

Security Certificates: Balancing National Security and Civil Liberties

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In June 2006, the Supreme Court of Canada held hearings into the constitutionality of the security certificate process. Under the Immigration and Refugee Protection Act, the Government of Canada can detain a foreign national or permanent resident indefinitely without charge and then deport them if they are deemed to be a threat to national security. In consulting with various stakeholders, a clear consensus is growing that the process needs to be improved for dealing with potential security threats.

After the security certificate is signed by the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness, an individual is detained while a Federal Court judge determines whether they should be deported. Throughout the process the Federal Court judge who hears the evidence must not disclose any information that might be injurious to national security or might cause harm to another individual. A large portion of the judges' decision is thus based on secret evidence upon which the individual and his lawyer have no opportunity to review or refute. The individual is therefore detained and ordered for deportation without due process. The process has been labeled by some as a 'secret trial' and it has been condemned by various human rights organizations including Human Rights Watch and Amnesty International.

It has become clear to me that the status quo is unacceptable. Security certificates have given Canada's human rights record a black eye. Since 1976, twenty-seven security certificates have been issued. Currently, four men remain detained on certificates while three other men have been released on conditional bail which equates to a form of house arrest. If the cases against these men are strong enough to warrant detention and deportation then they should be charged.

The case of Manickavasagam Suresh is an interesting one. Mr. Suresh was detained on a security certificate in 1995 for allegedly being the top organizer and fundraiser for the Liberation Tigers of Tamil Ealam (LTTE) in Canada. In 1998, after several appeals, he was released under strict conditions and to this day he is still living under house arrest in Mississauga. If the case against him was sound enough to warrant the use of a security certificate in the first place then it is difficult to understand how more than a decade later the government still has not been able to charge him. I am not questioning whether he is guilty or not, I am simply advocating for due process.

National security should always be the government's highest priority however we must balance security concerns with a transparent and accountable process. We need to fight the temptation to impose more restrictions on civil rights out of fear and paranoia. Canada should retain the highest standards of civil liberties including the right of due process for all.

In the coming months, the Supreme Court will render a landmark decision. Should the Supreme Court uphold the process or open the door to improvements, I have tabled a private members bill, C-345, An Act to amend the Immigration and Refugee Protection Act (appointment of a special counsel), in the House of Commons. The bill will make sure that a special counsel is appointed whenever a security certificate is issued in order to represent the public interest. The counsel's main objective would be to ensure that the process follows procedural fairness and the principles of fundamental justice which are protected by the Charter of Rights and Freedoms. C-345 will also strengthen Canada's human rights record by ensuring that due process is guaranteed for all individuals and it would go a long way towards restoring public confidence in the system.

If the Supreme Court rules that the security certificate process is unconstitutional, I would support that decision. Ideally, I would like to see these individuals tried in a criminal court. I believe that all individuals have the right to due process and that is why I am continuing a dialogue on this issue with all interested parties.