trials. To me, there's a difference. I'm talking more about an immigration procedure.

The other thing is to define “secret”. That's another challenge. I'm having a real problem here, discerning between the need for certificates with respect to immigration and the need for certificates with respect to those who are a proven threat through criminal activity or through terrorism or espionage.

Ms. Janet Dench: You mentioned the Canada Evidence Act. From our perspective, we feel that it may give some useful clues, because the Canada Evidence Act recognizes that there may be sensitive information in certain circumstances, but it has a much more flexible mechanism for dealing with how you balance the need to keep that information secure versus the interests of the person affected. In looking at Bill C-3, one of the questions we have is why there seems to be this all-or-nothing provision. Either the government has concerns about the disclosure of the information —in which case it's absolutely non-disclosed—or it's out there fully in the courts, had you considered looking at a more nuanced and flexible approach that allowed for a better balance between the rights of the person and the specific needs of disclosure or non-disclosure in an individual case.

Mr. Colin Mayes: I guess the argument to me is on the rights of a person. It could also be that they don't have financial assets, but they still shouldn't be prevented from coming to Canada because of that. Rights are violated through the whole process, because there are distinctions between people who immigrate to Canada, through their proceeding.

The Chair: We'll have to wind it up.

Ms. Barnes, please.

Hon. Sue Barnes (London West, Lib.): Thank you very much.

Thank you to each of you for coming and sharing your knowledge with us.

We've had quite a few really good suggestions from different witnesses over the last couple of days on how to do amendments, but this is a bill that has come to us after second reading, and some of these amendments, in our procedural ways, would be outside the scope of the bill and probably would not be receivable for us to do and follow along those paths. So I'm going to focus on a couple of things that I'm hoping would be inside the bill, that we could do an amendment on.

I want to ask your opinion, first of all, on the confidentiality, the special advocate right now, what level of confidentiality we could insert into this legislation that would improve it from where it is today.

The other thing I'd like to talk about is whether a named person should have choice of counsel. Again, I think that's something that would be inside the scope of the bill, that maybe we would be able to usefully work on.

Thirdly, one of my real concerns on this is, as we've seen in other jurisdictions, the resources to special advocates. What types of things should the government be looking at in the work of a special advocate, if that's the movement that goes forward? What, in your opinion, would be necessary?

I don't care who starts with this, but I'd like to hear all of your opinions.

Thank you. I have only five minutes.

● (1705)

Mr. Murray Mollard: Maybe I'll quickly start.

Assuming you're sticking with the bill and you want to find ways to improve it, I have said that if you're going to use special advocates, you want to make it the best possible in the world.

You've picked up other points that certainly have been made about how to improve this bill.

I understand the bill, as it stands, makes it clear that there's no solicitor-client relationship between the special advocate and the named person. However, one of the improvements that's been suggested is to allow the special advocate to actually discuss the case after having access to secret information, and also that the special advocate, although it's not a typical solicitor-client relationship, still has a burden to maintain confidentiality as between the named individual and the special advocate, absolutely.

As far as choice of counsel goes, I think it's important. It's a fundamental principle of due process, certainly, that individuals do have choice of counsel. We'd like to see a scheme in which there would be greater choice.

It's not really clear how it's supposed to work, because I think a lot of it is left to the regulations. Independence is very important there as well, independence from government. I understand the judge is supposed to appoint, but the judge is obviously going to get a roster from government, so there's a real question mark about how to maintain independence there.

On resources to special advocates, these cases, of course, have volumes and volumes of material. If you're going to use a special advocate, you have to be able to make sure that person has adequate resources and assistance, really, to go through the volumes and volumes of evidence, because it will be a large burden.

The Chair: Are there other witnesses who would like to comment? Does anybody else have a comment?

Ms. Janet Dench: We have in our brief outlined a number of specific areas in which the special advocate model is, as we call it, a minimalist model, like the worst possible. We believe you're off on the wrong track from the beginning, because we do not think this is the way to minimally impair the rights of persons affected, and we do not see the fundamental necessity for the security certificate process.

The Chair: Is there anybody else?

Do you have any other comments, Ms. Barnes? It doesn't seem that anybody else has a response.

Mr. Dominique Peschard: I think we've already stated our case, that we don't agree with the security certificate procedure as a procedure, even if it is improved a little bit one way or another. The fundamental problems raised by that procedure we've mentioned in our presentation, and we don't think they can be resolved with an improved, or not, special advocate model. We think Canada's security can be guaranteed without having recourse to security certificates. That's our position.

Hon. Sue Barnes: Okay.

Mr. Mollard, you've mentioned a number of things you would want to see as improvements. With those improvements, would you still see that this bill would be challenged?

Mr. Murray Mollard: Yes, I think it will be.

As long as the individual subject to the certificate is not able to have access to the full panoply of information such that the individual can truly know the case against him or her and truly meet that case, there is going to be a violation of a principle of fundamental justice. So I think you will see challenges.

● (1710)

Hon. Sue Barnes: Perhaps I should have said “challenge with success”.

Mr. Murray Mollard: Well, it's going to come down to....

I want to be on record that there is a better way to go as far as criminal prosecutions go, and indeed monitoring of individuals. Even if this bill dies, there is still a solution. But if you're going to have this special advocate process, there is going to be a lot you would need to do.

There are other models. And the Air India case has been an example, in which the Air India counsel had access, as I understand it—and people can correct me if I'm wrong—to the secret information. The counsel for these people knew the secret information, so they actually have the person who is the counsel for these individuals having access to the information, not even a special advocate.

There is even a more vigorous model, in which the counsel has all the kinds of relationship, information, background, knows the case intimately, and has that trust relationship with their client.

The Chair: Thank you very much.

We maybe have a little bit of time yet for Mr. MacKenzie.

Mr. Dave MacKenzie: Thank you, Chair.

If there is any time left, I'll share it with my colleague, Mr. Brown.

I just have one question. My sense is that as a panel you would prefer that Canada have an open door policy to immigration and refugees, and once someone is in the country, the responsibility becomes that of the police agencies for criminal prosecution. Am I right in that assumption?

Ms. Sharryn Aiken: I don't think it's the position of any of us here today—certainly an articulated position—that Canada should have an open door policy. And we understand that by its very nature the Immigration and Refugee Protection Act makes distinctions.

What we're speaking about, however, is how we treat people once they're here in Canada.

Mr. Dave MacKenzie: That's what I said. We let them into the country and then we make it a police issue.

Ms. Sharryn Aiken: That's not an open door policy.

Mr. Dave MacKenzie: I think you're advocating that we use the Criminal Code. How do we do that if we don't simply let them in and then make it a police issue?

Ms. Sharryn Aiken: Actually, as both of our colleagues have suggested, the Criminal Code itself contains a vast range of preventive and sort of pre-emptive measures passed in the aftermath of 9/11, which are ample tools to address genuine security threats.

For example, the reason we often hear from government as to why we need security certificates is because we don't have enough evidence on these people yet. We know they smell bad. There is something wrong with them. We've heard stuff. We have some evidence, but we certainly don't have enough information to proceed with criminal charges. We want a quick and dirty process to get them out of the country.

Well, it's our response to that concern that you can't do quick and dirty when fundamental rights are at stake, but what you can do—

Mr. Dave MacKenzie: You're talking about terrorism, though, aren't you?

Ms. Sharryn Aiken: Yes.

Mr. Dave MacKenzie: What about industrial espionage and organized crime?

Ms. Sharryn Aiken: In any regard.

But what you can do is marshal the investigative tools that you have in the Criminal Code to get the evidence sufficient to actually prosecute or, in many appropriate cases, extradite if there are actual criminal allegations at play.

Mr. Dave MacKenzie: But could we extradite somebody when the offence is that they're in Canada for a particular purpose?

If we can stop them from coming in.... I understand the prosecution side of it, and I would ask one other question. I understand and I appreciate the role of lawyers and what you do in taking care of the interests of the individual and so on. But has anybody here ever represented a victim at a hearing, a tribunal, or a court case, or an industry or a firm that's been the victim of industrial espionage or criminal activity? And if you have, by all means tell me. But what I hear is that your role has been to defend the individual. And that's fair, and I understand that. I'm not chiding you for that at all.

But how do we, as a government, represent the interests of Canadians, all Canadians, not only the individuals who we think may not be in Canada...?

● (1715)

Mr. Dominique Peschard: Well, there are different levels of threats. Now you're talking about espionage. Espionage is not directly a threat to the life of Canadians in the same way as a terrorist act, and we don't see why a person suspected of espionage would be treated differently, whether he's a Canadian citizen or a foreign national.

Mr. Philippe De Massy: We are here because Mr. Almrei has been deprived of his liberty for over six years, does not know the case against him, has no way of defending himself, and could possibly have his detention last for a lifetime. That's what we're here for; we're claiming that this is against all the fundamental principles in human rights.

We're defending those principles; we're not here to defend individuals or putting societies at risk against the danger that individuals pose. We are here to defend those principles. We claim that fighting terrorism and fighting organized crime, or whatever, can be done with the full respect of the fundamental principles that human beings have given themselves.

Mr. Dave MacKenzie: I understand that, and I have no issue with that; I respect you for that role. But how do we deal with Canadians? We had the widow of a 9/11 victim in here last week. How do we say to her that we're going to protect the interests of those folks? I think the Air India people are asking us what we did to protect them, and obviously we didn't do enough.

The Chair: Did you want to share your time with Mr. Brown?

Okay, Mr. Brown, go ahead.

Mr. Gord Brown (Leeds—Grenville, CPC): Mr. Chairman, I'll get this in quickly.

It's clear that the Supreme Court has upheld the security certificate regime, and you're all here today telling us that you don't want any part of it; you think it should be squashed and should not exist.

What we are doing now is looking for any way to improve the situation and improve the regime. In the few minutes we have left, I would like to hear what.... Maybe you can't do this because you don't believe in the regime, but is there any information you can give us to potentially improve this legislation so that it would somewhat satisfy you? Maybe that's not possible, but here's your chance to give us your two cents.

Ms. Janet Dench: Thank you for that opportunity.

I would like to come back to the issue of section 86, because there is a tendency always to talk about security certificates. I understand that they are the most serious issue in the bill in terms of the rights at stake, but section 86 is an important provision. It has been used on multiple occasions—more than the security certificates, I believe—and we need to look to the future and the ways in which that may be used in the future, so I would suggest that you look more carefully at limiting the use of secret evidence in the forum, if not eliminating it.

Mr. Gord Brown: Okay.

The Chair: Does anyone else have any concluding comments? We have votes coming up in the House here in a minute.

Mr. Philippe De Massy: Actually the problem is secret evidence, of course, but you know, in protecting these fundamental values that now are part of the international law that Canada adheres to through different conventions and treaties, we are protecting every single individual around this table. These are our rights that we're talking about, not the rights only of criminal elements who are going to endanger society; it's the right of every person not to be deprived of his freedom without due process. This is the only thing we're trying to stress—that if we want due process, we are not getting it with these amendments.

The Chair: Seeing no more hands going up, I will thank our....

Go ahead, Mr. Cullen.

Hon. Roy Cullen: Thank you.

We have been talking about the rights of these people who are being detained, and I agree that it's an important consideration.

What about the need to protect information that comes from our allies? It could be harmful if that information got into the wrong hands. In other words, we would stop receiving useful intelligence if we betrayed those confidences. Do you have any concern about that at all?

● (1720)

Mr. Murray Mollard: First, one of the suggested improvements —and I'm not sure we've discussed it explicitly today—is the importance of prohibitions against information that has the reasonable suspicion of having been generated from torture or degrading, inhuman, cruel behaviour.

Mr. Cullen, you had gone through that list of the six individuals who are under security certificates. Our organization hasn't done in-depth research. Indeed, we can't. No one really can, because no one has the information in terms of the credibility of their information. Indeed, it's a real question why the special advocates could.

When you look at that list, I think almost all of those countries top the list of countries that often are well known in the human rights world for practices that indeed involve inhuman, cruel, degrading kinds of behaviour, torture, etc. There is, I think, a prima facie assumption that information coming from those regimes and those secret services is in fact going to be information that we in fact don't want to have our security services eliciting, because of the practices that occur in those countries.

Ms. Sharryn Aiken: If I may, I'd respond to your concern about information provided by allies that may not be countries practising torture and the concern that it will squelch information-sharing. Our response to that would be that there's nothing wrong with the information flow per se. It can indeed still be protected, but it need not be used to mount a case against a person. In other words, there's nothing to prevent Canadian government agencies from still receiving that information and assuring their allies that the information won't be shared. When they choose to proceed against someone in a criminal context, they must have corroborating open-source information. I would suggest that in cases in which there really are threats, there's no reason why evidence can't be gathered through a process of monitoring, surveillance, or whatever, that won't breach the undertakings to allies, and that allies wouldn't have any reason to worry.

I hope I'm being clear. In other words, you can use all that information at the investigative stage, but when it comes to actually initiating a procedure, that procedure must be based on evidence that should be open-sourced and that you don't need to worry—

The Chair: You're sharing your time with Mr. Cullen?

Hon. Ujjal Dosanjh: I just have one question as a follow-up.

I'm intrigued by the way you've expressed it—I appreciate the sentiment and the commitment to the values—by the way you suggest we can use the evidence, but once we have to detain a person or limit liberties, we have to then have evidence of our own that we can produce.

Using that logic, what has been troubling me is that we would not be able to detain anyone based on information that we get from abroad unless we have evidence of any criminal activity here. That is the quandary governments find themselves in. I'm not defending anything here, but if you were sitting around the cabinet table, you could not detain an individual, could not deport an individual under the security certificate, because you don't have the evidence of commission of crime in Canada—which you could gather, I agree with you; we should be able to do that.

What do you do in those situations if you find the evidence you have obtained from elsewhere to be reliable but you can't produce it?

Ms. Janet Dench: Isn't that the same quandary you find yourself in if the person affected is a Canadian citizen? What do you do if the person is a Canadian citizen?

Hon. Ujjal Dosanjh: There are people you're stuck with, right? Whether they are born in Canada or they come to Canada and become citizens, you become stuck with them unless you can denaturalize them legally, and legitimately you should have some proof.

Obviously, if a person has come and is in the process of settling himself or herself permanently in the country, but we find out that the person is an extremely dangerous person because we have this evidence from a reliable ally but can't produce that evidence in an open court, what you're suggesting is that we do nothing in that regard unless we can find evidence that is here, that is available to us, that the person has committed an offence. We have first-hand evidence and we can produce that, and then we can deal with the issue.

● (1725)

Mr. Murray Mollard: If I could just respond quickly, first of all, if there indeed is reliable evidence—not just information, but evidence—from a foreign source, such that the evidence suggests this individual who has arrived in Canada has committed crimes elsewhere, surely we have procedures to extradite that person, subject to a legitimate procedure in that other country.

Hon. Ujjal Dosanjh: If the government is seeking extradition at the other end.

Mr. Murray Mollard: Right. If they are seeking—

Hon. Ujjal Dosanjh: There may be governments that don't want to have extradition.

Mr. Murray Mollard: Then we have to ask the question why they wouldn't. If they're governments we respect, they have a full democratic and fair judicial process.

The Chair: Monsieur Ménard, did you have a brief comment or question?

[*Translation*]

Mr. Serge Ménard: Yes, Mr. Chairman.

I would like to know if I understood your point correctly, and your impression of the governement's position. I believe that the Supreme Court explained why our procedure is not consistent with the Charter. The court told Parliament that it was up to it to find a solution that would pass the charter test, whereas the government's action suggests that it thinks the Supreme Court handed down a decision telling it what it should do in order to make the procedure Charter-proof.

In fact, you believe that that is not what the Supreme Court told us. That is the first thing the court told us, and you came here in order to help us do what we must in order to make it charter-proof, did you not?

Ms. Janet Dench: As parliamentarians, you must assume your responsibility and make choices that respect with the Charter. However, you are not limited by what the Supreme Court said. We, as members of a democratic society, encourage you to respect the rights of every member of our society as much as possible.

Mr. Philippe De Massy: The court said above all that section 7 of the Canadian Charter applies to people who are not Canadian citizens. That is very, very important and that is the context in which immigration decisions must be made.

[*English*]

The Chair: Okay.

Thank you all very much.

This meeting stands adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
http://www.parl.gc.ca

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.